



**PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA**

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Companies Act, No. 07 of 2007

[Certified on 20th March, 2007]

L.D. — O. 44/2005

AN ACT TO AMEND AND CONSOLIDATE THE LAW RELATING TO
COMPANIES

BE it enacted by the Parliament of the Democratic Socialist
Republic of Sri Lanka as follows :-

1. (1) This Act may be cited as the Companies Act, No. 07
of 2007. Short title and
date of
operation.

(2) The provisions of this Act shall come into operation
on such date (hereinafter referred to as the “appointed date”)
as the Minister may appoint, by Order published in the
Gazette.

PART I

INCORPORATION OF COMPANIES AND RELATED MATTERS

ESSENTIAL CHARACTERISTICS OF COMPANIES

2. (1) A company incorporated under this Act shall, by
the name by which it is registered from time to time, be a
body corporate. Legal status and
capacity of a
company.

(2) A company shall have, both within and outside Sri
Lanka—

- (a) subject to the provisions of section 13 of the Act,
the capacity to carry on or undertake any business
or activity, do any act or enter into any transaction ;
and
- (b) subject to the provisions of any written law of Sri
Lanka or of any other country, all the rights, powers
and privileges necessary for the purposes of
paragraph (a).

Different types
of companies.

3. (1) A company incorporated under this Act may be either—

- (a) a company that issues shares, the holders of which have the liability to contribute to the assets of the company, if any, specified in the company's articles as attaching to those shares (in this Act referred to as a "limited company") ; or
- (b) a company that issues shares, the holders of which have an unlimited liability to contribute to the assets of the company under its articles (in this Act referred to as an "unlimited company") ; or
- (c) a company that does not issue shares, the members of which undertake to contribute to the assets of the company in the event of its being put into liquidation, in an amount specified in the company's articles (in this Act referred to as a "company limited by guarantee").

(2) Where a limited company is incorporated as a private company or as an off-shore company, the provisions of Part II or Part XI shall apply respectively, to such a company.

INCORPORATION OF COMPANIES

Method of
incorporating a
company.

4. (1) Subject to the provisions of subsection (2), any person or persons may apply to incorporate a company, other than a company limited by guarantee, by making an application for the same to the Registrar in the prescribed form signed by each of the initial shareholders, together with the following documents :-

- (a) a declaration stating that to the best of such person or persons knowledge, the name of the company is not identical or similar to that of an existing company ;

- (b) the articles of association of the company, if different from the articles set out in the First Schedule hereto, and signed by each of the initial shareholders ;
- (c) consent from each of the initial directors under section 203, to act as a director of the company ; and
- (d) consent from the initial secretary under subsection (2) of section 221, to act as secretary of the company.

(2) A company shall have not less than two shareholders, provided that a company may have a single shareholder where such single shareholder is the Secretary to the Treasury who is holding shares on behalf of the Government of Sri Lanka or is an individual or a body corporate.

5. (1) On receipt of a properly completed application for incorporation in the prescribed form, the Registrar shall— Incorporation of a company.

- (a) enter the particulars of the company on the Register ;
- (b) assign a unique number to that company as its company number ; and
- (c) issue a certificate of incorporation in the prescribed form to the applicant company.

(2) The certificate of incorporation issued under subsection (1) shall specify—

- (a) the name and number of the company ;
- (b) the date on which the company was incorporated ;
- (c) whether the company is a limited company, an unlimited company or a company limited by guarantee ;
- (d) whether the company is a private company ; and
- (e) whether the company is an off-shore company ;

(3) A certificate of incorporation issued under this section in-respect of any company, shall be conclusive evidence of the fact that—

- (a) all the requirements under this Act relating to the incorporation of a company have been complied with ; and
- (b) the company has been incorporated under this Act on the date specified in such certificate of incorporation.

COMPANY NAMES

Requirements as to name.

6. The name of every—

- (a) limited company other than a listed company, shall end in the word “Limited” or by the abbreviation “Ltd” ;
- (b) private company, shall end in the words “(Private) Limited” or by the abbreviation “(Pvt) Ltd” ; and
- (c) limited company which is a listed company, shall end in the words “Public Limited Company” or by the abbreviation “PLC”.

Restrictions on names.

7. (1) A company shall not be registered by a name which—

- (a) is identical with the name of any other company or of any registered overseas company ;
- (b) contains the words “Chamber of Commerce”, unless the company is a company which is to be registered under a licence granted under section 34 without the addition of the word “Limited” to its name ; or

(c) is in the opinion of the Registrar, misleading.

(2) Except with the consent of the Minister given having regard to the national interest, no company shall be registered by a name which contains the words :—

- (a) “President”, “Presidential” or other words which in the opinion of the Registrar suggest or are calculated to suggest, the patronage of the President or connection with the Government or any Government Department ;
- (b) “Municipal”, “incorporated” or other words which in the opinion of the Registrar suggest or are calculated to suggest, connection with any Municipality or other local authority or with any society or body incorporated by an Act of Parliament ;
- (c) “Co-operative” or “Society” ; or
- (d) “National”, “State” or “Sri Lanka” or other words which in the opinion of the Registrar suggest or are calculated to suggest, any connection with the Government or any Government Department.

(3) In determining for the purposes of subsection (1) whether one name is identical with another, the following words shall be disregarded :—

- (a) the word “the”, where it is the first word of the name ;
- (b) the following words and expressions, where they appear at the end of the name :
 - (i) “company” ;
 - (ii) “and company” ;
 - (iii) “company limited” ;

- (iv) “and company limited” ;
- (v) “limited” ;
- (vi) “unlimited” ;
- (vii) “(Private) limited” ;
- (viii) “Public Limited Company” ;
- (c) abbreviations referred to in section 6, where they appear at the end of the name ;
- (d) type and case of letters, accents, spaces between letters and punctuation marks ; and
- (e) “and” or “&”.

Change of
name.

8. (1) A company may change its name by special resolution with the prior approval in writing of the Registrar.

(2) Where a company has resolved to change its name under subsection (1), it shall within ten working days of the change, give notice of the change to the Registrar in the prescribed form.

(3) Upon receiving notice that a company has changed its name, the Registrar shall—

- (a) enter the new name on the Register in place of the former name ; and
- (b) issue a fresh certificate of incorporation in the prescribed form, altered to indicate—
 - (i) the change of name ; and
 - (ii) where the company has become or has ceased to be a private company, the fact of that change.

(4) The change of name shall not affect any rights or obligations of the company, or render ineffective any legal proceedings by or against the company. 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.

(5) Where a company fails to comply with subsection (2)—

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees ; and
- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

9. (1) A company shall within thirty working days of its incorporation under this Act, give public notice of its incorporation, specifying — Public notice of name.

- (a) the name and company number of the company ;
and
- (b) the address of the company's registered office.

(2) Where a company changes its name in accordance with the provisions of section 8, it shall within twenty working days of such change give public notice of it, specifying—

- (a) the former name of the company ;
- (b) the company number ;
- (c) the address of the registered office of the company ;
and
- (d) the new name of the company.

(3) Where a company fails to publish the notice required under subsection (1) or (2) :—

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees ; and
- (b) the Registrar shall cause the relevant notice to be published.

Direction to
change name.

10. (1) Notwithstanding the provisions of section 7, the Registrar may direct a company to change its name in the following circumstances :—

- (a) where through inadvertence or otherwise, it has been registered with a name which contravenes the provisions of section 6 ;
- (b) a request is made to the Registrar to do so within three months of the company giving public notice of the name objected to under section 9, by another company or by a registered overseas company, where—
 - (i) the name of the first-mentioned company is so similar to the name of the requesting company that it is likely to cause confusion ; and
 - (ii) the requesting company was registered with its current name before the first-mentioned company was registered with the name objected to ; or
- (c) a request is made to the Registrar to do so by any person and the Registrar is satisfied that the name was not applied for in good faith for the purpose of identifying the company.

(2) A company shall comply with a direction issued by a Registrar under subsection (1) within a period of six weeks from the date of the issue of such direction, or such longer period as the Registrar may in his discretion permit.

(3) A company which fails to comply with a direction issued under this section shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees.

11. (1) Where a company ceases to be a private company, it shall be deemed to have resolved to change its name in accordance with the provisions of subsection (1) of section 8, by omitting the word “(Private)”.

Change of name upon change of status of company.

(2) Where a company which was not a private company becomes a private company under section 29, it shall be deemed to have resolved to change its name in accordance with the provisions of subsection (1) of section 8 by substituting for the word “Limited” at the end of its name, of the words “(Private) Limited”.

(3) Where a limited company becomes a listed company, it shall be deemed to have resolved to change its name in accordance with the provisions of subsection (1) of section 8 by substituting for the word “Limited” at the end of its name, of the words “Public Limited Company”.

(4) Where a limited company ceases to be a listed company, it shall be deemed to have resolved to change its name in accordance with the provisions of subsection (1) of section 8, by substituting for the words “Public Limited Company” at the end of its name, of the word “Limited”.

(5) Where a company is deemed to have resolved to change its name under this section, it shall within ten working days of such change, give public notice of the change and send a copy of such notice to the Registrar, and the provisions of subsections (3) and (4) of section 8, shall apply to and in relation to such change of name.

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

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees ; and
- (b) every officer of the company who is in default shall be guilty an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

Use of company
name and
company
number.

12. (1) A company shall ensure that its name and its company number are clearly stated in—

- (a) all business letters of the company ;
- (b) all notices and other official publications of the company ;
- (c) all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods signed on behalf of the company ;
- (d) all invoices, receipts and letters of credit of the company ;
- (e) all other documents issued or signed by the company which creates or is evidence of a legal obligation of the company ; and
- (f) the company seal, if any.

(2) Every company shall ensure that its name and its company number are clearly displayed at its registered office.

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

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

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

(4) Where—

- (a) a document that creates or is evidence of a legal obligation of a company, is issued or signed by or on behalf of the company ; and
- (b) the name and company number of the company are not correctly stated in the document,

every person who issued or signed the document will be liable to the same extent as the company if the company fails to discharge the obligation, unless-

- (c) the person who issued or signed the document proves, that the person in whose favour the obligation was incurred was aware at the time the document was issued or signed, that the obligation was incurred by the company ; or
- (d) the court is satisfied that it would not be just and equitable for that person to be so liable.

(5) For the purposes of subsections (1) and (2), a company may use a generally recognized abbreviation of any word in its name, unless it is misleading to do so.

ARTICLES OF ASSOCIATION

13. The articles of association of a company may provide for any matter not inconsistent with the provisions of this Act other than the First Schedule hereto, and in particular may provide for—

Contents of articles.

- (a) the objects of the company ;

- (b) the rights and obligations of shareholders of the company ; and
- (c) the management and administration of the company.

Application of
model articles.

14. The articles of association set out in the First Schedule hereto (hereinafter referred to as “model articles”) shall apply in respect of any company other than a company limited by guarantee, except to the extent that the company adopts articles which exclude, modify or are inconsistent with the model articles.

Adoption or
amendment of
articles.

15. (1) Subject to the provisions of this Act and any conditions contained in its articles, a company may at any time by special resolution —

- (a) adopt new articles ;
- (b) if it has articles which differ from the articles of association set out in the First Schedule, adopt such articles as its articles ; or
- (c) alter its articles.

(2) Where a company by a special resolution alters its articles, it shall give notice of such resolution to the Registrar within ten working days, setting out in full the text of the resolution and of any new articles or of any alterations to the company’s articles.

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

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees ; and
- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

16. Subject to the provision of section 89, the articles of a company shall bind the company and its shareholders as if there were a contract between the company and its shareholders. In particular, all money payable by any shareholder to the company under the articles, shall be a debt due from that shareholder to the company.

Effect of articles.

17. (1) Where the articles of a company sets-out the objects of the company, there shall be deemed to be a restriction placed by the articles in carrying on any business or activity that is not within those objects, unless the articles expressly provide otherwise.

Effect of
statement of
objects in
articles.

(2) Where the articles of a company provide for any restriction on the business or activities in which the company may engage—

- (a) the capacity and powers of the company shall not be affected by such restriction ; and
- (b) no act of the company, no contract or other obligation entered into by the company and no transfer of property by or to the company, shall be invalid by reason only of the fact that it was done in contravention of such restriction.

(3) Nothing in subsection (2) shall affect —

- (a) the ability of a shareholder or director of the company to make an application to court under section 233 to restrain the company from acting in a manner inconsistent with a restriction placed by the articles, unless the company has entered into a contract or other binding obligation to do so; or
- (b) the liability of a director of the company for acting in breach of the provisions of section 188.

Right of shareholders to a copy of the articles.

18. (1) A shareholder has a right at any time to request a company in writing for a copy of the articles of the company, and subject to subsection (2), the company shall comply with such request within five working days of the date of receipt and such request.

(2) A company to which a request is made under subsection (1) may—

- (a) require the shareholder to pay a fee of not more than five hundred rupees before providing a copy of the articles; or
- (b) decline to provide a copy of the articles, if a copy has been provided to that shareholder within the previous six months.

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

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees; and
- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding one hundred thousand rupees.

COMPANY CONTRACTS ETC.

Method of contracting.

19. (1) A contract or other enforceable obligation may be entered into by a company as follows :—

- (a) an obligation which, if entered into by a natural person is required by law to be in writing signed by that person and be notarially attested, may be entered into on behalf of the company in writing signed under the name of the company by —
 - (i) two directors of the company;

- (ii) if there be only one director, by that director ;
- (iii) if the articles of the company so provide, by any other person or class of persons; or
- (iv) one or more attorneys appointed by the company,

and be notarially executed;

- (b) an obligation which, if entered into by a natural person is required by law to be in writing and signed by that person, may be entered into on behalf of the company in writing signed by a person acting under the company's express or implied authority;
- (c) an obligation which if entered into by a natural person is not required by law to be in writing, may be entered into on behalf of the company in writing or orally, by a person acting under the company's express or implied authority.

(2) The provisions of subsection (1) shall apply to a contract or other obligation —

- (a) whether or not that contract or obligation is entered into in Sri Lanka; and
- (c) whether or not the law governing the contract or obligation is the law of Sri Lanka.

(3) For the purpose of this section, a company may use a generally recognised abbreviation of any word in the name, unless it is misleading to do so.

20. (1) Subject to its articles, a company may by an instrument in writing executed in accordance with the provisions of section 19, appoint a person as its attorney either generally or in relation to a specified matter.

Attorneys.

(2) Any act of the attorney carried out in accordance with the instrument referred to in subsection (1), shall be binding on the company.

(3) The provisions of the Powers of Attorney Ordinance (Chapter 122) and the law relating to powers of attorney executed by a natural person, shall with necessary modifications, apply in relation to a power of attorney executed by a company to the same extent as if the company was a natural person, and as if the commencement of the liquidation or if there is no liquidation, the removal of the company from the Register, was the death of a person.

Authority of
directors,
officers and
agents.

21. (1) A company or a guarantor of an obligation of the company or any person claiming under the company, may not assert against a person dealing with that company or with any person who has acquired rights from the company, that —

- (a) the articles of the company have not been complied with ; or
- (b) the persons named in the most recent notice filed under section 223 or the annual return delivered under section 131 of this Act, are not the directors or the secretary of the company, as the case may be ; or
- (c) a person held out by a company as a director, officer or agent of the company—
 - (i) has not been duly appointed; or
 - (ii) does not have authority to exercise the powers and perform the duties that are customary in the business of the company or are normal for a director, officer or agent of a company carrying on business of the kind carried on by that company; or

- (d) a document issued by any director, the secretary of the company or by any officer or agent, with actual or normal authority to issue the document, is not valid or genuine,

unless that person has, or by virtue of that person's position with or relationship to the company, ought to have knowledge to the contrary.

(2) The provisions of subsection (1) shall apply even in a situation where a person referred to in paragraphs (b) to (d) of that subsection acts fraudulently or forges a document that appears to have been signed on behalf of the company, unless the person dealing with the company or who has acquired rights from the company, has actual knowledge of such fraud or forgery.

22. Subject to the provisions of subsection (3) of section 105, a person shall not be affected by or deemed to have notice or knowledge of the contents of the articles of company or any other document relating to a company, by reason only of the fact that it has been delivered to the Registrar for filing or is available for inspection at any office of the company.

No constructive notice.

PRE-INCORPORATION CONTRACTS

23. (1) For the purpose of this section and sections 24 and 25 of this Act, the expression "pre-incorporation contract" means —

pre-incorporation contracts may be ratified.

- (a) a contract purported to have been entered into by a company before its incorporation; or
- (b) a contract entered into by a person on behalf of a company before and in contemplation of its incorporation.

(2) Notwithstanding anything to the contrary in any law, a pre-incorporation contract may be ratified within such period as may be specified in the contract or if no such period is specified, within a reasonable time after the incorporation of such company, in the name of which or on behalf of which it has been entered into.

(3) A pre-incorporation contract that is ratified under subsection (2), shall be as valid and enforceable as if the company had been a party to the contract at the time it was entered into.

(4) A pre-incorporation contract may be ratified by a company in the same manner as a contract may be entered into on behalf of a company under section 19.

Warranties
implied in pre-
incorporation
contracts.

24. (1) Notwithstanding anything to the contrary in any law, in a pre-incorporation contract, unless a contrary intention is expressed in the contract, there shall be an implied warranty by the person who purports to enter into such contract in the name of or on behalf of the company—

- (a) that the company will be incorporated within such period as may be specified in the contract, or if no period is specified, within a reasonable time after the making of the contract; and
- (b) that the company will ratify the contract within such period as may be specified in the contract or if no period is specified, within a reasonable time after the incorporation of such company.

(2) The amount of damages recoverable in an action for breach of an implied warranty referred to in subsection (1), shall be the same as the amount of damages that may be recoverable in an action against the company for damages for breach by the company of the unperformed obligations under the contract, if the contract had been ratified by the company.

(3) Where after its incorporation, a company enters into a contract in the same terms as or in substitution for, a pre-incorporation contract (not being a contract ratified by the company under section 23), the liability of a person under subsection (1) shall be discharged.

25. Where a company has acquired property pursuant to a pre-incorporation contract that has not been ratified by the company after its incorporation, a court may on an application made in that behalf by the party from whom the property was acquired, make an order —

Failure to ratify.

- (a) directing the company to return property acquired under the pre-incorporation contract, to that party;
- (b) validating the contract in whole or in part; or
- (c) granting any other relief in favour of that party relating to that property acquired.

AUTHENTICATION OF DOCUMENTS BY COMPANY

26. A document or record of proceedings requiring authentication by a company shall be signed by a director, secretary, or other authorised officer of the company.

Authentication of documents by company.

PART II

PRIVATE COMPANIES

27. The articles of a private company shall include provisions which—

Articles of a private company.

- (a) prohibit the company from offering shares or other securities issued by the company to the public; and
- (b) limit the number of its shareholders to fifty, not including shareholders who are—
 - (i) employees of the company; or

- (ii) former employees of the company who became shareholders of the company while being employees of such company and who have continued to be shareholders after ceasing to be employees of the company.

Company
ceasing to be a
private
company.

28. (1) If a private company alters its articles in such a way that the articles no longer comply with the requirements of section 27—

- (a) the company shall cease to be a private company;
- (b) provisions of sections 30 and 31 shall cease to apply to that company; and
- (c) the company shall be deemed to have changed its name in accordance with section 11.

(2) If a private company fails to comply with the requirements specified in section 27—

- (a) the company shall cease to be a private company;
- (b) provisions of sections 30 and 31 shall cease to apply to that company; and
- (c) the company shall be deemed to have changed its name in accordance with section 11.

(3) The court may determine that provisions of subsection (2) shall not apply in respect of failure by a private company, where it is satisfied that—

- (a) the failure to comply was due to inadvertence;
- (b) the failure to comply has been rectified; or
- (c) in all the circumstances of the case it is just and equitable to reach such determination.

29. Where a limited company alters its articles so that the articles comply with the requirement of section 27—

Company may become a private company.

- (a) the company shall become a private company; and
- (b) the company shall be deemed to have changed its name in accordance with the provisions of section 11.

30. (1) A private company may by unanimous resolution of its shareholders dispense with the keeping of an interests register, and while such a resolution is in force, no provision of this Act which requires any matter to be entered in the interests register of a company, shall apply to such private company.

Private companies need not keep interests register.

(2) A unanimous resolution under subsection (1) shall cease to have effect, if any shareholder gives notice in writing to the company, that he requires it to keep an interests register.

31. (1) Where all the shareholders of a private company agree in writing to any action which has been taken, or is to be taken by the company—

Unanimous agreement of shareholders.

- (a) the taking of that action is deemed to be validly authorised by the company, notwithstanding any provision in the articles of the company to the contrary; and
- (b) the provisions contained in the list of sections of this Act specified in the Second Schedule hereto, shall not apply to and in relation to that action.

(2) Without limiting the matters which may be agreed to under subsection (1), the provisions of that subsection shall apply where all the shareholders of a private company agree to or concur in —

- (a) the issue of shares by the company;

- (b) the making of a distribution by the company;
- (c) the repurchase or redemption of shares in the company;
- (d) the giving of financial assistance by a company for the purpose of or in connection with the purchase of shares in the company;
- (e) the payment of remuneration to a director, or the making of a loan to a director, or the conferment of any other benefit on a director; or
- (f) the entering into a contract between an interested director and the company.

(3) Where a distribution is made by a company under subsection (2) and as a consequence of making that distribution the company fails to satisfy the solvency test, such distribution shall be deemed not to have been made validly.

(4) A distribution to a shareholder which is deemed not to have been validly made under subsection (3) may be recovered by the company from such shareholder, unless —

- (a) the shareholder received the distribution in good faith and without knowledge of the company's failure to satisfy the solvency test;
- (b) the shareholder has altered his position relying on the validity of such distribution; and
- (c) it would be unreasonable in view of the circumstances, to require repayment in full or at all.

(5) Where reasonable grounds did not exist for believing that the company would be able to satisfy the solvency test

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

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

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

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

PART III

COMPANIES LIMITED BY GUARANTEE

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

Application for incorporation of a company limited by guarantee.

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

Company limited by guarantee must have articles.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Provisions
which apply to
companies
limited by
guarantee.

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

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

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

PART IV

SHARES AND DEBENTURES

PROSPECTUS

Dating of
prospectus.

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

37. (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, shall contain the information specified in Part I of the Fourth Schedule hereto and set out the reports specified in Part II of that Schedule. The provisions of Parts I and II shall have effect, subject to the provisions contained in Part III of that Schedule.

Specific requirements as to particulars in prospectus.

(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 for 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 the provisions of this subsection shall not apply, where it is shown that the form for application was issued either—

- (a) in connection with a *bona fide* invitation to a person to enter into an under-writing agreement with respect to the shares or debentures ;
- (b) in relation to shares or debentures which were not offered to the public ; or
- (c) in relation to issuance of commercial papers by a company listed on a stock exchange and offered to the public.

(4) Subject to the provisions of subsections (1) and (2), any person who acts in contravention of the provisions of subsection (3) shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees.

(5) 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 issue of the prospectus shall not incur any liability by reason of such non-compliance or contravention, if—

- (a) as regards any matter not disclosed he proves that he was not cognizant thereof ;
- (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 any matter which in the opinion of the court was immaterial or was otherwise such as ought, 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 17 of the Fourth Schedule hereto, 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.

(6) The provision of this section shall not apply to the issue to existing shareholders 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 shall or shall not have the right to renounce in favour of other persons. Save as aforesaid, the provisions of 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.

(7) Nothing in this section shall limit or diminish any liability which a person may incur under any written law or under this Act (other than this section).

(8) Where a prospectus has been sent for registration in accordance with the provisions of section 40 and has been

registered by the Registrar, nothing in the preceding provisions of this section shall be deemed or construed to prohibit the issue or publication of any notice, circular or advertisement stating that the prospectus has been registered and issued and that copies thereof are available on application, if such notice, circular or advertisement does not contain any invitation to the public to subscribe for or purchase any shares in or debentures of a company.

38. (1) A prospectus inviting persons to subscribe for shares in or debentures of a company and including a statement purporting to be made by an expert, shall not be issued, unless—

Expert's consent to issue of prospectus containing statement by him.

- (a) such expert has given and has not before delivery of a copy of the prospectus for registration, withdrawn his written consent to the issue thereof with the statement included in the form and context in which it is included ; and
- (b) a statement appears in the prospectus that such expert has given and has not withdrawn his consent as referred to in paragraph (a).

(2) Where any prospectus is issued in contravention of the provision of this section, the company and every person who is knowingly a party to the issue thereof, shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees.

(3) For the purpose of this section, the term “expert” includes an engineer, a valuer, an auditor, an accountant and any other person having similar professional qualifications.

39. (1) No bank shall be named as a company's banker in any prospectus inviting persons to subscribe for shares in or debentures of the company, unless such bank has given and has not before delivery of a copy of the prospectus for registration, withdrawn its written consent to the inclusion in such prospectus of its names as the company's banker :

Consent of bank or attorney-at-law or auditor necessary for inclusion of name in prospectus.

Provided that a bank shall not be deemed for the purposes of this Act to have authorised the issue of a prospectus, by reason only of it having given the consent to the inclusion in such prospectus of its name as the company's bankers.

(2) No attorney-at-law shall be named as a company's lawyer in a prospectus inviting persons to subscribe for shares in or debentures of the company, unless such attorney-at-law has given and has not before delivery of a copy of the prospectus for registration, withdrawn his written consent to the inclusion in such prospectus of his name as the company's lawyer :

Provided that an attorney-at-law shall not be deemed for the purposes of this Act to have authorised the issue of a prospectus, by reason only of his having given the consent to the inclusion in such prospectus of his name as the company's lawyer.

(3) No auditor shall be named as a company's auditor in a prospectus inviting persons to subscribe for shares in or debentures of the company, unless such auditor has given and has not before delivery of a copy of the prospectus for registration, withdrawn his written consent to the inclusion in such prospectus of his name as the company's auditor :

Provided that an auditor shall not be deemed for the purposes of this Act to have authorized the issue of a prospectus, by reason only of his having given the consent to the inclusion in such prospectus of his name as the company's auditor.

(4) Where the name of any bank, attorney-at-law or auditor is included in any prospectus of a company in contravention of the provisions of this section, the company and every person who is knowingly a party to the issue thereof, shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees.

40. (1) No prospectus shall be issued by or on behalf of a company or in relation to a company to be formed, unless on or before the date of its publication, there has been delivered to the Registrar for registration a copy of such prospectus signed by every person who is named in such prospectus as a director or proposed director of the company, or by his agent authorised in writing, and having endorsed thereon or attached thereto—

Registration of prospectus.

- (a) written consent from an expert to the issue of the prospectus as required by section 38 ;
 - (b) a declaration made and subscribed to by every person who is named in such prospectus as a director or a proposed director of the company, to the effect that he has read the provisions of this Act relating to the issue of a prospectus and that those provisions have been complied with ; and
 - (c) in the case of prospectus issued generally, where the persons making any report required by Part II of the Fourth Schedule hereto have made or have without giving the reasons, indicated in such prospectus any such adjustments as are mentioned in paragraph 30 of that Schedule, and a written statement signed by such person setting out the adjustments and giving the reasons therefor.
- (2) Every prospectus shall on the face of it—
- (a) state that a copy has been delivered for registration as required by this section ; and
 - (b) set out or refer to statements included in the prospectus which specify any documents required by this section to be endorsed on or attached to the copy so delivered.

(3) The Registrar shall not register a prospectus—

- (a) unless the copy thereof is signed in the manner required by this section ;
- (b) unless it has endorsed thereon or attached thereto the documents (if any) specified as aforesaid ;
- (c) unless it bears the date of the delivery of the copy thereof to the Registrar under this section, or it bears a future date to be inserted in such prospectus under the provisions of section 36 ; and
- (d) where it bears a future date as hereinbefore provided, unless that date has been confirmed or altered by notice served on the Registrar.

(4) Where a prospectus is issued without a copy thereof being delivered under this section to the Registrar or without a copy so delivered having been endorsed thereon or attached thereto the required documents referred to in subsection (1), the company and every person who is knowingly a party to the issue of the prospectus, shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees.

Civil liability for untrue in prospectus.

41. (1) Subject to the provisions of this section, where a prospectus invites persons to subscribe for shares in or debentures of a company, the following persons 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 included in such prospectus, that is to say:—

- (a) every person who is a director of the company, at the time of the issue of the prospectus ;
- (b) every person who has authorised 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 ;

- (c) every person being a promoter of the company ; and
- (d) every person who has authorised the issue of the prospectus :

Provided that, where under the provisions of section 38, the consent of any person is required to the issue of a prospectus and such person has given such consent, such person shall not by reason of his having given such consent, be liable under the provisions of this subsection as a person who has authorised the issue of the prospectus, except in respect of an untrue statement purporting to be made by him as an expert.

(2) No person shall be liable under the provisions of subsection (1), if he proves that—

- (a) 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 ;
- (b) 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 ;
- (c) after the issue of the prospectus and before allotment thereunder, he on becoming aware of any untrue statement in such prospectus, withdrew his consent thereto and gave reasonable public notice of the withdrawal and of the reasons therefor ; or
- (d) (i) as regards every untrue statement not 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, believed that the statement was true ;

- (ii) 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, as the case may be, and he had reasonable ground to believe and did up to the time of the issue of the prospectus believed, that the person making the statement was competent to make it and that person had given the consent required under section 38 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or to his knowledge, before allotment thereunder ; and
- (iii) as regards every untrue statement purporting to be a statement made by a person in his official capacity or contained in what purports to be a copy or extract from a public document issued officially, it was a correct and fair representation of the statement or copy or extract from the document :

Provided that the provisions of this subsection shall not apply in the case of a person liable, by reason of his having given the consent required under section 38, as a person who has authorised the issue of the prospectus in respect of an untrue statement purporting to be made by him as an expert.

(3) A person who apart from the provisions of this subsection, would under the provisions of subsection (1) be liable by reason of his having given the consent required under the provisions of section 38 as a person who has authorised the issue of a prospectus in respect of an untrue

statement purporting to be made by him as an expert, shall not be so liable, if he proves that —

- (a) having given his consent under the provisions of section 38 to the issue of the prospectus, he withdrew it in writing before delivery of a copy of the prospectus for registration ;
- (b) after delivery of a copy of the prospectus for registration and before allotment thereunder, he on becoming aware of the untrue statement withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reason therefor ; or
- (c) he was competent to make the statement and that 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, believed that the statement was true.

(4) Where—

- (a) the prospectus contains the name of a person as a director of the company or as having agreed to become a director of such company and he has not consented to become a director or has withdrawn his consent before the issue of the prospectus and has not authorised or consented to the issue of such prospectus ; or
- (b) the consent of a person is required under section 38 to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus,

the directors of the company, except any director without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue of such prospectus,

shall be liable to indemnify the person named under paragraph (a), or whose consent was required under paragraph (b), as the case may be, 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 of the inclusion therein of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any action or legal proceeding brought against him in respect thereof :

Provided that a person shall not be deemed for the purposes of this subsection to have authorised the issue of a prospectus, by reason only of his having given the consent required under section 38 to the inclusion in such prospectus of a statement purporting to be made by him as an expert.

(5) Every person who, by reason of his being a director or being named as a director or as having agreed to become a director or of his having authorised the issue of the prospectus or of the inclusion in such prospectus of a statement purporting to be made by him as an expert, 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.

(6) For the purposes of this section—

(a) “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 ; and

(b) “expert” has the same meaning as in section 38.

42. (1) Where a prospectus issued includes any untrue statement, any person who authorised the issue of the prospectus shall be guilty of an offence and be liable on conviction to a fine not exceeding five hundred thousand rupees or to imprisonment for a term not exceeding two years or to both to such fine and imprisonment, unless he proves either that the statement was immaterial or that he had reasonable ground to believe and up to the time of the issue of the prospectus did believe, that the statement was true.

Criminal liability
for untrue
statements in a
prospectus.

(2) A person shall not be deemed for the purposes of this section to have authorised the issue of a prospectus by reason only of his having given the consent required by the provisions of section 38, to the inclusion in such prospectus of a statement purporting to be made by him as an expert.

(3) No prosecution shall be instituted in respect of any offence under the provisions of subsection (1), except with the sanction of the Attorney-General.

43. (1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to offering all or any of those shares or debentures 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 provisions of any written law which relates to the contents of prospectuses, liability in respect of statements in and omission from prospectuses or otherwise generally relating to matters dealing with or connected to prospectuses, shall apply and have effect accordingly, as if the shares or debentures has 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 untrue statements contained in the document or otherwise in respect thereof.

Document
containing offer
of shares or
debentures for
sale to be
deemed a
prospectus.

(2) For the purposes of this Act, it shall, unless the contrary is proved, be deemed 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 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) The provisions of section 40 shall be applicable in relation to this section, as though the persons making the offer were persons named in a prospectus as directors of a company, and the provisions of section 37 shall be applicable in relation to this section, 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 net amount of the consideration 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 through his agent authorised in writing.

44. For purposes of the preceding provisions of this Part of this Act—

Interpretation of provisions relating to prospectuses.

- (a) a statement included in a prospectus shall be deemed to be untrue, if it is misleading in the form and context in which it is included ; and
- (b) a statement shall be deemed to be included in a prospectus, if it is contained in or in any report or memorandum appearing on the face of, or by reference incorporated in, or issued with, such prospectus.

ALLOTMENT

45. (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 particulars specified in paragraph 5 of the Fourth Schedule hereto 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 is received.

For the purposes of this subsection, 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 may not be paid.

(2) Where the conditions set out in subsection (1) has not been complied with within the expiration of sixty days from the date of closing of the subscription lists, any money received from applicants for shares shall be forthwith repaid to them without interest, and if such money is not so repaid within seventy-five days from the date of closing of the subscription lists, the directors of the company shall be jointly

and severally liable to repay that money with interest at the legal rate, from the expiration of the seventy-fifth 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.

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

(4) The provisions of this section shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

Effect of
irregular
allotment.

46. (1) An allotment made by a company to an applicant in contravention of the provisions of section 45 shall be voidable at the instance of the applicant within one month from the date of the allotment, and shall be so voidable notwithstanding that the company is in the course of being wound up.

(2) Where any director of a company knowingly contravenes or permits or authorizes the contravention of any of the provisions of section 45, 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 no proceedings to recover any such loss, damages, or costs shall be commenced after the expiration of two years from the date of the allotment.

Applications
for and
allotment of
shares and
debentures.

47. (1) No allotment shall be made of any shares in or debentures of a company in pursuance of a prospectus issued generally and no proceedings shall be taken on applications made in pursuance of a prospectus so issued, until the commencement of the third day after the date on which the prospectus is first issued or such later time (if any) as may be specified in the prospectus, (hereinafter in this Act referred to as "the time of the opening of the subscription lists").

(2) The reference in subsection (1) to the day on which the prospectus is first issued generally shall be construed as referring to the date on which it is first issued as a newspaper advertisement :

Provided that, if it is not issued as a newspaper advertisement before the third day after the date on which it is first issued in any other manner, the said reference shall be construed as referring to the date on which it is first so issued in such manner.

(3) The validity of an allotment shall not be affected by any contravention of the preceding provisions of this section but, in the event of any such contravention—

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees; and
- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding one hundred thousand rupees.

(4) In the application of this section to a prospectus offering shares or debentures for sale, the preceding subsections shall have effect with the substitution for a reference to allotment of a reference to sale and for the reference to the company and every officer of the company who is in default, of a reference to any person by or through whom the offer is made and who knowingly and willfully authorises or permits the contravention.

(5) An application for shares in or debentures of a company which is made in pursuance of a prospectus issued generally, shall not be revocable until after the expiration of the third day from the date of the opening of the subscription lists, or the giving before the expiration of the said third day, by some person responsible under the provisions of section 41 for the prospectus, of a public notice having the effect under that section of excluding or limiting the responsibility of the person giving it.

(6) In determining for the purposes of this section the third day after any day, any intervening day which is a bank holiday or a public holiday shall be disregarded and where the third day as so determined is itself a bank or a public holiday, there shall for the said purposes be substituted the first day thereafter which is not a bank holiday or a public holiday.

Construction
of reference
to offering
shares or
debentures to
the public.

48. (1) Any reference in this Act to offering of any shares or debentures to the public shall, subject to any provision to the contrary contained therein, be construed as including a reference to offering them to any section of the public, whether selected as shareholders or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner, and references in this Act or in a company's articles to invitations to the public to subscribe for shares or debentures shall, subject to the preceding provisions, be similarly construed.

(2) The provisions of subsection (1) shall not be taken as requiring any offer or invitation to be treated as made to the public, if it can properly be regarded in all the circumstances as not being calculated to result directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or otherwise as being a domestic concern of the persons making and receiving it, and in particular—

- (a) a provision in a company's articles prohibiting invitation to the public to subscribe for shares or debentures shall not be taken as prohibiting the making to members or debenture holders of an invitation which can properly be regarded as aforesaid; and
- (b) the provisions of this Act relating to private companies shall be construed accordingly.

NATURE AND TYPES OF SHARES

- 49.** (1) A share in a company shall be movable property. Nature and types of shares.
- (2) Subject to the company's articles, a share in a company shall confer on the holder —
- (a) the right to one vote on a poll at a meeting of the company on any resolution;
 - (b) the right to an equal share in dividends paid by the company;
 - (c) the right to an equal share in the distribution of the surplus assets of the company on liquidation.
- (3) A company may issue different classes of shares, and in particular may issue shares which —
- (a) are redeemable;
 - (b) confer preferential rights to distributions; or
 - (c) confer special, limited or conditional voting rights or confer no voting rights.
- (4) No share in a company shall have a nominal or par value
- (5) A share in a company is transferable in the manner provided for by its articles and such articles may limit or restrict the extent to which a share is transferable.

ISSUE OF SHARES

- 50.** (1) Immediately following the incorporation of a company under section 5, the company shall issue to each shareholder named in the application for incorporation, the shares to which that person is entitled. Initial shares.

(2) Immediately following the issue of a certificate of amalgamation under section, 244, the amalgamated company shall issue to each person who is entitled to shares under the amalgamation proposal, the shares to which that person is entitled.

Issue of shares.

51. (1) Subject to the provisions of sections 52 and 53 and the company's articles, the board of a company may issue such shares to such persons as it considers appropriate.

(2) If the shares issued confer rights other than those set out in subsection (2) of section 49 or impose any obligation on the holder, the board shall approve terms of issue which will set out the rights and obligations attached to those shares.

(3) Terms of issue approved by the board under subsection (2) —

- (a) shall be consistent with the articles of the company, and to the extent that they are not so consistent, are invalid and of no effect ;
- (b) are deemed to form part of the articles, and may be amended in accordance with section 15.

(4) Within twenty working days of the issue of any shares under this section, the company shall —

- (a) give notice to the Registrar in the prescribed form of—
 - (i) the number of shares issued;
 - (ii) the amount of the consideration for which the shares have been issued or its value as determined by the board under subsection (2) of section 58; and
 - (iii) the amount of the company's stated capital following the issue of the shares;
- (b) deliver to the Registrar a copy of any terms of issue approved under subsection (2).

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

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees; and
- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

52. (1) Before issuing any shares, the board shall —

Consideration
for issue of
shares.

- (a) decide the consideration for which the shares will be issued; and
- (b) resolve that in its opinion that consideration is fair and reasonable to the company and to all existing shareholders.

(2) The consideration for which a share is issued may take any form, including cash, promissory notes, future services, property of any kind or other securities of the company.

(3) Upon receipt of the consideration, the company shall within a period of twenty days, make an allotment of the shares.

53. (1) Subject to the company's articles, where a company issues shares which rank equally with or above existing shares in relation to voting or distribution rights, those shares shall be offered to the holders of existing shares in a manner which would, if the offer was accepted, maintain the relative voting and distribution rights of those shareholders.

Pre-emptive
rights to new
issues.

(2) An offer which a company is required to make under subsection (1), shall remain open for acceptance for a reasonable period of time.

Method of
issuing shares.

54. (1) A share is deemed to be issued when the name of the holder is entered on the share register, and such entry shall be made prior to compliance with subsection (4) of section 51.

(2) The issue by a company of a share which imposes a liability to the company on the holder shall be invalid and of no effect, until such time as the person to whom it is issued has consented in writing to become the holder of the share.

CALLS ON SHARES

Calls on shares.

55. (1) Where a call is made on a share or any other obligation attached to a share and is performed by the shareholder, the company shall within ten working days give notice to the Registrar in the prescribed form of—

- (a) the amount of the call or its value as determined by the board under subsection (3) of section 58; and
- (b) the amount of the stated capital of the company following the making of the call.

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

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees; and
- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

DISTRIBUTIONS TO SHAREHOLDERS

Distributions.

56. (1) Before a distribution is made by a company to any shareholder, such distribution shall —

- (a) be authorised by the board under subsection (2); and

- (b) unless the company's articles provide otherwise, be approved by the shareholders by ordinary resolution.

(2) The board of a company may authorise a distribution at such time and in such amount as it considers appropriate, where it is satisfied that the company will, immediately after the distribution is made satisfy the solvency test, provided that such board obtains a certificate of solvency from the auditors.

(3) The directors who vote in favour of a distribution shall sign a certificate setting that in their opinion, the company will satisfy the solvency test immediately after the distribution is made.

(4) In applying the solvency test for the purposes of this section, "debts" includes fixed preferential returns on shares ranking ahead of those in respect of which a distribution is made, except where the fixed preferential return is expressed to be subject to the power of the board to authorise distributions.

(5) A director who fails to comply with the requirements of subsection (2) shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees.

57. (1) A company shall be deemed to have satisfied the solvency test, if— Solvency test.

- (a) it is able to pay its debts as they become due in the normal course of business; and
- (b) the value of the company's assets is greater than —
 - (i) the value of its liabilities; and
 - (ii) the company's stated capital.

(2) In determining whether a company satisfies the solvency test, the board—

- (a) shall take into account the most recent financial statements of the company prepared in accordance with section 151 of the Act ;
- (b) shall take into account circumstances the directors know or ought to know which affect the value of the company's assets and liabilities ;
- (c) may take into account a fair valuation or other method of assessing the value of assets and liabilities.

Stated capital.

58. (1) Subject to section 59, stated capital in relation to a company means the total of all amounts received by the company or due and payable to the company —

- (a) in respect of the issue of shares; and
- (b) in respect of calls on shares.

(2) Where a share is issued for consideration other than cash, the board shall determine the cash value of such consideration for the purposes of subsection (1).

(3) Where a share has attached to it an obligation other than an obligation to pay calls, and that obligation is performed by the shareholder—

- (a) the board shall determine the cash value, if any, of that performance; and
- (b) the cash value of that performance shall be deemed to be a call which has been paid on the share for the purposes of subsection (1).

59. (1) Subject to the provisions of subsection (3), a company may by special resolution reduce its stated capital to such amount as it thinks appropriate, in accordance with the provisions of this Act.

Reduction of
stated capital.

(2) Public notice of a proposed reduction of a company's stated capital shall be given not less than sixty days before the resolution to reduce stated capital is passed.

(3) A company may agree in writing with a creditor of the company, that it will not reduce its stated capital below a specified amount without the prior consent of the creditor or unless specified conditions are satisfied at the time of the reduction. A resolution to reduce stated capital passed in breach of any such agreement, shall be invalid and of no effect.

(4) Where —

- (a) a share is redeemed at the option of the shareholder under section 68 or on a fixed date under section 69; or
- (b) the company purchases a share under section 95,

and the board is satisfied that as a consequence of the redemption or purchase, the company would but for this subsection, fail to satisfy the solvency test—

- (c) the board shall after obtaining the auditors certificate of solvency, resolve that the stated capital of the company shall be reduced by the amount by which the company would so fail to satisfy the solvency test; and
- (d) the resolution of the board shall have effect notwithstanding provisions contained in subsection (1) to subsection (3) of this section.

(5) A company which has reduced its stated capital shall within ten working days of such reduction, give notice of the reduction to the Registrar, specifying the amount of the reduction and the reduced amount of its stated capital.

(6) Where company fails to comply with requirements of subsection (2) or subsection (5)—

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees; and
- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

Dividends.

60. (1) A dividend is a distribution out of profits of the company, other than an acquisition by the company of its own shares or a redemption of shares by the company.

(2) The board of a company shall not authorise a dividend in respect of some shares in a class and not others of that class or of a greater amount in respect of some shares in a class than other shares in that class, except where—

- (a) the amount of the dividend is reduced in proportion to any liability attached to the shares under the company's articles; or
- (b) a shareholder has agreed in writing to receive no dividend or a lesser dividend than would otherwise be payable.

Recovery of distributions.

61. (1) A distribution made to a shareholder at a time when the company did not, immediately after the distribution, satisfy the solvency test, may be recovered by the company from the shareholder, unless—

- (a) the shareholder received the distribution in good faith and without knowledge of the company's failure to satisfy the solvency test;
- (b) the shareholder has altered his position in relying on the validity of the distribution; and

- (c) it would be unreasonable in view of the circumstances to require repayment in full at all.

(2) Where in relation to a distribution to which subsection (1) applies, the procedure set out in section 56 has not been followed or reasonable grounds for believing that the company would satisfy the solvency test did not exist at the time the certificate was signed, every director who—

- (a) failed to take reasonable steps to ensure the procedure was followed; or
- (b) signed the certificate,

as the case may be, shall be personally liable to the company to repay to the company, so much of the distribution as the company is not able to recover from the shareholders.

(3) Where in an action brought against a director or a shareholder under this section, the court is satisfied that the company could by making a distribution of a lesser amount have satisfied the solvency test, the court may—

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

an amount equal to the value of any distribution that could properly have been made.

62. (1) Where a company—

- (a) alters its articles; or
- (b) acquires shares issued by it or redeems shares under section 67,

Reduction of shareholder liability to be a distribution.

in a manner which cancels or reduces the liability of a shareholder to the company in relation to a share held prior to that alteration, acquisition, or redemption, as the case may

be, the cancellation or reduction of liability shall be treated, for the purposes of subsection (1) and subsection (3) of section 61, as if it were a distribution of the amount by which the liability was reduced.

(2) Where the liability of a shareholder of an amalgamating company to that company in relation to a share held before the amalgamation, is—

- (a) greater than the liability of that shareholder to the amalgamated company in relation to a share or shares into which that share is converted; or
- (b) cancelled by the cancellation of that share in the amalgamation,

the reduction of liability effected by the amalgamation shall be treated for the purposes of subsection (1) and subsection (3) of section 61, as a distribution by the amalgamated company to that shareholder of the amount by which that liability was reduced.

RE-PURCHASE OF SHARES

Company may acquire or redeem its own shares.

63. (1) A company may purchase or otherwise acquire any of its own shares —

- (a) under section 64 or section 67;
- (b) if the company is a private company, with the agreement or concurrence of all shareholders under section 31; or
- (c) in accordance with an order made by the court under this Act,

but not otherwise.

(2) A company may redeem a share which is a redeemable share, in accordance with the provisions of sections 66 to 69, but not otherwise.

(3) A share that is acquired or redeemed by the company shall be deemed to be cancelled immediately upon acquisition or redemption, as the case may be.

(4) Immediately following the acquisition or redemption of shares by the company, the company shall give notice to the Registrar of the number and class of shares acquired or redeemed, as the case may be.

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

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees; and
- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

64. (1) A company may agree to purchase or otherwise acquire its own shares if the articles of such company provide for it to do so, with the approval of the board.

Purchase of own shares.

(2) Before a company offers or agrees to purchase its own shares, the board of such company shall resolve that —

- (a) the acquisition is in the interests of the company;
- (b) the terms of the offer or agreement and the consideration to be paid for the shares is in the opinion of the company's auditors a fair value; and

- (c) it is not aware of any information that has not been disclosed to shareholders which is material to an assessment of the value of the shares, and as a result of which the terms of an offer or the consideration offered for the shares are unfair to shareholders accepting the offer.

(3) Before the company—

- (a) makes an offer to acquire shares other than in a manner which will if it is accepted in full, leave unaffected the relative voting and distribution rights of all shareholders; or
- (b) agrees to acquire shares other than in a manner which leaves unaffected the relative voting and distribution rights of all shareholders,

the board shall resolve that the making of the offer or entry into the agreement, as the case may be, is fair to those shareholders to whom the offer is not made or with whom no agreement is entered into.

Enforceability
of contract to
purchase
shares.

65. (1) A contract with a company providing for the acquisition by the company of its shares shall be specifically enforceable against the company, except to the extent that the company would after performing the contract fail to satisfy the solvency test, and the burden of proving that after the performance of the contract it would be unable to satisfy the solvency test, shall be on the company.

(2) Until the company has fully performed a contract referred to in subsection (1), the other party to the contract retains the status of a claimant entitled to be paid as soon as the company is lawfully able to do so or, in the event of a liquidation, to be ranked subordinate to the rights of creditors, but in priority to the other shareholders.

REDEMPTION OF SHARES

66. For the purposes of this Act, a share is redeemable if the articles of the company make provision for the redemption of that share by the company —

Meaning of
“redeemable”.

- (a) at the option of the company;
- (b) at the option of the holder of the share; or
- (c) on a date specified in the articles,

for a consideration that is specified or to be calculated by reference to a formula or required to be fixed by a suitably qualified person who is not associated with or interested in the company.

67. (1) A company may exercise an option to redeem a share which is redeemable at the option of the company, if the board has previously resolved that the redemption is in the interest of the company.

Redemption
option of
company.

(2) A redemption of a share at the option of the company is deemed to be—

- (a) an acquisition by the company of the share, for the purposes of subsection (3) of section 64; and
- (b) a distribution for the purposes of section 56.

68. (1) Where a share is redeemable at the option of the holder of the share and the holder gives proper notice to the company requiring the company to redeem the share—

Redemption at
the option of the
shareholder.

- (a) the company shall redeem the share on the date specified in the notice or if no date is specified, on the date of receipt of the notice;
- (b) the share is deemed to be cancelled on the date of redemption; and

- (c) from the date of redemption, the former shareholder ranks as an unsecured creditor of the company for the sum payable on redemption.

(2) A redemption under this section is not a distribution for the purposes of section 56, but is deemed to be a distribution for the purposes of subsection (1) and subsection (3) of section 61.

Redemption on fixed date.

69. (1) Where a share is redeemable on a specified date —

- (a) the company shall redeem the share on that date;
- (b) the share is deemed to be cancelled on that date; and
- (c) from that date, the former shareholder ranks as an unsecured creditor of the company for the sum payable on redemption.

(2) A redemption under this section is not a distribution for the purposes of section 56, but is deemed to be a distribution for the purposes of subsection (1) and subsection (3) of section 61.

FINANCIAL ASSISTANCE IN CONNECTION WITH PURCHASE OF SHARES

Restrictions on giving financial assistance.

70. (1) A company shall not give financial assistance directly or indirectly for the purpose of or in connection with the acquisition of its own shares, other than in accordance with this section.

(2) Notwithstanding the provisions of subsection (1), a company may give financial assistance for the purpose of or in connection with the acquisition of its own shares, if the board has previously resolved that —

- (a) giving such assistance is in the interest of the company;

- (b) the terms and conditions on which the assistance is given are fair and reasonable to the company and to any share holders not receiving that assistance; and
- (c) immediately after giving the assistance, the company will satisfy the solvency test.

(3) Where the amount of any financial assistance approved under subsection (2) together with the amount of any other financial assistance given by the company which is still outstanding, exceeds ten *per centum* of the company's stated capital, the company shall not give the assistance unless it first obtains from its auditor or if it does not have an auditor from a person qualified to act as its auditor, a certificate to the effect that—

- (a) he has inquired into the state of affairs of the company; and
- (b) he is not aware of anything to indicate that the opinion of the board that the company will, immediately after giving the assistance satisfy the solvency test, is unreasonable in all the circumstances.

(4) The giving of financial assistance under this section is not a distribution for the purposes of section 56.

(5) Where a company acts in contravention of the provisions of this section, every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding one million rupees or to a term of imprisonment not exceeding five years or to both such imprisonment and fine.

71. (1) The provisions of section 70 shall not apply to the giving of financial assistance by a company for the purpose of or in connection with the acquisition of its own shares, if—

Transactions not prohibited by section 70.

- (a) the company's principal purpose in giving the assistance is not to give it for the purpose of that

acquisition or the giving of the assistance is an incidental part of any other larger purpose of the company; and

- (b) the assistance is given in good faith in the interest of the company.

(2) The provisions of section 70 shall also not apply in respect of—

- (a) a distribution to a shareholder approved under section 56;
- (b) the issue of shares by the company;
- (c) a repurchase or redemption of shares by the company;
- (d) anything done in terms of a compromise reached under the provisions of Part IX or a compromise or arrangement approved under the provisions of Part X;
- (e) the lending of money by a company in the ordinary course of business, where the ordinary business of the company includes the lending of money;
- (f) the provision by a company in good faith in the interest of the company, of financial assistance for the purposes of an employees' share scheme;
- (g) the granting of loans by a company to its employees other than directors in good faith in the interest of the company, with a view to enabling those persons to acquire beneficial ownership of shares in the company.

CROSS-HOLDINGS

72. (1) A company which is a subsidiary of another company (referred to in this section as the “holding company”)—

Restriction on subsidiary holding shares in holding company.

- (a) shall not acquire shares in the holding company;
- (b) may continue to hold any shares in the holding company acquired by the subsidiary before it became a subsidiary of the holding company, but may not exercise any right to vote which is attached to those shares.

(2) Nothing in subsection (1) shall apply to a company which —

- (a) holds shares in the holding company only as a trustee or legal representative and has no beneficial interest in the shares; or
- (b) holds an interest in shares in the holding company by way of security for the purposes of a transaction entered into by it in the ordinary course of business and on usual terms and conditions.

(3) Where a body corporate—

- (a) became a holder of shares in the holding company before the commencement of this Act, it may continue to be a member of that company, but it has no right to vote in respect of those shares at any meetings of the company; and
- (b) is permitted to continue as a member of the holding company by virtue of paragraph (b) of subsection (1) and paragraph (a) of this subsection, an allotment of fully paid shares in the company may be validly made by way of capitalisation of reserves of the company, which shares also will have no right to vote.

(4) The provisions of subsections (1), (2) and (3) shall apply in relation to a nominee for a company which is a subsidiary, as if a reference to the company were a reference to the nominee.

TRANSFER OF SHARES AND DEBENTURES, EVIDENCE OF TITLE &C.

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

73. Notwithstanding anything to the contrary 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 affect any power of the company to register as shareholder or debenture holder, any person to whom the right of any shares in or debentures of the company has been transmitted by operation of law.

Transfer by legal representative.

74. A transfer of the shares or other interests of a deceased shareholder of a company made by his legal representative shall, although the legal representative is not himself a shareholder of the company, be as valid as if he had been such a shareholder at the time of the execution of the instrument of transfer.

Registration of transfer at the request of transferor.

75. On the application of the transferor of any share or other interest in a company, the company shall enter in its share register 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.

76. (1) Where a company refuses to register a transfer of any shares or debentures, the company shall within two months from the date on which the transfer was lodged with the company, send to the transferee a notice of such refusal.

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

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

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

77. (1) The certification by a company of any instrument of transfer of shares in or debentures of the company shall be taken as a representation by the company to any person acting on the faith of such certification, that there have been produced to the company such documents as on the face of there show a *prima facie* title to the shares or debters in the transferor named in the instrument of transfer, but not as a representation that the transferor has any title to the shares or debentures.

Certification of transfers.

(2) Where any person acts on the faith of a false certification made by a company negligently, the company shall be under the same liability to him as if the certification had been made fraudulently.

(3) For the purposes of this section —

- (a) an instrument of transfer shall be deemed to be certified if it bears the words “certificate lodged” or words to the like effect;
- (b) the certification of an instrument of transfer shall be deemed to be made by a company, where —
 - (i) the person issuing the instrument is a person authorised to issue certificated instruments of transfer on the company’s behalf; and
 - (ii) the certification is signed by a person authorised to certify transfers on the company’s behalf or by an officer or servant either of the company or of a body corporate so authorised ;
- (c) a certification shall be deemed to be signed by any person where —
 - (i) it purports to be authenticated by his signature or initials, whether handwritten or not; and

- (ii) it is not shown that the signature or initials was or were placed there neither by himself nor by any person authorised to use the signature or initials for the purpose of certifying transfers on the company's behalf.

Duties of company with respect to issue of certificates.

78. (1) Every company shall within two months from the date of allotment of any of its shares, debentures or debenture stock and within two months from 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 certification 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 provide otherwise.

For the purposes of this subsection the expression “transfer” means a transfer duly stamped and otherwise valid and does not include a transfer which the company is for any reason entitled to refuse to register and does not register.

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

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees ; and
- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

(3) Where any company on whom a notice has been served requiring the company to make good any default in complying with the provisions of subsection (1), fails to make good the default within ten days from the date of 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 any officer of the company responsible for the default.

79. A certificate signed under the name of the company by a director and secretary of the company specifying any shares held by any shareholder, shall be *prima facie* evidence of the title of the shareholder to the shares.

Certificate to be evidence of title.

80. The production to a company of any document which by law is sufficient evidence of probate of a will or of letters of administration of the estate or confirmation as executor of a deceased person having been granted to some person, shall be accepted by the company notwithstanding anything in its articles, as sufficient evidence of the grant.

Evidence of grant of probate, &c.

SPECIAL PROVISIONS AS TO DEBENTURES

81. (1) Every company which has issued debentures shall maintain a register of holders of debentures of the company. The register shall, except when duly closed (but subject to such reasonable restrictions the company may impose at a general meeting so that not less than two hours in each day shall be allowed for inspection), be opened for the inspection by the registered holder of any such debentures or any holder of shares in the company without a fee, and by any other person on payment of a fee of ten rupees or such lesser sum as may be specified by the company.

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

(2) For the purposes of subsection (1), a register shall be deemed to be duly closed if closed in accordance with the provisions contained in the company's 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 debentures or debenture stock, during such period or periods not exceeding in the whole thirty days in any year, as may be therein specified.

(3) Any registered holder of the debentures or holder of shares as aforesaid or any other person, may require a copy of the register of the holders of debentures of the company or any part thereof to be furnished on payment of a sum not exceeding ten rupees for every page required to be copied.

(4) A copy of any trust deed for securing an 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 ten rupees or such lesser sum as may be specified by the company, or where the trust deed has not been printed, on payment of a sum not exceeding one rupee for every hundred words required to be copied.

(5) Where inspection of the register is refused or a copy as aforesaid is refused or not forwarded—

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees; and
- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

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

Directors
prohibited from
acting as
trustees.

82. A director of a company shall not be capable of being appointed as a trustee for the holders of debentures of the company :

Provided that the provisions of this section shall not apply to any director of a company who holds office as a trustee for the holders of debentures of the company, by virtue of an appointment made on or before July 2, 1982, and accordingly any such director may continue in office as trustee until the termination of that appointment.

83. A condition contained in any debentures or in any deed for securing any debentures whether issued or executed before or after the appointed date, shall not be invalid by reason only of the fact that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of the period, however long.

Perpetual
debentures.

84. (1) Where a company has redeemed any debentures previously issued, then—

Power to reissue
redeemed
debentures in
certain cases.

- (a) unless any provision to the contrary, whether express or implied, is contained in the company's 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 reissue the debentures, either by reissuing the same debentures or by issuing other debentures in their place.

(2) On a reissue 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 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.

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

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

Specific performance of contracts to subscribe for debentures.

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

PART V

SHAREHOLDERS AND THEIR RIGHTS AND OBLIGATIONS

Meaning of “shareholder”.

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

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

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

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

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

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

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

LIABILITY OF SHAREHOLDERS

Liability of shareholder.

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

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

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

Liability for calls.

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

(2) Where—

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

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

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

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

Shareholders must agree to increase in liability.

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

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

POWERS OF SHAREHOLDERS

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

Exercise of powers reserved to shareholders.

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

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

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

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

Exercise of powers by ordinary resolution.

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

Powers exercised by special resolution.

- (a) alter the company's articles ;

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

such powers shall be exercised by special resolution.

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

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

MINORITY BUY-OUT RIGHTS

Shareholder
may require
company to
purchase shares.

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

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

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

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

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

Notice requiring purchase.

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

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

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

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

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

Purchase by
company.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Purchase of shares by third party.

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

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

Court may grant exemption.

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

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

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

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

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

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

Court may grant exemption if company is insolvent.

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

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

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

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

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

Alteration of
shareholder
rights.

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

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

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

Shareholder
may require
company to
purchase shares.

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

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

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

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

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

Action not invalid.

PART VI

REGISTRATION OF CHARGES

REGISTRATION OF CHARGES WITH REGISTRAR

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

Registration of charges created by companies registered in Sri Lanka.

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

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

- (d) a charge on land wherever situated, or on any interest in land ;
- (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 aircraft or any share in a ship or aircraft ;
- (i) a charge on goodwill or intellectual property within the meaning of the Intellectual Property Act, No. 36 of 2003 ; and
- (j) a trust receipt to which section 4 of the Trust Receipts Ordinance (Cap. 86) applies or an inland trust receipt within the meaning of the Inland Trust Receipts Act, No. 14 of 1990.

(3) An instrument which is required to be registered under this section shall—

- (a) in the case of instruments executed in Sri Lanka, be registered within twenty - one working days of the date of execution of the instrument ; or
- (b) in the case of an instrument executed outside Sri Lanka, be registered within three months of the date of execution of the instrument.

(4) Where a charge is created in Sri Lanka but comprises of property outside Sri Lanka, the instrument creating or purporting to create the charge may be sent for registration under the provisions of 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 situated.

(5) 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.

(6) The holding of debentures entitling the holder to a charge on land shall not for the purposes of this section, be treated as an interest in land.

(7) Where a series of debentures containing or giving by reference to any other instrument any charge to the benefit of which the debenture holder of that series are entitled *pari passu* is created by a company, it shall for the purposes of this section be sufficient if, within fifteen working days from the date of execution of the deed containing the charge or if there is no such deed, from the date of execution of any debentures of the series, the following particulars :—

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

together with a copy of the deed containing the charge verified in the prescribed manner, or if there is no such deed, one of the debentures of the series, are delivered to or received by the Registrar :

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. An omission to send such particulars shall not affect the validity of the debentures issued.

(8) 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—

- (a) subscribing or agreeing to subscribe whether absolutely or conditionally, for any debentures of the company ; or
- (b) procuring or agreeing to procure subscriptions whether absolute or conditional, for any such debentures,

the particulars required to be sent for registration under the provisions of this section shall include particulars as to the amount or rate *per centum* of the commission, discount or allowance so paid or made. An omission to send such particulars shall not affect the validity of the debentures issued.

(9) The deposit of any debentures as security for any debt of the company shall not for the purposes of subsection (8), be treated as the issue of the debentures at a discount.

(10) Registration of a charge under this section may be effected on the application of any person interested in it. Where registration is effected on the application of a person other than the company, that person shall be entitled to recover from the company the amount of any fees paid by him to the Registrar.

(11) Where any company fails to send to the Registrar for registration the particulars of any charge created by the company or of the issue of debentures of a series which requires registration under this section, then, unless the registration has been affected on the application of some other person—

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

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

(12) The provisions of this section shall be in addition to and not in substitution of any other written law relating to the registration of any document or instrument creating or purporting to create a charge on any property, whether movable or immovable.

(13) For the purpose of this Part of this Act, “charge” includes a mortgage.

103. (1) Subject to the provisions of this Part, every charge shall in so far as it confers any security on the company’s property or undertaking, be void against the liquidator and any creditor of the company, unless it is registered in the manner and within the time prescribed by section 102 of this Act or by section 91 of the Companies Act, No. 17 of 1982, as the case may be, or if the time for registration has been extended under section 108 of this Act, or under section 97 the Companies Act, No. 17 of 1982, then within such extended time.

Unregistered charges void in certain cases.

(2) Nothing in this section shall affect any contract or obligation for repayment of money secured by a charge. If a charge becomes void under this section, the money which it secures shall immediately become payable.

(3) For the purpose of this section “charge” means a charge created on or after July 2, 1982, which was required to be registered under section 91 of the Companies Act, No. 17 of 1982 or under section 102 of this Act.

104. (1) Where a company registered in Sri Lanka acquires any property which is subject to a charge that would, if it had been created by the company after the acquisition of the property, have been required to be registered under this

Duty of company to register charges existing on property acquired.

Part, the company shall, within the time specified by subsection (2), deliver to the Registrar for registration—

- (a) the prescribed particulars of the charge ; and
- (b) 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.

(2) Particulars of a charge which is required to be registered under subsection (1) shall be delivered to the Registrar—

- (a) if the property is situated and the charge was created outside Sri Lanka, within three months of the date on which the acquisition is completed ; or
- (b) in all other cases within twenty-one working days of the date on which the acquisition is completed.

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

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees ; and
- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

Register of
charges to be
kept by
Registrar.

105. (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, 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, the particulars specified in subsection (8) of section 102 ;

(b) in the case of any other charge—

- (i) if it is a charge created by the company, the date of its creation, and if it is a charge which was existing on property acquired by the company, the date of the acquisition of the property ;
- (ii) the amount secured by the charge ;
- (iii) short particulars of the property charged ;
- (iv) the persons entitled to the charge.

(2) The Registrar shall issue a certificate in the prescribed form, of the registration of any charge registered under this Part stating the amount secured by it. The certificate shall be conclusive evidence that the requirements of this Part as to registration have been complied with.

(3) Registration of a charge under this Part shall constitute notice to all persons of the particulars of the charge entered on the register of charges under this section, but not of the contents of the instrument which creates or is evidence of the charge.

106. (1) The company shall cause a copy of every certificate of registration given under provision of section 105 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.

(2) Nothing in subsection (1) shall be construed as requiring a company to cause a certificate of registration of any charge to be endorsed on any debenture or certificate of debenture stock issued by the company, before the charge was created.

(3) Where any person knowingly and willfully authorises 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 guilty of an offence and liable on conviction to a fine not exceeding two hundred thousand rupees.

Entries of satisfaction and release.

107. Where the Registrar is satisfied that—

- (a) the debt for which any registered charge was given has been paid or satisfied in whole or in part ; or
- (b) any part of the property or undertaking charged has been released from the charge or has ceased to form part of a company's property or undertaking,

he may enter on the register a memorandum of satisfaction in whole or in part or of the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be.

Rectification of register of charges.

108. If the court is satisfied that—

- (a) the omission to register a charge within the time required by this Act ; or
- (b) 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 it is otherwise just and equitable to grant relief, the court 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 that the omission or misstatement shall be rectified, as the case may be.

PROVISIONS AS TO COMPANY'S REGISTER OF CHARGES AND AS TO
COPIES OF INSTRUMENTS CREATING CHARGES

109. Every company shall keep a copy of every instrument creating any charge requiring registration under this Part at its registered office or at such other place as may be notified to the Registrar under section 116. In the case of a series of uniform debentures, a copy of one debenture of the series shall be sufficient.

Copies of instruments creating charges to be kept by company.

110. (1) Every limited company shall—

Company's register of charges.

- (a) keep at its registered office or at such other place as may be notified to the Registrar under section 116, a register of charges ; and
- (b) enter in that register all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company, specifying in each case —
 - (i) a short description of the property charged ;
 - (ii) the amount of the charge ;
 - (iii) except in the case of securities to bearer, the names of the persons entitled to the charge.

(2) Any officer of the company who knowingly and willfully authorises or permits the omission of any entry required to be made under the provisions of this section, shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees.

REVIEW OF REGISTER OF CHARGES

Review of
Register of
charges.

111. (1) The Registrar may from time to time by notice in writing issued to a company, require that company to deliver to him within fifteen working days of the receipt of such notice—

- (a) the particulars required to be provided under section 102 in respect of all charges which have been registered under this Part or under Part III of the Companies Act, No. 17 of 1982 or Part III of the Companies Ordinance (Cap. 145), in relation to the property or undertaking of the company, and which have not been satisfied in whole or otherwise ceased to apply to any property of the company ;
- (b) a certified copy of the instrument, if any, by which each such charge is created or evidenced ;
- (c) a copy of the certificate issued by the Registrar on the registration of each such charge ;
- (d) an affidavit sworn or affirmed by a director or the secretary of the company, verifying that the information provided under this section is to the best of his knowledge, complete and accurate in every particular.

(2) Following receipt from a company of the documents required to be provided under subsection (1), the Registrar shall review the register of charges kept by him, and shall make such entries in the register as may be required to ensure the accuracy of the register.

(3) The Registrar shall not enter a memorandum of satisfaction of a charge in whole or in part or of the fact that part of the property or undertaking has been released from a charge or has ceased to form part of the company's property or undertaking, pursuant to a review under this section.

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

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees ; and
- (b) every officer of the company who is in default shall be guilty of an offence, and be liable on conviction to a fine not exceeding fifty thousand rupees.

APPLICATION OF THIS PART TO OVERSEAS COMPANIES

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

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

PART VII

MANAGEMENT AND ADMINISTRATION

REGISTERED OFFICE

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

Registered office of a company.

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

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

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

Change of
registered
office.

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

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

Requirement
to change
registered
office.

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

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

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

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

(3) The company shall change its registered office—

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

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

COMPANY RECORDS

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

Location of
company
records.

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

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

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

(3) The documents referred to in—

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

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

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

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

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees ; and
- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding one hundred thousand rupees.

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

Form of records.

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

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

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

- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding one hundred thousand rupees.

INSPECTION OF COMPANY RECORDS

Inspection of records by directors.

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

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

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

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

Inspection of company records by shareholders.

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

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

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

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

- (a) the company shall guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees ; and
- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding one hundred thousand rupees.

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

Public inspection
of company
records.

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

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

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

- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding one hundred thousand rupees.

Manner of inspection.

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

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

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

Copies of documents.

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

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

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding one hundred thousand rupees ; and
- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

SHARE REGISTER

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

Company to maintain share register.

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

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

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

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees ; and
- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding one hundred thousand rupees.

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

Place of share register.

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

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

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

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

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

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

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

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

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

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

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

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

Index of shareholders.

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

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

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

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding one hundred thousand rupees ; and
- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

Power to close
register.

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

Power of court
to rectify
register.

128. (1) Where—

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

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

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

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

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

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

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

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding one hundred thousand rupees ; and
- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

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

Trusts not to be entered on share register.

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

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

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

Share register to be evidence.

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

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

ANNUAL RETURN

Annual return.

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

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

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

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

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding one hundred thousand rupees ; and
- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

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

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

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

MEETINGS AND PROCEEDINGS

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

Annual general meeting.

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

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

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

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

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

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

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

- (b) every officer of the company who is in default shall be guilty of an offence, and be liable on conviction to a fine not exceeding fifty thousand rupees.

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

Convening of extraordinary general meeting on requisition.

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

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

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

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

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

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

Length of notice
for calling
meetings.

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

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

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

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

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

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

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

Provisions as to meetings and votes.

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

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

Power of court
to order
meeting.

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

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

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

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

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

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

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

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

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

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

Proxies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Voting on a poll.

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

Circulation of shareholder's resolutions on requisition.

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

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

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

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

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

(b) not less than fifty shareholders.

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

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

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

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

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

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

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

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

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

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

(7) Where any default is made in complying with the provisions of this section, every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding one hundred thousand rupees.

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

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

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

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

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

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

Resolution in
lieu of meeting.

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

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

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

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

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

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

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

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

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

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

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

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

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

Resolutions
requiring special
notice.

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

Resolutions
passed at
adjourned
meetings.

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

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

the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

Minutes of
proceedings of
meetings of
shareholders and
directors.

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

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

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

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

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

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

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

ACCOUNTING RECORDS

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

Duty to keep accounting records.

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

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

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

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

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

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees; and
- (b) every officer of the company who is in default shall be guilty of an offence, and be liable on conviction to a fine not exceeding two hundred thousand rupees.

Place where
accounting
records are kept.

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

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

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

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

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

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

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees; and
- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees.

DUTY TO PREPARE FINANCIAL STATEMENTS

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

Obligation to prepare financial statements.

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

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

Contents and
form of
financial
statements.

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

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

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

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

Obligation to
prepare group
financial
statements.

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

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

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

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

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

Contents and
form of group
financial
statements.

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

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

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

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

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

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

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

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

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

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

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

AUDITORS

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

Appointment of auditor.

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

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

(3) Where —

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

the Registrar may appoint an auditor.

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

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

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees ; and
- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding one hundred thousand rupees.

Auditor's fees
and expenses.

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

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

Appointment of
partnership as
auditor.

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

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

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

Qualifications of auditors.

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

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

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

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

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

(5) Regulations may be made providing for —

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

Automatic re-
appointment.

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

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

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

Appointment of
first auditor.

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

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

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

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

Replacement
of auditor.

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

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

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

Statement by
person ceasing
to hold office as
auditor.

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

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

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

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

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

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

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

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

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees; and
- (b) every officer of the company who is in default shall be guilty of an offence, and be liable on conviction to a fine not exceeding one hundred thousand rupees.

Auditor to avoid
conflict of
interest.

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

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

(2) The auditor's report shall state—

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

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

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

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

Auditor's
access to
information.

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

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

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

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

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

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

Auditor's
attendance at
shareholders'
meeting.

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

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

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

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

ANNUAL REPORT TO SHARE HOLDERS

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

Obligation to prepare annual report.

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

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

Sending of annual report to shareholders.

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

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

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

Contents of
annual report.

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

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

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

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

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

Failure to
send reports
&.

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

REGISTRATION OF FINANCIAL STATEMENTS

Registration
of financial
statements.

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

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

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

INTERPRETATION

Balance sheet
date.

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

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

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

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

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

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

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

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

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

INVESTIGATION OF COMPANY'S AFFAIRS

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

Investigation of company's affairs on application of shareholders.

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

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

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

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

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

Investigation
of
company's
affairs in
other cases.

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

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

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

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

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

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

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

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

Production of documents and evidence at investigation.

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

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

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

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

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

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

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

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

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

Inspector's
report.

176. (1) An inspector—

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

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

(3) The Registrar may if he thinks fit—

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

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

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

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

Proceedings on
inspector's
report.

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

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

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

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

Expenses of investigation of company's affairs.

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

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

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

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

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

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

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

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

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

Inspector's
report to be
evidence.

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

Appointment
and powers of
inspectors to
investigate
ownership of
company.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Power to impose restrictions on shares or debentures.

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

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

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

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

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

(5) Any person who—

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

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

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

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees; and
- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding one hundred thousand rupees.

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

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

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

Registrar's powers to verify assets and liabilities.

POWERS OF MANAGEMENT

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

Management of company.

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

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

Major transactions.

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

(2) In this section the reference to—

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

“major transaction”, means—

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

(3) Nothing in this section shall apply to—

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

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

Delegation of powers.

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

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

DIRECTORS' DUTIES

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

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

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

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

Directors to comply with Act and company's articles.

Directors
standard of care.

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

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

Use of
information and
advice.

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

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

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

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

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

TRANSACTIONS IN WHICH A DIRECTOR IS INTERESTED

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

Meaning of
“interested”.

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

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

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

Disclosure of interest.

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

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

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

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

Avoidance of transaction.

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

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

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

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

(5) For the purposes of this section —

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

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

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

Effect on third parties.

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

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

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

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

Interested
director may
vote.

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

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

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

Use of company
information.

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

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

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

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

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

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

DISCLOSURE OF DIRECTORS' INTERESTS IN SHARES

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

Meaning of
"relevant
interest".

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

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

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

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

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

that director has a relevant interest in the share.

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

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

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

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

Relevant
interests to be
disregarded in
certain cases.

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

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

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

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

200. (1) A person who—

Disclosure of
share dealing by
directors.

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

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

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

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

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

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

APPOINTMENT AND REMOVAL OF DIRECTORS

Number of
directors.

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

Qualification of
directors.

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

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

- (a) a person who is under eighteen years of age;
- (b) a person who is an undischarged insolvent;
- (c) a person who is or would be prohibited from being a director of or being concerned or taking part in the promotion, formation or management of a company, under the Companies Act, No. 17 of 1982, but for the repeal of that Act;
- (d) a person who is prohibited from being a director or promoter of or being concerned or taking part in the management of a company under section 213 or section 214 of this Act;
- (e) a person who has been adjudged to be of unsound mind;

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

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

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

Director's consent required.

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

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

Appointment of first and subsequent directors.

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

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

Appointment of directors to be voted on individually.

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

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

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

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

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

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

Removal of
directors.

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

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

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

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

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

Director ceasing to hold office.

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

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

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

Resignation of last remaining director.

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

Validity of
director's
acts.

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

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

RETIRING AGE OF DIRECTORS.

Age limit for
directors.

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

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

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

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

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

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

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

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

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

(3) Any person who—

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

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

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

DISQUALIFICATION OF DIRECTORS

Persons
prohibited from
managing
companies.

213. (1) Where a person—

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

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

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

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

(4) A person who acts in contravention of this section or of any order made under this section, shall be guilty of an offence and be liable on conviction to a fine not exceeding one million rupees or to a term of imprisonment not exceeding five years or to both such fine and imprisonment.

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

214. (1) Where a person—

Court may disqualify directors.

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

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

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

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

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

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

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

(6) Every person who acts in contravention of an order made under this section shall be guilty of an offence and be liable on conviction to a fine not exceeding one million rupees or to a term of imprisonment not exceeding five years or to both such fine and imprisonment.

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

MISCELLANEOUS PROVISIONS RELATING TO DIRECTORS.

Proceedings
of board.

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

Remuneration
and other
benefits.

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

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

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

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

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

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

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

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

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

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

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

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

Restrictions on
loans to
directors.

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

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

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

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

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

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

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

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

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

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

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

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

Indemnity and insurance.

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

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

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

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

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

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

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

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

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

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

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

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

(8) In this section —

“director” includes a former director;

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

“employee” includes a former employee;

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

Duty of
directors on
insolvency.

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

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

(3) If—

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

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

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

Duty of directors
on serious loss of
capital.

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

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

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

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

SECRETARIES

Secretary.

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

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

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

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

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

Qualifications of secretary to be prescribed.

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

REGISTER OF DIRECTORS AND SECRETARIES

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

Register of
directors and
secretaries.

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

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

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

is delivered to the Registrar for registration.

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

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

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

(4) Where a company fails to comply with this section—

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding one hundred thousand rupees; and
- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

PREVENTION OF OPPRESSION AND MISMANAGEMENT

Oppression.

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

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

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

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

Mis-
management.

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

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

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

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

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

Who may make
an application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding one hundred thousand rupees;
- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

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

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

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

Consequences of termination or modification of certain agreements.

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

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

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

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

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

shall be deemed to be guilty of such offence:

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

Extended
meaning of
“shareholder”.

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

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

RESTRAINING ORDERS

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

Restraining orders.

(2) An application may be made by —

(a) the company; or

(b) a director or shareholder of the company.

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

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

(5) The court may at any time before the final determination of an application under subsection (1), make as an interim order, any order that it is empowered to make under that subsection. Such order may at the discretion of the court, be made *ex parte* or after notice to the respondent. The respondent may make an application for an order of revocation or variation of the *ex parte* order with notice to the petitioner.

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

DERIVATIVE ACTIONS

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

Derivative actions.

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

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

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

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

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

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

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

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

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

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

Costs of
derivative action
to be met by
company.

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

Powers of court
where leave is
granted.

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

Compromise, settlement or continuance of derivative action.

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

RATIFICATION

Ratification of certain actions of directors.

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

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

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

PART VIII

AMALGAMATIONS

Amalgamations.

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

Amalgamation proposal.

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

241 an amalgamation proposal setting out the terms of the amalgamation, and in particular —

- (a) the name of the amalgamated company, if it is the same as the name of one of the amalgamating companies;
- (b) the registered office of the amalgamated company;
- (c) the full name and residential address of each of the directors of the amalgamated company;
- (d) the full name and address of the secretary of the amalgamated company;
- (e) the share structure of the amalgamated company, specifying—
 - (i) the number of shares of the company;
 - (ii) the rights, privileges, limitations, and conditions attached to each share of the company, if different from those set out in subsection (2) of section 49;
- (f) the manner in which the shares of each amalgamating company are to be converted into shares of the amalgamated company;
- (g) if shares of an amalgamating company are not to be converted into shares of the amalgamated company, any consideration that the holders of those shares are to receive in place of shares of the amalgamated company;
- (h) any payment to be made to a shareholder or director of an amalgamating company, other than a payment of the kind described in paragraph (g) ;

- (i) details of any arrangement necessary to complete the amalgamation and to provide for the subsequent management and operation of the amalgamated company;
- (j) the date on which the amalgamation is intended to become effective.

(2) If the proposed articles of the amalgamated company are different from the model articles, a copy of the proposed articles shall be attached to and shall form part of the amalgamation proposal.

(3) Where shares of one of the amalgamating companies are held by or on behalf of another of the amalgamating companies, the amalgamation proposal—

- (a) shall provide for the cancellation of those shares without payment or the provisions of other consideration when the amalgamation becomes effective ;
- (b) shall not provide for the conversion of those shares into shares of the amalgamated company.

Approval of
amalgamation
proposal.

241. (1) Before an amalgamation proposal is put to the shareholders, the board of an amalgamating company shall resolve that—

- (a) in its opinion the amalgamation is in the best interests of the company ; and
- (b) it is satisfied that the amalgamated company will immediately after the amalgamation becomes effective, satisfy the solvency test.

(2) The directors who vote in favour of a resolution required under subsection (1) shall sign a certificate stating that in their opinion, the conditions set out in that subsection are satisfied and setting out the reasons for reaching that opinion.

(3) The board of each amalgamating company shall send to each shareholder of the company, not less than twenty working days before the amalgamation is proposed to take effect—

- (a) a copy of the amalgamation proposal ;
- (b) copies of the certificates given by the directors of each board ;
- (c) a statement setting out the rights of shareholders under section 93 ;
- (d) a statement of any material interests of any director in the proposal, whether in that capacity or otherwise ;
- (e) such further information and explanation as may be necessary to enable a reasonable shareholder to understand the nature and implications for the company and its shareholders of the proposed amalgamation.

(4) The board of each amalgamating company shall, not less than twenty working days before the date on which amalgamation is intended to become effective—

- (a) send a copy of the amalgamation proposal to every secured creditor of the company ; and
- (b) give public notice of the proposed amalgamation, including a statement to the effect that—
 - (i) copies of the amalgamation proposal are available for inspection by any shareholder or creditor of an amalgamating company, or any person to whom an amalgamating company is under an obligation, at the registered offices of the amalgamating

companies and at such other places as may be specified, during normal business hours ; and

- (ii) a shareholder or creditor of an amalgamating company or any person to whom an amalgamating company is under an obligation, is entitled to be supplied free of charge with a copy of the amalgamation proposal upon request made to an amalgamating company.

(5) An amalgamation may be effected if the amalgamation proposal is approved—

- (a) by a special resolution of the shareholders of each amalgamating company, in accordance with the provisions of section 92 ; and
- (b) if a provision in the amalgamation proposal would, if contained in an amendment to an amalgamating company's articles or otherwise proposed in relation to that company, require the approval of an interest group, by a special resolution of that interest group.

(6) For the purposes of this section, the solvency test shall be applied without taking into account the stated capital of the amalgamated company.

(7) A director who fails to comply with the requirements of subsection (2) shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees.

(8) If the court is satisfied that giving effect to an amalgamation proposal would unfairly prejudice a creditor of an amalgamating company or a person to whom an amalgamating company is under an obligation, it may on application made in that behalf by that person made at any

time before the date on which the amalgamation becomes affective, make any order as it thinks fit in relation to the proposal, and may without limiting the generality of this subsection, make an order—

- (a) directing that effect shall not be given to the proposal ;
- (b) directing the company or its board to reconsider the proposal or any part of it.

(9) An order under subsection (8) may be made on such terms and conditions as the court thinks fit.

242. (1) A company and one or more other companies that are directly or indirectly wholly owned by it, may amalgamate and continue as one company (being the company first referred to) without complying with the provisions of section 240 and section 241, if—

Short form
amalgamation.

- (a) the amalgamation is approved by a resolution of the board of each amalgamating company ; and
- (b) each resolution provides that—
 - (i) the shares of each amalgamating company, other than the amalgamated company, will be cancelled without payment or other consideration ;
 - (ii) the articles of the amalgamated company will be the same as the articles of the company first referred to ;
 - (iii) the board is satisfied that the amalgamated company will immediately after the amalgamation becomes effective, satisfy the solvency test ; and

- (iv) the person or persons named in the resolution will be the director or directors of the new company.

(2) Two or more companies each of which is directly or indirectly wholly owned by the same company, may amalgamate and continue as one company without complying with the provisions of section 240 or section 241 if—

- (a) the amalgamation is approved by a resolution of the board of each amalgamating company ;
- (b) each resolution provides that—
 - (i) the shares of all but one of the amalgamating companies will be cancelled without payment or other consideration ;
 - (ii) the articles of the amalgamated company will be the same as the articles of the amalgamating company whose shares are not cancelled ;
 - (iii) the board is satisfied that the amalgamated company will immediately after the amalgamation becomes affective, satisfy the solvency test ; and
 - (iv) the person or persons named in the resolution will be the director or directors of the new company.

(3) The board of each amalgamating company shall, not less than twenty working days before the date on which the amalgamation is intended to become effective—

- (a) give written notice of the proposed amalgamation to every secured creditors of the company ; and

(b) give public notice of the proposed amalgamation.

(4) The resolutions approving an amalgamation under this section shall, taken together, be deemed to constitute an amalgamation proposal that has been approved.

(5) The directors who vote in favour of a resolution required under subsection (1) or subsection (2), as the case may be, shall sign a certificate stating that in their opinion, the conditions set out in subsection (1) or subsection (2) are satisfied, and setting out the reasons for reaching that opinion.

(6) For the purposes of this section, the solvency test shall be applied without taking into account the stated capital of the amalgamated company.

(7) A director who fails to comply with subsection (5) shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees.

243. For the purpose of effecting an amalgamation, the following documents shall be delivered to the Registrar for registration :—

Registration of
amalgamation
proposal.

- (a) the approved amalgamation proposal ;
- (b) any certificates required under subsection (2) of section 241 or subsection (5) of section 242 ;
- (c) a certificate signed by the board of each amalgamating company stating that the amalgamation has been approved in accordance with the provisions of this Act and the articles of the company ;
- (d) a consent from each of the persons named in the amalgamation proposal as a director of the amalgamated company, to act as a director of that company, as required by section 203 ; and

- (e) a consent from each of the persons named in the amalgamation proposal as secretary of the amalgamated company, to act as secretary of that company, as required by subsection (2) section 221.

Certificate of
amalgamation.

244. (1) The Registrar shall forthwith after receipt of the documents required under section 243—

- (a) if the amalgamated company is the same as one of the amalgamating companies, issue a certificate of amalgamation in the prescribed form ; or
- (b) if the amalgamated company is a new company—
 - (i) enter particulars of the company on the Register ; and
 - (ii) issue a certificate of amalgamation in the prescribed form together with a certificate of incorporation in the prescribed form.

(2) If an amalgamation proposal specifies a date on which the amalgamation is intended to become effective, and that date is the same as or later than the date on which the Registrar receives the documents, the certificate of amalgamation, and any certificate of incorporation shall be deemed to have affect on the date specified in the amalgamation proposal.

(3) Notice of completion of such amalgamation shall be given to the public by the company.

Effect of
certificate of
amalgamation.

245 On the date shown in a certificate of amalgamation—

- (a) the amalgamation becomes effective ;
- (b) if it has the same name as of one of the amalgamating companies, the amalgamated company shall have the name specified in the amalgamation proposal ;

- (c) the Registrar shall remove all particulars relating to the amalgamating companies, other than the amalgamated company, from the Register ;
- (d) the amalgamated company succeeds to all the property, rights, powers, and privileges of each of the amalgamating companies ;
- (e) the amalgamated company succeeds to all the liabilities and obligations of each of the amalgamating companies ;
- (f) proceedings pending by or against an amalgamating company may be continued by or against the amalgamated company ;
- (g) a conviction, ruling, order, or judgment in favour of or against an amalgamating company, may be enforced by or against the amalgamated company ;
- (h) the stated capital of the amalgamated company shall be the sum certified by the auditor of the amalgamated company ; and
- (i) any provisions of the amalgamation proposal that provide for the conversion of shares or rights of shareholders in the amalgamating companies, shall have effect according to their tenor.

246. (1) Where any person pursuant to an offer made to the holders of voting rights of a company acquires not less than ninety *per centum* of the voting rights of such company, such person may within three months of such acquisition give notice in the prescribed manner to all the shareholders holding the outstanding shares carrying voting rights, the desire to acquire such shares, and unless the court thinks fit to order otherwise, upon an application made by any shareholder to the court within fourteen days of the receipt of

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

such notice for the acquisition of his shares, shall be entitled to acquire such shares on terms not less favourable than the terms made under the aforementioned offer.

(2) A copy of the notice in relation to the acquisition referred to in subsection (1) shall be forwarded to the company, the shares of which are to be so acquired.

(3) Where any person has given notice under the provisions of subsection (1), on the expiration of one month from the date on which such notice was given, such person shall forward the due consideration to the company, the shares of which are to be so acquired and the company secretary of such company shall register such acquirer as the holder of all such shares.

(4) Any consideration received by the company shall be held by the company on trust for the person or persons entitled to the shares in respect of which the sum or other consideration was received. The company secretary of such company shall forward such consideration due, to all shareholders without any undue delay.

(5) Where after reasonable inquiry is made at such intervals and the publication of notices in all three languages in daily newspapers, the person entitled to any consideration cannot be found and six years have elapsed since the consideration has been received or the company is wound up, the consideration together with any interest, dividend or other benefit that has accrued from it, shall be paid by the company to the Public Trustee.

(6) In the case where the company is wound up—

- (a) the trust shall terminate ;
- (b) the company or, as the case may be, the liquidator shall sell the consideration other than cash and any benefit other than cash that has accrued from the consideration ; and

- (c) a sum representing ;
 - (i) the consideration so far as it is cash,
 - (ii) the proceeds of any sale under subparagraph (b) above ; and
 - (iii) any interest, dividend or other benefit that has accrued from the consideration,

shall be deposited in the name of the Public Trustee.

(7) The expenses of any such inquiry and press notices as is mentioned above shall be defrayed out of the money or other property held in trust referred to in subsection (4) above.

PART IX

COMPROMISES WITH CREDITORS

247. In this Part of this Act, unless the context otherwise requires— Interpretation.

“compromise” means a compromise between a company and its creditors, including a compromise—

- (a) cancelling all or part of any debt of the company ;
- (b) varying the rights of its creditors or the terms of a debt ;
- (c) relating to an alteration of a company’s articles that affects the likelihood of the company’s ability to pay a debt;

“creditor” includes a person who in a liquidation, would be entitled to claim in accordance with the provisions of section 357, that a debt is owing to that person by the company ; and

“proponent” means a person referred to in section 248 who proposed a compromise in accordance with the provisions of this Part of this Act.

Compromise
proposal.

248. (1) Any of the following persons may propose a compromise under this Part, if that person has reason to believe that a company is or is likely to become unable to pay its debts as they fall due:—

- (a) the board of the company ;
- (b) a receiver appointed in relation to the property and undertakings of the company ;
- (c) an administrator of the company appointed under Part XIII ;
- (d) a liquidator of the company ; or
- (e) with the leave of the court, any creditor or shareholder of the company.

(2) Where the court grants leave to a creditor or shareholder under paragraph (d) of subsection (1), the court may make an order directing the company to supply to the creditor or shareholder within such time as may be specified, a list of the names and addresses of the company’s creditors, showing the amounts owed to each of them or such other information as may be specified, to enable the creditor or shareholder to propose a compromise.

Notice of
proposed
compromise.

249. (1) The proponent shall compile, in relation to each class of creditors of the company, a list of creditors known to the proponent who would be affected by the proposed compromise, and setting out—

- (a) the amount owing or estimated to be owing to each of them ; and

- (b) the number of votes which each of them is entitled to cast on a resolution approving the compromise.

(2) The proponent shall give to each known creditor, the company, any receiver or administrator or liquidator respectively, and deliver to the Registrar—

- (a) a notice in accordance with the requirements specified in the Seventh Schedule hereto, of the intention to hold a meeting of creditors, or any two or more classes of creditors, for the purpose of voting on the resolution ; and
- (b) a statement—
 - (i) containing the name and address of the proponent and the capacity in which the proponent is acting ;
 - (ii) containing the address and telephone number to which inquiries may be directed during normal business hours ;
 - (iii) setting out the terms of the proposed compromise and the reasons for it ;
 - (iv) setting out the reasonably foreseeable consequences for creditors of the company of the compromise being approved ;
 - (v) setting out the extent of any interest of a director in the proposed compromise ;
 - (vi) explaining that the proposed compromise and any amendment to it proposed at a meeting of creditors or any classes of creditors, will be binding on all creditors or on all creditors of that class, if approved in accordance with the provisions of section 250 ; and

- (vii) containing details of any procedure proposed as part of the proposed compromise for varying the compromise following its approval ; and

- (c) a copy of the list or lists of creditors referred to in subsection (1).

Effect of
compromise.

250. (1) A compromise including any amendment proposed at the meeting, is deemed to be approved by creditors or a class of creditors, if at a meeting of creditors or that class of creditors conducted in accordance with the requirements specified in the Seventh Schedule hereto, the compromise, including any amendment is adopted in accordance with paragraph 5 of that Schedule.

(2) A compromise including any amendment approved by creditors or a class of creditors of a company in accordance with the provisions of this Part, is binding on the company and on—

- (a) all creditors ; or
- (b) if there is more than one class of creditors, on all creditors of that class,

to whom notice of the proposal was given under section 249.

(3) Where a resolution proposing a compromise including any amendment is put to the vote of more than one class of creditors, it shall be presumed unless the contrary is expressly stated in the resolution, that the approval of the compromise, including any amendment by each class, is conditional on the approval of the compromise, including any amendment by every other class voting on the resolution.

(4) The proponent shall give written notice of the result of the voting to each known creditor, the company, any receiver or administrator or liquidator and the Registrar, respectively.

251. (1) A compromise approved under section 250 may be varied either— Variation of compromise

- (a) in accordance with any procedure for variation incorporated in the compromise as approved ; or
- (b) by the approval of a variation of the compromise in accordance with the requirements provided for in this Part which, for that purpose, shall apply with such modifications as may be necessary, as if any proposed variation were a proposed compromise.

(2) The provisions of this Part shall apply to any compromise that is varied in accordance with this section.

252. (1) On the application of the proponent or the company, the court may— Powers of court.

- (a) give directions in relation to a procedural requirement imposed under provisions of this Part or waive or vary any such requirement, if the court is satisfied that it would be just to do so; or
- (b) order that during a period specified in the order, beginning not earlier than the date on which notice was given of the proposed compromise and ending not later than ten working days after the date on which notice was given of the result of the voting on it—
 - (i) proceedings in relation to a debt owing by the company be stayed; or
 - (ii) a creditor should refrain from taking any other measure to enforce payment of a debt owing by the company.

(2) Nothing in paragraph (b) of subsection (1) shall affect the right of a secured creditor during that period to seize, realise, appoint a receiver in respect of or otherwise deal with property of the company, over which that creditor has a charge.

(3) Where the court is satisfied on the application of a creditor of a company who was entitled to vote on a compromise, that —

- (a) insufficient notice of the meeting or of the matters required to be notified under section 249 was given to that creditor;
- (b) there was some other material irregularity in obtaining approval of the compromise; or
- (c) in the case of a creditor who voted against the compromise, the compromise is unfairly prejudicial to that creditor or to the class of creditors to which that creditor belongs,

the court may make an order that such creditor is not bound by the compromise, or make such other order as it thinks fit.

(4) An application under subsection (3) shall be made not later than ten working days after the date on which notice of the result of the voting was given to the creditor.

Effect of
compromise in
liquidation of a
company.

253. (1) Where a compromise is approved under section 250, the court may on the application of—

- (a) the company ;
- (b) a receiver appointed in relation to property of the company;
- (c) an administrator; or
- (d) with the leave of the court, any creditor or shareholder of the company,

make such order as the court thinks fit with respect to the extent, if any, to which the compromise will, if the company is put into liquidation, continue in effect and be binding on the liquidator of the company.

(2) Where a compromise is approved under section 250 and the company is subsequently put into liquidation, the court may on the application of—

- (a) the liquidator;
- (b) a receiver appointed in relation to property of the company; or
- (c) with the leave of the court, any creditor or shareholder of the company,

make such order as the court thinks fit with respect to the extent, if any, to which the compromise will continue in effect and be binding on the liquidator of the company.

254. Unless the court orders otherwise, the costs incurred in organising and conducting a meeting of creditors for the purpose of voting on a proposed compromise—

Costs of
compromise.

- (a) shall be met by the company;
- (b) if incurred by a receiver or a liquidator, shall be deemed to be a cost of the receivership or liquidation;
- (c) if incurred by an administrator, shall be deemed to be a cost of the administration; or
- (d) if incurred by any other person, shall be deemed to be a debt due to that person from the company and, if the company is put into liquidation, are payable in the order of priority specified in the Ninth Schedule.

PART X

APPROVAL OF ARRANGEMENTS, AMALGAMATIONS, AND
COMPROMISES BY COURT

Interpretation.

255. In this Part of this Act, unless the context otherwise requires—

“arrangement” includes a re-organisation, of the shares and the stated capital of a company;

“company” includes a registered overseas company; or of the shares or the stated capital of the company ; and

“creditor” includes a person who in a liquidation, would be entitled to claim in accordance with the provision of section 357 that a debt is owing to that person by the company.

Court approval
of arrangements,
amalgamation
and
compromises.

256. (1) Notwithstanding the provisions of this Act or the provisions contained in the articles of a company, the court may on the application of —

- (a) a company;
- (b) an administrator appointed under Part XIII; or
- (c) with the leave of the court, any shareholder or creditor of a company,

order that an arrangement or amalgamation or compromise shall be binding on the company and on such other persons or classes of persons as the court may specify. Any such order may be made on such terms and conditions as the court thinks fit.

(2) Before making an order under subsection (1), the court may, on the application of the company or the administrator

or any shareholder or creditor or other person who appears to the court to be interested or of its own motion, make any one or more of the following orders :—

- (a) an order that notice of the application together with such information relating to it as the court thinks fit, be given in such form and in such manner and to such persons or classes of persons as the court may specify;
- (b) an order directing the holding of a meeting or meetings of shareholders or any class of shareholders or creditors or any class of creditors of a company, to consider and if determined fit, to approve in such manner as the court may specify, the proposed arrangement or amalgamation or compromise. The court may for that purpose determine the shareholders or creditors that constitute a class of shareholders or creditors of a company;
- (c) an order requiring that report on the proposed arrangement or amalgamation or compromise be prepared for the court by a person specified by the court, and if the court thinks fit, be supplied to the shareholders or any class of shareholders or creditors or any class of creditors of a company or to any other person who appears to the court to be interested;
- (d) an order as to the payment of the costs incurred in the preparation of any such report;
- (e) an order specifying the persons who shall be entitled to appear and be heard on the application to approve the arrangement or amalgamation or compromise.

(3) An order made under this section shall have effect on and from the date specified in the order.

(4) Within ten working days of an order being made by the court under this section, the company shall ensure that a copy of the order is delivered to the Registrar.

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

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding one hundred thousand rupees; and
- (b) every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine not exceeding fifty thousand rupees.

Court may make additional orders.

257. (1) Without limiting the powers conferred under section 256, the court may for the purpose of giving effect to any arrangement or amalgamation or compromise approved under that section, either by the order approving the arrangement or amalgamation or compromise or by any subsequent order, provide for and prescribe terms and conditions relating to —

- (a) the transfer or vesting of movable or immovable property, assets, rights, powers, interests, liabilities, contracts and engagements;
- (b) the issue of shares, securities or policies of any kind;
- (c) the continuation of legal proceedings;
- (d) the liquidation or the removal from the Register without liquidation, name and particulars of any company;
- (e) the provision to be made for persons who voted against the arrangement or amalgamation or compromise at any meeting called in accordance with an order made under paragraph (b) of subsection (2) of section 256, or who appeared before the court

in opposition to the application, to approve the arrangement or amalgamation or compromise;

- (f) such other matters as are necessary or desirable to give effect to the arrangement or amalgamation or compromise.

(2) An order made by the court under subsection (1) shall have effect according to its tenor.

(3) Within ten working days of an order being made by the court under this section, the company shall ensure that a copy of the order is delivered to the Registrar.

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

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding one hundred thousand rupees; and
- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

258. The court shall not approve an arrangement or amalgamation or compromise under section 256 if it could be effected under Part VIII or this Part or under any other provisions of this Act, unless it is satisfied that it is not reasonably practicable to do so.

Application of
Part VIII.

259. The provisions of section 253 shall apply with such modifications as may be necessary, in relation to any compromise approved under section 256.

Application of
section 253 to
compromise
approved under
this Part.

PART XI

PROVISIONS RELATING TO OFFSHORE COMPANIES

- Interpretation. **260.** In this Part of this Act, “company” includes a company or a body corporate incorporated under the laws of any foreign country.
- Company incorporated for business outside Sri Lanka. **261.** (1) Any company may make an application to the Registrar in accordance with the provisions of this Part of this Act to be registered in Sri Lanka as an off-shore company and to be so referred to, and in the case of a company incorporated abroad, to be deemed to be incorporated in Sri Lanka, as if it had been incorporated under the provisions of this Act.
- (2) An application for registration under subsection (1) shall have annexed thereto the following documents :—
- (a) a certified copy of the charter, statute or memorandum and articles of association of the company or other instrument constituting or defining the constitution of the company, and where such instrument is not in an official language or in English, a translation of the instrument in such language as may be specified by the Registrar;
 - (b) a list of the directors or those managing the affairs of the company, containing their full names, addresses, occupations and the offices they hold in the company;
 - (c) the names and addresses of one or more persons who are resident in and are citizens of Sri Lanka, who is or are authorised to represent the company;
 - (d) a statement containing the full address of—
 - (i) the registered or principal office of the company in the country of incorporation; and
 - (ii) the office of the company in Sri Lanka;

- (e) a certified copy (certified of recent date of the incorporation of the company).

(3) The company shall notify the Registrar of any amendments or alterations in respect of any of the aforesaid particulars within the prescribed time, and in the prescribed form.

262. (1) Subject to the provisions of subsections (3) and (4), the Registrar may, having regard to the national interest or in the interest of the national economy, issue a certificate of registration to an off-shore company for the carrying on of its business outside Sri Lanka, where that off-shore company—

Grant of
certificate of
registration to
off-shore
company.

- (a) makes payment of the prescribed fee; and
- (b) produces to the Registrar a certificate from a bank, that the prescribed sum to defray the expenses of the off-shore company for the purposes of its office in Sri Lanka, has been deposited to the credit of an account at that bank in the name of the off-shore company.

(2) A certificate of registration issued to an off-shore company under this Part of this Act, shall exempt the company from complying with any other provision of this Act.

(3) No certificate of registration shall be granted to a company under this section, where —

- (a) the winding up or liquidation of such company has commenced;
- (b) a receiver of the property of such company has been appointed;
- (c) there is any scheme or order in force in relation to such company under which the rights of creditors are suspended or restricted.

(4) Before the Registrar issues a certificate of registration to an off-shore company under this section, he shall satisfy himself that—

- (a) in the case of a company incorporated abroad, there is no legal impediment in the country of incorporation to the company engaging in the business of an off-shore company;
- (b) the issue of such certificate does not render defective any legal or other proceedings instituted or to be instituted by or against the company,

and shall embody in the certificate such conditions as he may deem necessary in the national interest or in the interest of the national economy.

(5) The Registrar may for good cause cancel the registration of an off-shore company under this Part of this Act. Upon such cancellation, the off-shore company shall cease to enjoy the privileges and benefits granted under this Part of this Act or under any other written law relating to off-shore companies.

Continuation of
business of off-
shore company.

263. An off-shore company which intends to continue its business as an off-shore company under this Act shall in every calendar year—

- (a) produce to the Registrar proof of payment of the prescribed fee in the prescribed manner at the commencement of that year and not later than the thirty first day of January of that year ; and
- (b) produce to the Registrar not later than the thirty-first day of January of that year, or such later date as the Registrar may approve, a bank certificate as required under paragraph (b) of subsection (1) of section 262 in regard to defraying of the expenses of the off-shore company for that year.

264. (1) An off-shore company shall have power to carry on any business outside Sri Lanka; but shall not be entitled to carry on any business within Sri Lanka.

Prohibition on carrying on business in Sri Lanka.

(2) Nothing in subsection (1) shall preclude an off-shore company securing in Sri Lanka any benefits or advantages available under any written law which may be applicable to it.

265. An off-shore company may cease carrying on business as an off-shore company by giving notice to the Registrar in the prescribed form of its intention to do so.

Cessation of business as an off-shore company.

PART XII

WINDING UP

(1) PRELIMINARY

Modes of winding up

266. In this Part of this Act, the expression “contributory” means every shareholder of the company and every other 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 and includes any person alleged to be a contributory.

Definition of contributory.

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

Modes of winding up.

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

(2) The provisions of this Act with respect to winding up shall apply unless the contrary appears, to the winding up of a company in any manner set out in subsection (1).

CONTRIBUTORIES

Power of liquidator to enforce liability of share holders and former shareholders.

268. (1) The liquidator may—

- (a) if a shareholder is liable to calls, make calls on the shares held by that shareholder;
- (b) if a shareholder or former shareholder is otherwise liable to the company, enforce that liability.

(2) A call under paragraph (a) of subsection (1) shall be made in writing.

Liability of former shareholders for unpaid calls.

269. (1) Subject to the provisions of subsection (2), if a shareholder of a company in liquidation fails to pay any amount due in respect of a share, that amount shall be payable by and may be recovered by the liquidator from any other person who was registered as the holder of the share at any time, within—

- (a) the period of one year before the commencement of the liquidation; or
- (b) in the case of a company that was put into liquidation by the court, the period of one year before the making of the application to the court together with the period commencing on the date of the making of that application and ending on the date on which the order of the court was made.

(2) A former shareholder shall not be liable under subsection (1), if at all times that he was registered as the holder of the share during the period referred to in subsection (1), the company was able to pay its debts as they fell due.

(3) Where the liability attached to a share has increased after the time at which the former shareholder was registered as the holder of the share, he shall be liable only for the amount of any liability attached to the share at the time at which it was held by him.

(II) WINDING UP BY THE COURT

CASES IN WHICH COMPANY MAY BE WOUND UP BY THE COURT

- 270.** 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) the company does not commence its business within a year from its incorporation or suspends its business for one year;
 - (c) if the number of the members falls below the minimum number required under subsection (2) of section 4 of this Act;
 - (d) the company has no directors;
 - (e) the company is unable to pay its debts; or
 - (f) the court is of opinion that it is just and equitable that the company should be wound up.

Circumstance in which a company may be wound up by the court.

- 271.** A company shall be deemed to be unable to pay its debts where—

Definition of inability to pay debts.

- (a) a creditor by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty thousand rupees 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 from the date of so leaving, neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor;
- (b) execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company, is returned unsatisfied in whole or in part; or

- (c) 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

Application for winding up.

272. (1) 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, jointly or separately:

Provided that—

- (a) a contributory shall not be entitled to present a winding-up petition unless—
 - (i) the number of members falls below the minimum number required under subsection (2) of section 4 of this Act ; 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 immediately preceding the date of commencement of the winding up or have devolved on him through the death of a former holder ;
- (b) 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 ; and

- (c) the Registrar may present a winding-up petition in the case of a company referred to in subsection (3) of section 177.

(2) Where a company is being wound up voluntarily or subject to supervision, a winding-up petition may be presented by the official receiver attached to the court as well as by any other person authorised in that behalf under the provisions of this section, but the court shall not make a winding up order on the petition, unless it is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

273. (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 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.

Powers of court
on hearing
petition.

(2) Where a winding-up petition is presented by shareholders of the company as contributories on the ground that it is just and equitable that the company should be wound up, the court shall where it is of opinion that—

- (a) the petitioners are entitled to relief either by winding-up the company or by some other means ;
and
- (b) in the absence of any other remedy it would be just and equitable that the company should be wound up,

make a winding-up order, unless it is of the opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

Power to stay or
restrain
proceedings
against a
company.

274. At any time after the presentation of a winding-up petition, and before a winding-up order has been made, the company or any creditor or contributory may-

- (a) where any action or proceeding against the company is pending in any court in Sri Lanka, make an application to the court in which such action or proceeding is pending for a stay of proceedings therein ; and
- (b) where any other action or proceeding is pending against the company, make an application to the court having jurisdiction to wind up the company, to restrain further proceedings in such action or proceeding, and the court to which application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit.

Avoidance of
disposition of
property &c.
after
commencement
of winding-up.

275. In a winding up by the court, any disposition of the property of the company, including things in action 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
attachments &c.

276. (1) Where any company is being wound up by the court, subject to the provisions of subsection (2) any attachment, sequestration, or execution put in force against the estate or effects of the company after the time of the presentation of the petition for the winding up, shall be void to all intents.

(2) Nothing in this section shall apply to an execution process or attachment against any property by or for the benefit of a creditor, who is entitled to a charge in respect of that property.

COMMENCEMENT OF WINDING UP

277. (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.

Commencement of winding up by the court.

(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.

CONSEQUENCES OF WINDING UP ORDER

278. On the making of a winding up order, a copy of the order shall forthwith be forwarded by the company or otherwise as may be prescribed, to the Registrar who shall make a minute thereof in his books relating to the company.

Copy of order to be forwarded to Registrar.

279. (1) When a winding up order has been made or a provisional liquidator has been appointed, subject to the provisions of subsection (2), 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.

Actions stayed on winding up.

(2) Nothing in this section shall apply to an execution process or attachment against any property by or for the benefit of a creditor, who is entitled to a charge in respect of that property.

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

Effect of winding up order.

OFFICIAL RECEIVER IN WINDING UP

Official
receiver.

281. For the purposes of this Act, the expression “official receiver” so far as it relates to the winding up of a company by the court, means the official receiver if any, attached to the court for insolvency purposes, or if there is no such official receiver so attached, such person as the Minister may appoint as official receiver to that court.

Appointment
of official
receiver by
court in
certain cases.

282. If in the case of the winding up of any company by court it appears to the court desirable with a view to securing a more convenient and economical conduct of such winding up, that some officer, other than the person who would by virtue of the provisions of section 281 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 purposes of this Act.

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

283. (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 in the prescribed form of the affairs of the company, 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.

(2) The statement referred to in subsection (1) 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 of the company or by such of the persons referred to below, who may be appointed by court as the official receiver, subject to the direction of the court —

(a) who are or have been 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 referred to in subsection (1) 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 the provisions of this section, shall be allowed and shall be paid by the official receiver or provisional liquidator, as the case may be, out of 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) Where any person without reasonable excuse fails to comply with the requirements of this section, he shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees.

(6) Any person claiming 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 the provisions of this section and to a copy of or extract from such statement.

(7) Any person claiming to be a creditor or contributory knowing it to be false shall be guilty of a contempt of court and shall on the application of the liquidator or of the official receiver, be punishable for such contempt.

(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 case where no such appointment is made, the date of the winding up order.

Report by
official receiver.

284. (1) In any case where a windingup order is made, the official receiver shall, as soon as practicable after receipt of the statement to be submitted under the provisions of section 283 or in any case where the court orders that no such 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 number and types of shares issued, the stated capital and the estimated amount of assets and liabilities ;
- (b) where 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 officer of the company in relation to the company since the formation of such company, and any other matters which in his opinion it is desirable to bring to the notice of the court.

(3) Where the official receiver states in any such further report as is referred to in subsection (2) that in his opinion a fraud has been committed, the court shall exercise the powers set out in section 311 in dealing with such report.

LIQUIDATORS

285. For the purposes 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.

286. (1) 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 so 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.

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

Appointment style, &c. 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 contributories of the company, for the purposes of determining whether or not an application is to be made to the court for appointing a liquidator in place of the official receiver ;
- (c) the court may make any appointment and make any 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 the liquidator is not appointed by the court, the official receiver shall be the liquidator of the company ;
- (e) the official receiver shall by virtue of his office be the liquidator during any vacancy in the office of liquidator ;
- (f) a liquidator shall be described where a person other than the official receiver is the 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 a liquidator.

288. 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 been notified of such appointment and given security in the prescribed manner to 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 required for enabling that officer to perform his duties under this Act.

General provisions as to liquidators.

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

(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 where more than one such persons are appointed liquidators, their 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) Where more than one liquidator is appointed by the court, the court shall declare whether any act required or authorised to be done under the provisions of this Act by the liquidator, is to be done by all or any one or more of the persons so appointed.

(5) No act of a liquidator shall be or shall be deemed to be invalid by reason only of any defect in the appointment or qualification of such liquidator.

290. Where a windingup 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.

291. Where a company is being wound up by the court, the court may on the application of the liquidator by order direct that that all or any part of the property of whatever 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 proceedings 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.

292. (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 of such company ;
- (c) to appoint an attorney-at-law to assist him in the performance of his duties ;
- (d) to pay any classes of creditors in full ;
- (e) to make any compromise or arrangement with creditors or persons 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 alleged 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 in a winding up by the court 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 seal of the company, if any ;
- (c) to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors ;
- (d) to draw, accept, make and endorse any bills of exchange or promissory note or like instruments 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 or such instrument 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 required ;
- (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 appointed under the Public Trustee Ordinance (Cap. 88) ;

- (g) to appoint an agent to do any business on behalf of such liquidator ;
- (h) to do all such other things as may be necessary for windingup 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 the provisions of this section, shall be subject to the control of the court and any creditor or contributory may make an application to the court for the exercise or proposed exercise of any of those powers.

Exercise and control of liquidator's powers.

293. (1) Subject to the provisions of this Act, 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 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 prevail over any directions given by the committee of inspection.

(2) 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 of the total number of creditors or contributories, as the case may be.

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

(4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(5) Where any person is aggrieved by any act or decision of the liquidator, that person may appeal to the court against such act or decision, and the court may confirm, reverse, or modify the act or decision complained of and make such order as it thinks just.

294. Every liquidator of a company which is being wound up by the court shall keep in the prescribed manner, 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.

Books to be kept
by liquidators.

295. (1) Every liquidator of a company which is being wound up by the court shall pay the money received by him into an account or accounts established for the purpose at one or more licenced commercial banks.

Payments by
liquidator into
bank.

(2) A liquidator of a company which is being wound up by the court shall not pay any sums received by him as liquidator into his private banking account.

296. (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.

Audit of
liquidator's
accounts.

(2) The account shall be in the prescribed form, shall be made in duplicate and shall be certified 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 person on payment of the prescribed fee.

(5) The liquidator shall send a copy of the account or summary by post to every creditor and contributory, unless he considers that it is not practicable to do so, having regard to the cost of so doing and the value of the assets of the company.

Control of
Registrar over
liquidator.

297. (1) The Registrar shall take cognizance of the conduct of liquidators of companies which are being wound up by the court, and where a liquidator does not faithfully perform his duties and duly observe all requirements imposed on him by any written law or otherwise with respect to the performance of his duties, or where any complaint is made to the Registrar by any creditor or contributory in regard thereto, the Registrar shall inquire into the matter and if necessary, report to the court.

(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 where the Registrar thinks fit so to do, make an application to court to examine him or any other person on oath on any matter concerning the winding up.

(3) The Registrar may also direct a local investigation to be made of the books and vouchers of the liquidator.

298. (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, has distributed a final dividend, if any, to the creditors and adjusted the rights of the contributories among themselves and made a final return if any to the contributories, or has resigned or has been removed from his office, the court shall, on his application for a release from the office of the liquidator, cause a report on the 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 such release accordingly.

Release of
liquidators.

(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 done or default made by him in the administration of the affairs of the company.

(3) An order of the 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 from office, his release shall have the effect of a removal of a liquidator from his office.

COMMITTEE OF INSPECTION

Meetings of creditors and contributories to determine whether committee of inspections shall be appointed.

299. (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 shall be made to the court for the appointment of a committee of inspection to act with the liquidator and the persons who shall be members of such committee, if appointed.

(2) The court may make any appointment or order required to give effect to any such determination, and where there is any difference between the determinations of the meetings of the creditors and contributories in respect of the matters referred to in subsection (1), the court shall decide the difference and make such order thereon as the court may think fit.

Constitution and proceedings of committee of inspection.

300. (1) A committee of inspection appointed in pursuance of the provisions of this Act 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 at the meetings of creditors and contributories, or in case of any difference, as may be determined by the court.

(2) The committee shall meet at such times as they from time to time appoint, provided that a meeting is held at least once in every three months. The liquidator or any member of the committee may also call a meeting of the committee as and when such liquidator or member, as the case may be, thinks necessary.

(3) The committee shall not act unless a majority of the members of the committee are present at the meeting.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) Where a member of the committee becomes insolvent or bankrupt or compounds or arranges with his creditors or is absent from three 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 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, notice of such meeting being given seven days prior to the date and also stating the objects of such 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 be, to fill the vacancy and the meeting may by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy:

Provided that where the liquidator having regard to the state of the winding up, is of the opinion that it is unnecessary for the vacancy to be filled, he may make an application to the court for an order that the vacancy shall not be filled and the court may make such an order or an order that such vacancy shall not be filled except in such circumstances as may be specified in the order.

301. Where in the case of a winding up there is no committee of inspection, the court may on the application of the liquidator, do any act or give any direction or permission which by this Act is authorised or required to be done or given, by the committee.

Powers of court where there is no committee of inspection.

GENERAL POWERS OF COURT IN CASE OF WINDING UP BY COURT

Power to stay winding up.

302. (1) The court may at any time after an order for winding up is made, 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 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 made under the provisions of subsection (1), 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.

(3) A copy of every order made under the provisions of this section shall forthwith be forwarded by the company or otherwise as may be prescribed to the Registrar, who shall forthwith make a minute of the order in his books relating to the company.

Settlement of list of contributories and application of assets.

303. (1) As soon as may be after making a winding up order, the court shall settle a list of contributories, with power to rectify the share register in all cases where rectification is required in pursuance of this Act 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 contributories, the court may dispense with the settlement of a list of contributories.

(2) In settling the list of contributories, the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

304. The court may, at any time after making a winding up order, require any contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer forthwith or within such time as the court directs, to the liquidator any money, property, or books and papers in his hand to which the company is *prima facie* entitled.

Delivery of property to liquidator.

305. (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 contributories, to pay in the 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 such estate by virtue of any call in pursuance of this Act.

Payment of debts due by contributory to company and extent to which set off is allowed.

(2) The court in making such an order may 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.

(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.

306. (1) The court may order any contributory, purchaser or other person from whom money is due to the company, to pay the amount due 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 endorsed in the same manner as if it had directed payment to the liquidator.

Payment into bank of moneys due to company.

(2) All moneys and 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.

Appointment of
special manager.

307. (1) Where the official receiver becomes the liquidator of a company whether provisionally or otherwise, he may where 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, make an application to court for the appointment of a special manager of the estate or business of the company, 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 appointed under the provisions of subsection (1), shall give such security and account in such manner as the court directs.

(3) The special manager appointed under the provisions of subsection (1) shall receive such remuneration as may be fixed by the court.

Inspection of
books by
creditors and
contributories.

308. 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 contributories as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly.

Power to order
costs of winding
up to be paid out
of assets.

309. 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
summon persons
suspected of
having property
of company.

310. (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 alleged 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 on oath any officer or person summoned under the provisions of subsection (1) on any matter referred to in that subsection, either orally or on written interrogatories, and may where such examination is conducted orally, reduce the answers to writing and require such officer or person to sign it.

(3) The court may require any officer or person summoned under the provisions of subsection (1), to produce any books and papers in his custody or power relating to the company, but where such officer or person claims any lien on such 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) Any officer or person summoned under the provisions of subsection (1) who refuses or fails without reasonable cause, to appear before court or to produce any books or papers required to be produced by him at the time and on the date specified in the summons, shall be liable to be arrested and produced before court for examination.

311. (1) Where an order has been made by the court for the winding up of a company and the official receiver has made a further report under the provisions of this Act, stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since its formation, the court may after consideration of such report, direct that such person 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 dealing as officer thereof.

Power to order public examination of promoters, directors &c.

(2) The official receiver may make representations at the examination referred to in subsection (1), and for that purpose may be represented by an attorney at-law.

(3) The liquidator, where the official receiver is not the liquidator, and any creditor or contributory may also take part in the examination either personally or by an attorney-at-law.

(4) The person or officer examined under the provisions of this section shall be examined on oath or affirmation and shall answer all such questions as the court may put or allow to be put to him

Person or officer
being examined
to be represented
by an attorney-
at-law, &c.,

312. (1) A person or officer directed to be examined under the provisions of section 311 shall at his own cost, before being so examined, be furnished with a copy of the report of the official receiver and may at his own cost be represented by an attorney-at-law, who shall be at liberty to put to such person or officer 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, where any such person or officer makes an application to court to be exculpated from any charges made or alleged against him, it shall be the duty of the official receiver to appear at the hearing of the application and draw the attention of the court to any matters which appear to the official receiver to be relevant, and where 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 it may in its discretion, thinks fit.

(2) Proceedings of the examination held under section 311 shall be reduced to writing and shall be read over to or by, and signed by the person or officer 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.

(3) The court may if it thinks fit, adjourn the examination from time to time.

313. The court may at any time either before or after making a winding up order, on reasonable cause being shown for believing that a contributory is about to leave Sri Lanka or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls, or for avoiding examination with respect to 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 kept in safe custody until such time, as the court may specify.

Power to arrest absconding contributory.

314. Any powers by this Act 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.

315. The Minister may make rules for enabling or requiring all or any of the powers and duties conferred and imposed on the court by this Act, in respect of—

Delegation to liquidator of certain powers of court.

- (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;
- (b) the settling of lists of contributories and the rectifying of the register of members where required, and the collecting and applying of the assets;
- (c) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;
- (d) the fixing of a time within which debts and claims shall be proved,

to be exercised or performed by the liquidator as an officer of the court and subject to the control of the court:

Provided that the liquidator shall not without the special leave of the court, rectify the register of members and shall not make any call without either the special leave of the court or the sanction of the committee of inspection.

Dissolution of a company.

316. (1) Where the affairs of a company have been completely wound up, the court shall where the liquidator makes an application in that behalf, make an order that the company be dissolved from the date of such order and the company shall be dissolved accordingly.

(2) A copy of the order made under the provisions of subsection (1) shall, within fifteen days from the date of such order, be forwarded by the liquidator to the Registrar who shall make in his books a minute of the dissolution of the company.

(3) Where the liquidator fails to comply with the requirements of this section, he shall be guilty of an offence and be liable on conviction to a fine not exceeding one hundred thousand rupees.

Manner of enforcing order of court.

317. Any order made by a court under this Act may be enforced in the same manner in which a decree of such court made in any suit pending therein may be enforced.

Enforcement of winding up order in another court.

318. Where any order made by one court is required to be enforced by any other court, a certified copy of the order shall be produced to the court required to enforce the same, and the production of a certified copy shall be sufficient evidence of the order, and thereupon such other 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.

(III) VOLUNTARY WINDING UP

RESOLUTION FOR AND COMMENCEMENT OF VOLUNTARY WINDING UP

319. (1) A company may be wound up voluntarily—

Circumstances in which 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 at a general meeting has passed a resolution requiring the company to be wound up voluntarily;
- (b) where the company resolves by special resolution that the company be wound up voluntarily;
- (c) where the company resolves by special 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 Act the expression “a resolution for voluntary winding up” means a resolution passed under the provisions of subsection (1).

320. (1) When the company has passed a resolution for voluntary winding up, it shall within fourteen days from the date of the passing of the resolution, give notice of the resolution by publication in the *Gazette*.

Notice of resolution to wind up voluntarily.

(2) Where the company fails to comply with the provisions of this section —

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

- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a penalty not exceeding fifty thousand rupees.

(3) For the purposes of this section, the liquidator of company shall be deemed to be an officer of the company.

Commencement of voluntary winding up.

321. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up.

CONSEQUENCES OF VOLUNTARY WINDING UP

Effect of voluntary winding up on business and status of company.

322. In the case of a voluntary winding up, the company shall from the date of commencement of the winding up, cease to carry on its business except so far as may be required for the beneficial winding up thereof:

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until such company is dissolved.

Avoidance of transfers, &c., after commencement of voluntary

323. 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 shareholders of the company made after the date of commencement of a voluntary winding up, shall be void.

DECLARATION OF SOLVENCY

Statutory declaration of solvency in case of proposal to wind up voluntarily.

324. (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, make a statutory declaration to the effect that they have made a full inquiry into the affairs of the company and that they are of the opinion that the company will be able to pay its debts in full within

such period not exceeding twelve months, from the date of commencement of the winding up as may be specified in the declaration.

(2) A declaration made under the provisions of subsection (1) shall have no effect for the purposes of this Act, unless—

- (a) it is made within the five weeks immediately preceding the date of the passing of the resolution for winding up of the company and is delivered to the Registrar for registration by that date; and
- (b) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of such declaration.

(3) A winding up in the case of which a declaration has been made and delivered in accordance with the provisions of this section, is in this Act referred to as “a shareholders' voluntary winding up”, and a winding up in the case of which a declaration has not been so made and delivered, is in this Act referred to as “a creditors' voluntary winding up”.

PROVISIONS APPLICABLE TO A SHAREHOLDERS' VOLUNTARY WINDING UP

325. The provisions of sections 326 to 332 (both inclusive) shall, subject to the provisions of section 326, apply in relation to a shareholders' voluntary winding up.

Provisions relating to a shareholders' voluntary winding up.

326. (1) The company at a 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 each such liquidator.

Power of company to appoint and fix remuneration of liquidators.

(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.

327. (1) Where a vacancy occurs by death, resignation, or otherwise in the office of liquidator appointed by the company, the company at a general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For the purpose of filling a vacancy in the office of liquidator, a general meeting of the company may be convened by any contributory or where there are more liquidators than one, by the continuing liquidators.

(3) The meeting referred to in subsection (2) shall be held in the manner provided by this Act 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 &c. in consideration for sale of property of company.

328. (1) Where a company is proposed to be or is in the course of being, wound up 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 Act 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 shareholders of the transferor company, or may enter into any other arrangement whereby the shareholders of the transferor company may, in lieu of receiving cash, shares, policies, or other like interest, 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 the provisions of this section shall be binding on the shareholders of the transferor company.

(3) Where any shareholder 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 is left at the registered office of the company within seven days from the date of 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 court, upon application made to court by the shareholder or the liquidator in the manner provided for by this section.

(4) Where the liquidator elects to purchase the shareholder's interest, the purchase money shall 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 where an order is made within a year of the date of passing of the resolution 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.

329. (1) Where the liquidator at any time is of opinion that the company will not be able to pay its debts in full within the period stated in the declaration made under the provisions of section 324, he shall forthwith summon a meeting of the creditors and shall lay before the meeting a statement of the assets and liabilities of the company.

Duty of liquidators to call creditors' meeting in case of insolvency.

(2) Where the liquidator fails to comply with the provisions of this section, he shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

Duty of liquidator to call general meeting at end of each year.

330. (1) Subject to the provisions of section 332, 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 date of commencement of the winding up, and of each succeeding year or at the first convenient date within three months from the end of the year or such longer period as the Registrar may allow, 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) Where the liquidator fails to comply with the provisions of this section, he shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

Final meeting and dissolution.

331. (1) Subject to the provisions of section 332, 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 an explanation thereof.

(2) The meeting referred to in subsection (1) shall be called by a notice published in the *Gazette*, specifying the date, time, place, and object thereof and published at least one month before such date.

(3) Within one week after the meeting referred to in subsection (1), 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 where the copy is not sent or the return is not made in accordance with the provisions of this subsection, the liquidator shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees :

Provided that where a quorum is not present at the meeting, the liquidator shall in lieu of the return referred to in the preceding provisions, 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 subsection 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 referred to in subsection (3), shall forthwith register them and on the expiration of three months from the date of 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 the provisions of this section is made, within seven days from the date of making of the order to deliver to the Registrar a certified copy of such order for registration, and where such person fails so to do, he shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

(6) Where a liquidator fails to call a general meeting of the company as required by the provisions of this section, he shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

332. In any case where the provisions of section 329 have effect, the provisions of sections 340 and 341 shall apply to the winding up to the exclusion of the provisions of sections 330 and 331, as if the winding up were a creditors' voluntary winding up and not a members' voluntary winding up :

Alternative provision as to annual and final meetings in case of insolvency.

Provided that the liquidator shall not be required to summon a meeting of creditors under the provisions of section 340 at the end of the first year from the date of the commencement of the winding up, unless the meeting held under the provisions of section 329 is held more than three months before the end of that year.

PROVISIONS APPLICABLE TO A CREDITOR'S VOLUNTARY WINDING UP

Provisions
applicable to a
creditors'
winding up.

333. The provisions of sections 334 to 341 (both inclusive) shall apply in relation to a creditor's voluntary winding up.

Meeting of
creditors.

334. (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 such 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.

(2) The company shall cause notice of the meeting of the creditors to be published in the *Gazette* and at least in two local newspapers circulating in the district where the registered office or principal place of business of the company is situated.

(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 creditors of the company and the estimated amount of their claims are to be laid before the meeting of creditors to be held, as referred to in subsection (1) ; and
- (b) appoint one of their number to preside at such 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) Where 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 the provisions of subsection (1), shall have effect as if it had been passed immediately after the passing of the resolution for winding up of the company.

(6) Where default is made—

- (a) by the company in complying with the provisions of subsections (1) and (2) ;
- (b) by the directors of the company in complying with the provisions of subsection (3) ;
- (c) by any director of the company in complying with the provisions of subsection (4),

such company or any such director, as the case may be, shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees and in the case of default by the company, every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a penalty not exceeding one hundred thousand rupees.

335. The creditors and the company at their respective meetings referred to in section 334, may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company and where the creditors and the company nominate different persons, the person nominated by the creditors shall be the liquidator, and where

Appointment of liquidator.

no person is nominated by the creditors, the person if any, nominated by the company shall be the liquidator :

Provided that, in the case of different persons being nominated, any director, shareholder or creditor of the company may, within seven days from the date on which the nomination was made by the creditors, make an application to 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.

336. (1) The creditors at the meeting held in pursuance of the provisions of section 334 or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five person, and where 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 at a general meeting, appoint such number of persons not exceeding five as they think fit, to act as members of the committee :

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 where the creditors so resolve the persons specified 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 the provisions of this section the court may, if it thinks fit, appoint other persons to act as such members in place of the persons specified in the resolution.

(2) Subject to the provisions of any rule made under this Act, the provisions of section 300, other than the provisions of subsection (1) of that section, shall apply with respect to a

committee of inspection appointed under the provisions of this section, as they apply with respect to a committee of inspection appointed in a winding up by the court.

337. (1) The committee of inspection or where there is no such committee the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

Fixing of liquidators' remuneration and ceasing 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 where there is no such committee the creditors, sanction the continuance thereof.

338. Where 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.

339. The provisions of section 328 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 that section shall not be exercised except with the sanction either of the court or of the committee of inspection.

Application of section 328 to a creditors' voluntary winding up.

340. (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 the creditors at the end of the first year from the commencement of the winding up and each succeeding year or at the first convenient date within three months from the end of the year or such longer period as the Registrar may allow, 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.

Duty of liquidator to call meetings of company and of creditors at end of each year.

(2) Where the liquidator fails to comply with the provisions of this section, he shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

Final meeting
and dissolution.

341. (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 an explanation thereof.

(2) Every meeting referred to in subsection (1) shall be called by notice published in the *Gazette*, specifying the date, time, place, and object thereof and published at least one month before such date.

(3) Within one week from the date of the meetings referred to in subsection (1), or where such meetings are not held on the same date, from 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 where the copy is not sent or the return is not made in accordance with the provisions of this subsection, the liquidator shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees :

Provided that, where a quorum is not present at either such meeting, the liquidator shall in lieu of the return referred to in the preceding provisions, 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 subsection 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 in respect of each meeting referred to in subsection (1) and either of the returns referred to in subsection (3), shall forthwith register them and on the expiration of three months from the date of 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 the provisions of this section is made, within seven days from the date of the making of the order, to deliver to the Registrar a certified copy of the order for registration and where that person fails so to do, he shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

(6) Where a liquidator fails to call a general meeting of the company or a meeting of the creditors as required by the provisions of this section, he shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

PROVISIONS APPLICABLE TO EVERY VOLUNTARY WINDING UP.

342. The provisions of sections 343 to 350 (both inclusive) shall apply to every voluntary winding up, whether a shareholders' or a creditors' winding up.

Provisions applicable to every voluntary winding up.

343. Subject to the provisions of this Act as to preferential payments, the property 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 shareholders according to their rights and interests in the company.

Distribution of property of company.

344. (1) The liquidator may—

- (a) in the case of a shareholders' voluntary winding up with the sanction of a special 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 or (if there is no such

Powers and duties of liquidator in voluntary winding up.

committee) a meeting of creditors, exercise any of the powers specified in the provisions of paragraphs (d), (e) and (f) of subsection (1) of section 292 in relation to a liquidator in a winding up by the court ;

- (b) without sanction exercise any power other than those referred to in paragraph (a), given by this Act to the liquidator in a winding up by the court ;
- (c) exercise the power of the court under the provisions of this Act of setting of 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 resolution or for any other purpose the liquidator 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 Act 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.

Power of court to appoint and remove liquidator in voluntary winding up.

345. (1) Where for 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.

346. (1) A liquidator appointed under any of the provisions of this Act shall, within fourteen days from the date of his appointment, publish in the *Gazette* and deliver to the Registrar for registration, a notice of his appointment in the prescribed form.

Notice by liquidator of his appointment.

(2) Where the liquidator fails to comply with the requirements of subsection (1), he shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

347. (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 the provisions of this section, be binding on the company where sanctioned by a special resolution, and on the creditors where acceded to by three-fourths the number and value of the creditors.

Arrangement when binding on creditors.

(2) Any creditor or contributory may within three weeks from the completion of the arrangement appeal to the court against such arrangement, and the court may thereupon as it thinks just, amend, vary or confirm the arrangement.

348. (1) The liquidator or any contributory or creditor may make an application to 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.

Power to apply to court to have question determined or powers exercised.

(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.

(3) A copy of an order made by virtue of the provisions of subsection (2) staying the proceedings in the winding up,

shall forthwith be forwarded by the company or otherwise as may be prescribed, to the Registrar who shall make a minute of the order in his books relating to the company.

Costs of
voluntary
winding up.

349. 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 for rights
of creditors and
contributories.

350. 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 where an application for winding up is made by a contributory, the court shall be satisfied that the rights of the 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.

351. 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.

Effect of
petition for
winding up
subject to
supervision.

352. 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.

Applications of
section 275 and
276 to winding
up subject to
supervision.

353. A winding up subject to the supervision of the court shall for the purposes of sections 275 and 276 be deemed to be a winding up by the court.

Power of
court to
appoint or
remove
liquidators.

354. (1) Where an order is made by court for a winding up subject to supervision, the court may by that or any subsequent order, appoint an additional liquidator.

(2) A liquidator appointed by the court under the provisions of subsection (1) shall have the same powers, be subject to the same obligations, and in all respects have the same position, as if he had been duly appointed in accordance with the provisions of this Act with respect to the appointment of liquidators in a voluntary winding up.

(3) The court may remove any liquidator appointed under the provisions of subsection (1), or any liquidator in a winding up continued under the supervision of court and fill any vacancy occasioned by such removal, or by death or resignation of any liquidator.

355. (1) When an order is made under the provisions of section 351 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 voluntarily :

Effect of
supervision
order.

Provided that the powers specified in the provisions of paragraphs (d), (e) and (f) of subsection (1) of section 292 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 creditor's voluntary winding up, with the sanction of either the court or the committee of inspection or where there is no such committee, a meeting of the creditors.

(2) A winding up subject to the supervision of the court shall not constitute a winding up by the court for the purpose of the provisions of this Act which are set out in the Eighth Schedule hereto, 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 creditors' 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 purposes of the provisions of section 300, other than the provisions of subsection (1) of that section, except in so far as the operation of that section is excluded in a voluntary winding up by rules made under this Act.

PROOF AND RANKING OF CLAIMS

Admissible claims.

356. A debt or liability present or future, certain or contingent, whether it is an ascertained debt or liability or a liability for damages, may be admitted as a claim against a company in liquidation.

Claims by unsecured creditors.

357. (1) A claim by an unsecured creditor against a company in a winding up shall be made in the prescribed form and shall —

- (a) contain full particulars of the claim; and
- (b) identify any documents that evidence or substantiate the claim.

(2) The liquidator may—

- (a) require the production of a document referred to in paragraph (b) of subsection (1); and
- (b) require a claim to be verified by affidavit.

(3) The liquidator shall as soon as practicable, either admit or reject a claim in whole or in part. If the liquidator subsequently considers that a claim has been wrongly admitted or rejected in whole or in part, he may revoke or amend that decision.

(4) If a liquidator rejects a claim whether in whole or in part, he shall forthwith give notice in writing of the rejection to the creditor.

(5) The costs of making a claim under subsection (1) or producing a document under subsection (2), shall be met by the creditor making the claim.

(6) Every person who—

- (a) makes or authorises the making of a claim under this section that is false or misleading in a material particular knowing it to be false or misleading; or
- (b) omits or authorises the omission from a claim under this section, of any matter knowing that the omission makes the claim false or misleading in a material particular,

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

358. (1) A secured creditor may—

Rights and duties
of secured
creditors.

- (a) seize, attach and realise, issue execution against or appoint a receiver in respect of property subject to a charge, if entitled to do so;
- (b) value the property subject to the charge and claim in the liquidation—
 - (i) as a secured creditor for the amount of his claim, up to the value of the security; and
 - (ii) as an unsecured creditor for the balance due, if any; or
- (c) surrender the charge to the liquidator for the general benefit of creditors, and claim in the liquidation as an unsecured creditor for the whole debt.

(2) A secured creditor may exercise the power referred to in paragraph (a) of subsection (1) whether or not the secured creditor has exercised the power referred to in paragraph (b) of subsection (1).

(3) A secured creditor who realises property subject to a charge—

- (a) may claim as an unsecured creditor for any balance due after deducting the net amount realised;
- (b) shall account to the liquidator for any surplus remaining from the net amount realised after satisfaction of the debt, including interest payable in respect of that debt up to the time of its satisfaction and after making any proper payments to the holder of any other charge over the property subject to the charge.

(4) If a secured creditor values the security and claims as a secured creditor, the valuation and claim shall be made in the prescribed form and shall—

- (a) contain full particulars of the valuation and claim;
- (b) contain full particulars of the charge including the date on which it was given; and
- (c) identify any documents that substantiate the claim and the charge,

and the provisions of sections 359, 360 and 362 shall apply to any claim as a secured creditor.

(5) The liquidator may—

- (a) require production of any document referred to in paragraph (c) of subsection (4); and

- (b) require a claim under subsection (4) to be verified by affidavit.

(6) Where a claim is made by a secured creditor under subsection (4), the liquidator shall either—

- (a) accept the valuation and claim; or
- (b) reject the valuation and claim in whole or in part, but—
 - (i) where a valuation and claim is rejected in whole or in part, the creditor may make a revised valuation and claim within ten working days of receiving notice of the rejection; and
 - (ii) the liquidator may if he subsequently considers that a valuation and claim was wrongly rejected in whole or in part, revoke or amend that decision.

(7) Where the liquidator—

- (a) accepts a valuation and claim under paragraph (a) of subsection (6);
- (b) accepts a revised valuation and claim under subparagraph (i) of paragraph (b) of subsection (6); or
- (c) accepts a valuation and claim on revoking or amending a decision to reject a claim under subparagraph (ii) of paragraph (b) of subsection (6),

the liquidator shall unless the secured creditor has realised the property, redeem the security on payment of the amount of the claim or the assessed value, whichever is the less.

(8) The liquidator may at any time by notice in writing, require a secured creditor within twenty working days after receipt of the notice—

- (a) to elect which of the powers referred to in subsection (1) the creditor wishes to exercise; and
- (b) if the creditor elects to exercise the power referred to in paragraph (b) or paragraph (c) of that subsection, to exercise the power within that period.

(9) A secured creditor on whom notice has been served under subsection (8) and who fails to comply with the notice shall be taken to have surrendered the charge to the liquidator under paragraph (c) of subsection (1) for the general benefit of creditors, and may claim in the liquidation as an unsecured creditor for the whole debt.

(10) A secured creditor who has surrendered a charge under paragraph (c) of subsection (1) or who is deemed to have surrendered a charge under subsection (9) may, with the leave of the court or the liquidator and subject to such terms and conditions as the court or the liquidator thinks fit, at any time before the liquidator has realised the property charged—

- (a) withdraw the surrender and rely on the charge; or
- (b) submit a new claim under this section.

(11) Every person who—

- (a) makes or authorises the making of a claim under subsection (4) that is false or misleading in a material particular knowing it to be false or misleading; or
- (b) omits or authorises the omission from a claim under subsection (4) of any matter knowing that the omission makes the claim false or misleading in a material particular,

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

359. (1) The amount of a claim shall be ascertained as at the date of commencement of the winding up of the company.

Ascertainment of amount of claim.

(2) The amount of a claim based on debt or liability denominated in a currency other than Sri Lankan currency, shall be converted into Sri Lankan currency at the rate of exchange applicable at the close of the date of commencement of the winding up of the company.

360. (1) If a claim is subject to a contingency or is for damages or, if for some other reason the amount of the claim is not certain, the liquidator shall make an estimate of the amount of the claim and give notice of that estimate to the creditor.

Claim not of an ascertained amount.

(2) On the application of a claimant who is aggrieved by an estimate made by the liquidator, the court shall determine the amount of the claim.

361. Nothing in this Part of this Act shall limit or affect the recovery of—

Fines, penalties, or recoveries.

- (a) a fine imposed on a company whether before or after the commencement of the winding up of the company, for the commission of an offence;
- (b) a monetary penalty payable to the State imposed on a company by a court whether before or after the commencement of the winding up of the company, for the breach of any enactment;
- (c) costs ordered to be paid by the company in relation to proceedings for the offence or breach; or
- (d) all provident fund dues, employees trust fund dues and gratuity payments accrued due, prior the securing of any assets from the sale proceeds of such secured assets.

Claims relating to debts payable after commencement of winding up.

362. (1) A claim in respect of a debt that but for the winding up, would not be payable until a date that is more than six months after the commencement of the winding up, shall be treated for the purposes of this Part of this Act, as a claim for the present value of the debt.

(2) For the purposes of subsection (1), the present value of a debt shall be determined by deducting from the amount of the debt, interest at the prescribe rate for the period from the date of commencement of the winding up to the date when the debt is due.

Mutual credit and set-off.

363. (1) Where there have been mutual credits, mutual debts or other mutual dealing between a company and a person who seeks or but for the operation of this section, would seek to have a claim admitted in the winding up of the company—

- (a) an account shall be taken of what is due from one party to the other in respect of those credits, debts, or dealings;
- (b) an amount due from one party shall be set-off against an amount due from the other party; and
- (c) only the balance of the account shall be claimed in the winding up or be payable to the company, as the case may be.

(2) This section shall not apply to an amount paid or payable by a shareholder—

- (a) as the consideration or part of the consideration for the issue of a share; or
- (b) in satisfaction of a call in respect of an outstanding liability of the shareholder, made by the board or by the liquidator.

364. (1) The amount of a claim may include interest up to the commencement of the winding up— Interest on claims.

- (a) at such rate as may be specified or contained in any contract that makes provision for the payment of interest on that amount; or
- (b) in the case of a judgment debt, at such rate as is payable on the judgment debt.

(2) If any surplus assets remain after the payment of all admitted claims, interest shall be paid at the prescribed rate on those claims from the date of commencement of the winding up to the date on which each claim is paid. If the amount of the surplus assets is insufficient to pay interest in full on all claims, payment shall abate rateably among all claims.

(3) If any surplus assets remain after the payment of interest in accordance with subsection (2), interest shall be paid on all admitted claims referred to in subsection (1), from the commencement of the winding up to the date on which the claim is paid, at the difference between the rate referred to in paragraph (a) or paragraph (b) of that subsection, as the case may be, and the prescribed rate. If the amount of the surplus assets is insufficient to pay interest in full on all claims, payment shall abate rateably among all claims.

365. (1) The liquidator shall pay out of the assets of the company the expenses, fees, and claims set out in the Ninth Schedule to the extent and in the order of priority specified in that Schedule and that Schedule shall apply to the payment of those expenses, fees, and claims according to its tenor. Preferential claims.

(2) Without limiting paragraph 7(b) of the Ninth Schedule, the terms “assets” in subsection (1) shall not include assets subject to a charge, unless—

- (a) the charge is surrendered or taken to be surrendered or redeemed under section 358; or

- (b) the charge was when created, a floating charge in respect of those assets.

Claims of other creditors and distribution of surplus assets.

366. (1) After paying preferential claims in accordance with section 365, the liquidator shall apply the assets of the company in satisfaction of all other claims.

(2) The claims referred to in subsection (1) shall rank equally among themselves and shall be paid in full, unless the assets are insufficient to meet them, in which case payment shall abate rateably among all claims.

(3) Where before the commencement of the winding up, a creditor agrees to accept a lower priority in respect of a debt than that which it would otherwise have under this section, nothing in this section shall prevent the agreement from having effect according to its terms.

(4) Subject to section 364, after paying the claims referred to in subsection (1), the liquidator shall distribute the company's surplus assets—

- (a) in accordance with the provisions contained in the company's articles ; or
- (b) if the company's articles do not contain provisions for the distribution of surplus assets, in accordance with the provisions of this Act.

(5) The provisions of the Tenth Schedule shall apply in relation to the payment of claims referred to in subsection (1).

VOIDABLE TRANSACTIONS

Transactions having preferential effect.

367. (1) A transaction by a company is voidable on the application of the liquidator, if the transaction —

- (a) took place—
 - (i) at a time when the company was unable to pay its debts as they fell due; and

- (ii) within the specified period; and
- (b) enabled another person to receive more towards satisfaction of a debt than the person would otherwise have received or be likely to have received in the liquidation.

(2) Unless the contrary is proved, for the purposes of subsection (1), a transaction that took place within the restricted period is presumed to have been made at a time when the company was unable to pay its debts as they fell due.

(3) A transaction with a person shall not be set aside under this section, unless the company was influenced in entering into the transaction by a desire to produce in relation to that person, the effect mentioned in paragraph (b) of subsection (1).

(4) A company which has entered into a transaction with any connected person is presumed, unless the contrary is shown, to have been influenced by a desire to produce in relation to that person, the effect mentioned in paragraph (b) of subsection (1).

368. (1) A charge over any property or undertaking of a company is voidable on the application of the liquidator, if the charge was given within the specified period, unless—

Voidable charge.

- (a) the charge secures—
 - (i) money actually advanced or paid, or the actual price or value of property sold or supplied to the company, or any other valuable consideration given in good faith by the grantee of the charge at the time of, or at any time after the giving of the charge; and
 - (ii) any interest payable on an amount referred to in sub-paragraph (i);
- (b) immediately after the charge was given, the company was able to pay its debts as they fell due; or

- (c) the charge is in substitution for a charge given before the specified period.

(2) Unless the contrary is proved, a company giving a charge within the restricted period is presumed to have been unable to pay its debts as they fell due immediately after giving the charge.

(3) The provisions of paragraph (c) of subsection (1) shall not apply to the extent that —

- (a) the amount secured by the substituted charge exceeds the amount secured by the existing charge; or
- (b) the value of the property subject to the substituted charge at the date of the substitution, exceeds the value of the property subject to the existing charge at that date.

(4) Nothing in subsection (1) shall apply to a charge given by a company that secures the unpaid purchase price of property and any interest payable on that amount, whether or not the charge is given over that property, if the instrument creating the charge is executed not later than thirty days after the sale of the property or in the case of the sale of an estate or interest in land, not later than thirty days after the final settlement of the sale.

(5) For the purposes of paragraph (a) of subsection (1) and subsection (4), where any charge was given by the company within the period specified in subsection (1), all payments received by the grantee of the charge after it was given shall be deemed to have been appropriated so far as may be necessary—

- (a) towards repayment of money actually advanced or paid by the grantee to the company on or after the giving of the charge;

- (b) towards payment of the actual price or value of property sold by the grantee to the company on or after the giving of the charge;
- (c) towards payment of any other liability of the company to the grantee in respect of any other valuable consideration given in good faith on or after the giving of the charge; or
- (d) towards interest payable on any amount referred to in paragraphs (a), (b) or (c).

369. (1) A transaction by a company is voidable on the application of the liquidator, if — Uncommercial transactions.

- (a) the transaction took place within the specified period;
- (b) the transaction was an uncommercial transaction;
- (c) when the transaction took place, the company—
 - (i) was unable to pay its due debts;
 - (ii) was engaged or about to engage in business for which its financial resources were grossly inadequate; or
 - (iii) incurred an obligation knowing that the company would not be able to perform the obligation when required to do so.

(2) A transaction by a company is an “uncommercial transaction” if, and only if, a reasonable person in the company’s circumstances would not have entered into the transaction having regard to—

- (a) the benefits (if any) to the company of entering into the transaction;

- (b) the detriment to the company of entering to the transaction;
- (c) the respective benefits to the other parties to the transaction; and
- (d) any other relevant matters.

(3) A transaction may be an uncommercial transaction for the purposes of this section—

- (a) whether or not a creditor of the company is a party to the transaction; and
- (b) even if the transaction is given effect to or is required to be given effect to, because of an order made by a court.

(4) Unless the contrary is proved for the purposes of subsection (1), a transaction that took place within the restricted period is presumed to have been made at a time when the company was unable to pay its debts as they fell due.

Procedure
for setting
aside
voidable
transactions
and charges.

370. (1) A liquidator who wishes to set aside a transaction that is voidable under section 367 or section 369 or a charge that is voidable under section 368 shall—

- (a) file in the court a notice by way of a motion to that effect specifying the transaction or charge to be set aside and, in the case of a transaction, the property or value which the liquidator wishes to recover, and setting out the effect of subsections (2), (3) and (4) of this section ; and
- (b) serve a copy of the notice as filed in court under paragraph (a), on the other party to the transaction or the grantee of the charge and or every other person from whom the liquidator wishes to recover the property or value.

(2) A person —

- (a) who would be affected by the setting aside of the transaction or charge specified in the notice; and
- (b) who considers that the transaction or charge is not voidable,

may apply to the court for an order that the transaction or charge, be not set aside.

(3) Unless a person on whom the notice was served has applied to the court under subsection (2), the transaction or charge shall be deemed to be set aside on the twentieth working day after the date of service of the notice.

(4) If one or more persons have applied to the court under subsection (2), the transaction or charge shall be deemed to be set aside on the day on which the last application is finally determined, unless the court orders otherwise.

371. If a transaction or charge is set aside under section 370, the court may make one or more of the following orders:— Other orders.

- (a) an order requiring a person to pay to the liquidator in respect of benefits received by that person as a result of the transaction or charge, such sums as fairly represent those benefits;
- (b) an order requiring property transferred to a person as part of the transaction to be restored to the company;
- (c) an order requiring property to be vested in the company if that property represents the application either of the proceeds of sale of property or of money so transferred;
- (d) an order releasing in whole or in part a debt incurred or a guarantee or charge given by the company;

- (e) an order declaring an agreement constituting, forming part of or relating to the transaction or charge or specified provisions of such an agreement, to have been void at and after the time when the agreement was made or at and after a specified later time;
- (f) an order varying such an agreement in the manner specified in the order and if the court thinks fit, declaring the agreement to have had effect as so varied at and after the time when the agreement was made or at and after a specified later time;
- (g) an order declaring such an agreement or specified provisions of such an agreement to be unenforceable;
- (h) an order requiring security to be given for the discharge of an order made under this section;
- (i) an order specifying the extent to which a person affected by the setting aside of a transaction or by an order made under this section, is entitled to claim as a creditor in the liquidation.

Additional provisions relating to setting aside of transactions and charges.

372. (1) The setting aside of a transaction or an order made under section 371 shall not affect the title or interest of a person in property, which that person has acquired—

- (a) from a person other than the company;
- (b) for valuable consideration ; and
- (c) in good faith.

(2) The setting aside of a charge or an order made under section 371 shall not affect the title or interest of a person in property which that person has acquired—

- (a) as the result of the exercise of a power of sale by the grantee of the charge;

(b) for valuable consideration; and

(c) in good faith.

(3) Recovery by the liquidator of property or its equivalent value, whether under section 371 or any other section of this Act or under any other enactment or in equity or otherwise, may be denied wholly or in part if—

(a) the person from whom recovery is sought received the property in good faith and has altered his position in the reasonably held belief that the transfer to that person was validly made; and

(b) in the opinion of the court, it is inequitable to order recovery or recovery in full.

373. (1) In sections 367 and 369 “transaction” in relation to a company, includes—

Interpretation in relation to preferences &.

(a) a conveyance or transfer or any other disposition of property by the company;

(b) the giving of a security or charge over the property of the company;

(c) the incurring of an obligation by the company;

(d) the acceptance by the company of execution under a judicial proceeding;

(e) the payment of money by the company including the payment of money under a judgment or order of a court.

(2) For the purposes of sections 367, 368 and 369 “specified period” means—

(a) in the case of a transaction entered into with or a charge granted to a connected person—

(i) the period of two years before the commencement of the winding up; and

- (ii) in the case of a company that is being wound up by the court, the period of two years before the filing of the petition in the court, together with the period commencing on the date of the filing of that petition and ending on the date on which the order of the court was made;
 - (b) in any other case—
 - (i) the period of one year before the commencement of the winding up; and
 - (ii) in the case of a company that is being wound up by the court, the period of one year before the filing of the petition in the court, together with the period commencing on the date of the filing of that petition and ending on the date on which the order of the court was made.
- (3) For purposes of subsection (4) and of section 367, a person is a “connected person”, if that person is—
- (a) a person who was at the time of the transaction, a director of the company or a nominee or relative of or a trustee for, or a trustee for a relative of, a director of the company;
 - (b) a person or a relative of a person, who at the time of the transaction, had control of the company;
 - (c) another company that was at the time of the transaction, controlled by a director of the company or a nominee or relative of or a trustee for, or a trustee for a relative of, a director of the company;
 - (d) another company that was at the time of the transaction, a related company.

(4) For the purposes of sections 367, 368 and 369 “restricted period” means—

- (a) the period of one month before the commencement of the winding up; and
- (b) in the case of a company that is being wound up by the court, the period of one month before the filing of the petition in the court together with the period commencing on the date of the filing of that petition and ending on the date on which the order of the court was made.

MALPRACTICE BEFORE WINDING UP AND LIABILITY OF OFFICERS

374. (1) When a company is wound up, a person who is a past or present officer of the company is deemed to have committed an offence if, within the two years preceding the commencement of the winding up, he has—

Fraud &c. in anticipation of winding up.

- (a) concealed any part of the company’s property to the value of ten thousand rupees or more or concealed any debt due to or from the company;
- (b) fraudulently removed any part of the company’s property to the value of ten thousand rupees or more;
- (c) concealed, destroyed, mutilated or falsified any book or document affecting or relating to the company’s property or affairs;
- (d) made any false entry in any book or document affecting or relating to the company’s property or affairs;
- (e) fraudulently parted with, altered or made any omission in any document affecting or relating to the company’s property or affairs;

- (f) pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for, unless the pawning, pledging or disposal was in the ordinary course of the company's business;
- (g) 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 company's property, with the intent of defrauding the company's creditors; or
- (h) concealed or removed any part of the company's property since or within two months before the date of any unsatisfied judgment or order for the payment of money obtained against the company, with the intent of defrauding the company's creditors.

(2) It is a defence—

- (a) for a person charged under paragraph (a) or (f) of subsection (1), to prove that he had no intent to defraud;
- (b) for a person charged under paragraph (c) or (d) of subsection (1), to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.

(3) A person who commits an offence under subsection (1) shall be liable on conviction to a fine not exceeding one million rupees or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

Fraudulent
trading.

375. (1) Where any business of a company that has been wound up has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, every person who was knowingly a party to the carrying on of the business in that manner, shall be

deemed to have committed an offence and shall be liable on conviction to a fine not exceeding one million rupees or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

(2) Where 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 may, on the application of the liquidator or any creditor of the company, declare that any persons who were knowingly parties to the carrying on of the business in that manner, shall be—

- (a) liable to make such contribution to the company's assets; or
- (b) personally responsible for such debts or other liabilities of the company,

as the court may think fit.

376. (1) Where in the course of the winding up of a company it appears to the court that a person who has taken part in the formation or promotion of the company or a past or present director, manager, liquidator or receiver of the company, has misapplied or retained or become liable or accountable for money or property of the company, or been guilty of negligence, default or breach of duty or trust in relation to the company, the court may, on the application of the liquidator or a creditor or shareholder—

Power of court to require persons to repay money or return property.

- (a) inquire into the conduct of the promoter, director, manager, liquidator, or receiver; and
- (b) order that person—
 - (i) to repay or restore the money or property or any part of it with interest at a rate the court thinks just; or

- (ii) to contribute such sum to the assets of the company by way of compensation as the court thinks just; or
- (c) where the application is made by a creditor, order that person to pay or transfer the money or property or any part of it with interest at a rate the court thinks just, to the creditor.

(2) The provisions of this section shall have effect even though the conduct may constitute an offence under this Act.

(3) Where an order for payment of money is made under this section, it shall for the purposes of the Insolvency Ordinance (Cap. 97), be deemed to be a judgment for the recovery of a debt or money demand referred to in section 12 of that Ordinance.

Disclaimer of
onerous
property.

377. (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, 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 from the date of commencement of the winding up or such extended period as may be allowed by the court, disclaim the property:

Provided that, where any such property has not come to the knowledge of the liquidator within one month from the date of commencement of the winding up, the power of disclaiming the property under the provisions of this section

may be exercised at any time within twelve months from the date 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 the 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 such 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 the provisions of this section, in any case where an application in writing has been made to him by any person 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 from the date of receipt of the application or such further period as may be allowed by the court, given notice to the applicant that he intends to make an application to the court for leave to disclaim, and in the case of a contract, where the liquidator upon receipt of 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 such 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 Act in respect of any disclaimed property and on hearing any such person 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 sub-lessee or as mortgagee, 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 date of commencement of the winding up; or
- (b) where 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 sub-lessee or mortgagee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon, the property, and where 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 by himself or jointly with the company to perform

the lessor's covenants in the lease, freed and discharged from all estates, encumbrances and interests created therein by the company.

(7) Any person injured by the operation of a disclaimer under the provisions of 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.

378. (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 of the company, unless he has completed the execution or attachment before the date of commencement of the winding up:

Restriction of rights of creditor as to execution or attachment in case of company.

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 preceding provisions, be substituted for the date of commencement of the winding up;
- (b) a person who purchases in good faith under a sale by order of 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;
- (c) the rights conferred by the provisions of this subsection on the liquidator may be set aside by the court in favour of the creditor, to such extent and subject to such terms as the court may think fit.

(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 debts, 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 movable property.

(4) Nothing this section shall apply to an execution process or attachment against any property by or for the benefit of a creditor, who is entitled to a charge in respect of that property.

Duty of fiscal as to goods taken in execution.

379. (1) Subject to the provisions of subsection (3), where any goods of a company are taken in execution and before the sale thereof or the completion of the execution, by receipt or recovery of the full amount of the levy, notice is served on the Fiscal 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 Fiscal shall on being so required, deliver the goods and 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) Subject to the provisions of subsection (3), where under an execution in respect of a judgment for a sum exceeding two hundred and fifty rupees, the goods of a company are sold or money is paid in order to avoid the sale, the Fiscal 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 him 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 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 Fiscal shall pay the balance to the liquidator who shall be entitled to retain it as against the execution creditor.

(3) The rights conferred by the provisions of this section on the liquidator may be set aside by the court in favour of the creditor, to such extent and subject to such terms as the court may think fit.

(4) In this section the expression “goods” includes all movable property and the expression “Fiscal” includes any officer charged with the execution of a writ or other process.

(5) Nothing in this section shall apply to an execution process or attachment against any property by or for the benefit of a creditor, who is entitled to a charge in respect of that property.

OFFENCES ANTECEDENT TO OR IN THE COURSE OF WINDING UP

380. (1) Where any person being a past or present 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—

Offences by officers of companies in liquidation.

- (a) does not to the best of his knowledge and belief fully and truly make known to the liquidator all the property, movable and immovable, 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 course of the business of the company;
- (b) does not deliver to the liquidator or as he directs, all such part of the movable and immovable property of the company as in his custody or under his control, and which he is required by law to deliver;
- (c) does not deliver 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;

- (d) makes any material omission in any statement relating to the affairs of the company;
- (e) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of one month to inform the liquidator thereof;
- (f) after the date of commencement of the winding up, prevents the production of any book or paper affecting or relating to the property or affairs of the company;
- (g) after the date of commencement of the winding up or at any meeting of the creditors of the company within the twelve months immediately prior to the date of commencement of the winding up, attempts to account for any part of the property of the company by fictitious losses or expenses;
- (h) has within the twelve months immediately prior to the date of 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;
- (i) within the twelve months immediately prior to the date of commencement of the winding up or at any time thereafter, under the false pretense 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
- (j) 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,

shall be guilty of an offence and shall on conviction, in the case of the offences referred to in paragraphs (h), (i) and (j), be liable to a fine not exceeding one million rupees or to imprisonment for a term not exceeding five years or to both such fine and imprisonment, and in the case of any other offence under the provisions of this subsection, be liable to a fine not exceeding five hundred thousand rupees or to imprisonment for a term not exceeding two years or to both such fine and imprisonment:

Provided that it shall be a good defence to a charge under the provisions of paragraphs (a), (b), (c), (d) and (i), for the accused to prove that he had no intent to defraud, and to a charge under the provisions of paragraph (f), to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.

(2) For the purposes of this section, the expression “officer” shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

381. (1) Where in the course of winding up of a company it is shown that proper books of accounts were not kept by the company throughout the period of two years immediately preceding the date of commencement of the winding up, or the period between the incorporation of the company and the date of commencement of the winding up, whichever is the shorter, every officer of the company who is in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on the default was inevitable, be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand rupees.

Liability where proper accounts are not kept.

(2) For the purposes of this section, proper books of accounts 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 dealing in goods, statement or 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 the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

Prosecution of delinquent officers and members of the company.

382. (1) Where 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 officer or any shareholder 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) Where it appears to the liquidator in the course of a voluntary winding up that any past or present officer or any shareholder 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 him such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in 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 provisions of subsection (2) to the Attorney-General, he may if he thinks fit, refer the matter to the Registrar for inquiry, and the Registrar shall thereupon investigate the matter and may where he thinks it expedient, make an application to court for an order conferring on him or any person designated by him for the purpose with respect to the company concerned, all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up the court.

(4) Where on any report to the Attorney-General under the provisions of subsection (2), it appears to the Attorney-General 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) Where it appears to the court in the course of voluntary winding up that any past or present officer or any shareholder 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 the provisions of subsection (2), 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 report, and on a report being made accordingly, the provisions of this section shall have effect as though the report has been made in pursuance of the provision of subsection (2).

(6) If where any matter is reported or referred to the Attorney-General under the provisions of this section, the Attorney-General considers that the case is one in which a prosecution ought to be instituted, he shall institute proceedings accordingly, and it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the accused in the proceedings) to give him all assistance in connection with the prosecution which he is reasonably able to give.

For the purposes of this subsection, the expression “agent” in relation to a company shall be deemed to include any banker or attorney-at-law 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) Where any person fails or neglects to give assistance in the manner required by subsection (6), the court may on the application of the Attorney-General, direct that person to comply with the requirements of the said subsection, 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.

SUPPLEMENTARY PROVISIONS AS TO WINDING UP

Qualifications
of
liquidators.

383. (1) None of the following persons may be appointed or act as a liquidator of a company :—

- (a) a person below eighteen years of age;
- (b) a creditor of the company in liquidation;
- (c) a person who has within the two years immediately preceding the commencement of the winding up, been a shareholder, director, auditor, or receiver of the company or of a related company;
- (d) an undischarged bankrupt;
- (e) a person who has been adjudged to be of unsound mind under the provision of the Mental Diseases Ordinance (Cap. 227);
- (f) a person in respect of whom an order has been made under section 468;
- (g) a person who is prohibited from being a director or promoter of or being concerned or taking part in the management of a company under section 186 of the Companies Act, No. 17 of 1982, or who would be so prohibited, but for the repeal of that Act; or
- (h) a person who is prohibited from being a director or promoter of or being concerned or taking part in the management of a company under section 213 or 214.

(2) A body corporate shall not be appointed or act as a liquidator.

(3) Every person who acts in contravention of the provisions of subsection (1) or subsection (2) shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees.

384. Any person who gives or agrees or offers to give to any shareholder or creditor of a company any valuable consideration with a view to securing his own appointment or nomination or to securing or preventing the appointment or nomination of some person other than himself as the company's liquidator, shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees.

Corrupt
inducement
affecting
appointment as
liquidator.

385. (1) Where any liquidator, who has made any default in filing, delivering or making any account, document or return, as the case may be, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within ten working days from the date of 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,
&c.,

(2) Any order made under the provisions of subsection (1), 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 written law imposing penalties on a liquidator in respect of any such default as is referred to in subsection (1).

Notification that a company is in liquidation.

386. (1) Where a company is being wound up, whether by or under the supervision of the court or voluntary, 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.

(2) Where default is made in complying with the provisions of this section, the company and any of the following persons who knowingly and willfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

Exemption of certain documents from stamp duty on winding up of companies.

387. In the case of a winding up by the court or of a creditors' voluntary winding up of a company—

- (a) every deed relating solely to movable or immovable property or creating any mortgage, charge or other encumbrance on, or any estate, right or interest in any such property which forms part of the assets of the company and which, after the execution of the deed, is or remains part of the assets of the company; and
- (b) every power of attorney, proxy paper, writ, order, certificate, affidavit, bond or other instrument of 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 stamp duty.

Books of company to be evidence.

388. Where a company is being wound up, all books and papers of the company and of the liquidators shall, as between contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be there in recorded.

389. (1) Where a company has been wound up and is about to be dissolved, the books of the company and of the liquidators may be disposed of as follows, that is to say—

Disposal of books and papers of the company.

- (a) in the case of a winding up by or subject to the supervision of the court, in such a way as the court directs;
- (b) in the case of a shareholders' voluntary winding up, in such a way as the company by special resolution directs, and in the case of a creditors' voluntary winding up, in such a way as the committee of inspection or where there is no such committee, as the creditors of the company may direct.

(2) After five years from the date of 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) Rules may be made for enabling the Registrar to prevent, for such period (not exceeding five years from the date of dissolution of the company) as he thinks fit, the destruction of the books and papers of a company which has been wound up, and for enabling any creditor or contributory of the company to make representations to the Registrar and to appeal to the Court of Appeal from any direction which may be given by the Registrar in the matter.

(4) Where any person acts in contravention of any rule made under the provisions of subsection (3) or of any direction of the Registrar thereunder, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two hundred thousand rupees.

Information as to pending liquidation.

390. (1) Where the winding up of a company is not concluded within one year from the date of 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) Where a liquidator fails to comply with the provisions of this section, he shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

Resolutions passed at adjourned meetings of creditors and contributories.

391. Where 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

Meetings to ascertain wishes of creditors or contributories.

392. (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.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or the company's articles.

PROVISIONS AS TO DISSOLUTION

393. (1) Where a company has been dissolved, the court may at any time within two years from 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.

Power of court to declare dissolution of company void.

(2) It shall be the duty of the person on whose application the order under the provisions of subsection (1) was made, within seven days from the date of the order or such further time as the court may allow, to deliver to the Registrar for registration a certified copy of such order, and where such person fails to do so he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty thousand rupees.

394. (1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or is in operation, he may send to the company by post a letter inquiring whether the company is carrying on business or is in operation.

Registrar may strike off defunct company from register.

(2) Where the Registrar does not within one month of the date of sending the letter referred to in subsection (1) receive any answer thereto, he shall within ten working days from the date of expiry of the said period of one month, send to the company a letter by registered post 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 off the name of the company from the register.

(3) Where the Registrar under the provisions of subsection (2), 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 an 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 specified therein will, unless cause is shown to the contrary, be struck off the register and be dissolved.

(4) Where in the winding up of a company 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 under the provisions of this Act 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 notice as is referred to in subsection (3).

(5) Upon the expiration of the period specified in the notice given under the provisions of subsection (4), the Registrar may, unless cause to the contrary is previously shown by the company, strike off the name of the company from the register, and shall publish notice thereof in the *Gazette*, and upon such publication the company shall be dissolved:

Provided that—

- (a) the liability, if any, of every director, manager and shareholder of the company shall continue and may be enforced as if the company had not been dissolved; and
- (b) nothing in the provisions of this subsection shall affect the power of the court to wind up a company the name of which has been struck off the register.

(6) Where a company or any shareholder or creditor thereof is aggrieved by the company having been struck off the register, the court on an application made by the company

or shareholder or creditor, as the case may be, before the expiration of five years from the publication in the *Gazette* of the notice referred to in subsection (5) 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 name of the company should 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 the register, and the court may by such order give such directions and make such provisions as to it seems 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 the register.

(7) A notice to be sent under the provisions of 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 the provisions of this section to a company may be addressed to the company at its registered office, or where no office has been registered, to the care of some officer of the company at the most recent address recorded for that person in the annual returns or any other documents sent to the Registrar by the company.

395. Where a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before the date of its dissolution (including leasehold property but not including property held by the company on trust for any other person) shall, subject to and without prejudice to any order which may at any time be made by the court under the provisions of sections 393 and 394, vest in and be at the disposal of the State.

Property of dissolved company to vest in the State.

COMPANIES LIQUIDATION ACCOUNT

396. (1) An Account to be called the Companies Liquidation Account, shall be kept by the Registrar with such bank as may from time to time be approved by the Minister in charge of the subject of Finance.

Establishment of Companies Liquidation Account.

(2) Whenever the balance standing to the credit of the Companies Liquidation Account is in the opinion of the Registrar, in excess of the amount required for the time being to meet claims under section 397, the Registrar shall notify the Deputy Secretary to the Treasury of the excess and shall pay to him, to such account as he may direct, the whole or any part of that excess which he may require. The Deputy Secretary to the Treasury may invest the sums paid to him or any part of them in Government securities, to be held to the credit of the Companies Liquidation Account.

(3) When any part of the money paid to the Deputy Secretary to the Treasury under subsection (2) is in the opinion of the Registrar, required to meet any claim under section 397, the Registrar shall give notice of that requirement to the Deputy Secretary to the Treasury who shall repay the amount required to the Registrar to the credit of the Companies Liquidation Account, and may for that purpose sell any of the securities referred to in subsection (2).

(4) The dividends on investments made under this section shall be paid into the Companies Liquidation Account.

Payments into
and out of
Companies
Liquidation
Account.

397. (1) Money representing unclaimed assets of a company standing to the credit of a liquidator shall after completion of the winding up, be paid to the Registrar to be credited to the Companies Liquidation Account.

(2) Money held in the Companies Liquidation Account may be paid or distributed to any person who would have been entitled to payment or distribution in the winding up of a company of any money or surplus assets the proceeds of which, have been credited to the Companies Liquidation Account.

(3) Where any funds have been paid into the Companies Liquidation Account in respect of any company, and that company subsequently is dissolved, the provisions of section 395 shall apply to those funds.

398. (1) For the purposes of this section, an “essential service” means—

Refusal to supply essential services prohibited.

- (a) the retail supply of electricity ;
- (b) the supply of water ; and
- (c) the supply of telecommunications services.

(2) Notwithstanding the provisions contained in any written law to the contrary or any contract, a supplier of an essential service shall not—

- (a) refuse to supply the service to a liquidator or to a company in liquidation, by reason of the company’s default in paying charges due for the service in relation to a period before the commencement of the liquidation ; or
- (b) make it a condition of the supply of the service to a liquidator or to a company in liquidation, that payment be made of outstanding charges due for the service, in relation to a period before the commencement of the liquidation.

(3) For the avoidance of doubt, nothing in this section shall prevent the supplier of an essential service from exercising any right or power under any contract or under any written law in respect of a failure by a company to pay charges due for the service, in relation to any period after the commencement of the liquidation.

(4) The charges incurred by a liquidator for the supply of an essential service shall be an expense incurred by the liquidator, for the purposes of sub-paragraph (a) of paragraph 1 of the Ninth Schedule to this Act.

RULES AND FEES

Rules and fees
for winding up.

399. (1) Rules may be made by the Minister to provide for the carrying into effect of the objects of this Act, so far as it relates to the winding up of companies.

(2) There shall be paid in respect of proceedings under this Act in relation to the winding up of companies, such reasonable fees as the Minister may, by regulation, prescribe.

PART XIII

ADMINISTRATORS

APPOINTMENT OF ADMINISTRATOR

Interpretation.

400. In this Part of this Act, unless the context otherwise requires —

(a) “initial period” means the period beginning from the date of appointment of the administrator, until—

(i) the date on which a meeting is held under section 404 ; or

(ii) a receiver is appointed in accordance with the provisions of subsection (2) of section 402 ; or

(iii) the expiry of twenty working days, or such longer period as court may allow,

whichever occurs first ; and

(b) references to hire-purchase agreements include conditional sale agreements, chattel leasing arrangements and retention of title agreements.

401. (1) Subject to the provisions of subsection (4) of this section, where the board of a company considers that—

Power of board to appoint administrator.

- (a) the company is or is likely to become unable to pay its debts as they fall due ; and
- (b) the appointment of an administrator will be likely to achieve one or more of the purposes referred to in subsection (2),

the board may resolve to appoint an administrator of a company.

(2) The purposes for which an administrator may be appointed are —

- (a) the survival of the company and the whole or any part of its undertaking as a viable concern ;
- (b) the preparation and approval of a compromise under Part IX or a compromise or arrangement under Part X ; or
- (c) a more advantageous realisation of the company's assets than would be likely on a winding up.

(3) A resolution appointing an administrator shall specify the purpose or purposes for which the appointment is being made, and once passed may not be rescinded without the leave of the court.

(4) A resolution shall not be passed by the board under this section where—

- (a) an order has been made for the winding up of the company ;
- (b) a receiver has been appointed in respect of the whole of the property and undertaking of the company,

unless the person by whom or on whose behalf the receiver was appointed has consented to the making of the order ; or

- (c) an administrator has been appointed by the company on a previous occasion, unless the leave of the court to make the further appointment is first obtained.

(5) A resolution passed in contravention of subsection (4) shall be void and of no effect.

Notice to charge holders of appointment of administrator.

402. (1) Where the board of a company appoints an administrator, the company shall forthwith give notice of the appointment and of the identity of the person who has been appointed as administrator, to any person who is entitled to appoint a receiver of the property and undertaking of the company.

(2) At any time within ten working days from the date on which notice has been given under subsection (1), a person who is entitled to appoint a receiver of the property and undertaking of the company may make such an appointment. Upon the appointment of such a receiver, the administrator shall immediately cease to hold office.

Effect of appointment of administrator.

403. (1) From and after the appointment of an administrator, until the end of the initial period—

- (a) no resolution may be passed or order made for the liquidation of the company ;
- (b) subject to the provisions of subsection (2) of section 402, no steps be taken to enforce any security over any property of the company or to repossess any goods in the company's use or possession under any hire-purchase agreement, except with the consent of the administrator or with the leave of the court and subject to such terms as the court may impose ;

- (c) no other proceedings and no execution or other legal process may be commenced or continued and no distress may be levied against the company or its property, except with the consent of the administrator or with the leave of the court and subject to such terms as the court may impose.

(2) Nothing in subsection (1) requires the leave of the court, for—

- (a) filing a petition to wind up the company ; or
- (b) giving notice in relation to a default under a charge over property of the company or under an agreement relating to property in the use, possession or occupation of the company.

INITIAL MEETING AND CONFIRMATION OF APPOINTMENT

404. (1) An administrator shall within ten working days of being appointed, send a written notice to all creditors of the company so far as he is aware of their addresses—

Duty of administrator to summon initial meeting.

- (a) advising them of the appointment of an administrator ; and
- (b) calling a meeting of creditors to consider whether the appointment should be confirmed.

(2) Where no meeting of creditors is held before the expiry of the initial period, the administrator shall cease to hold office at the expiry of that period.

(3) A meeting of creditors called under this section shall be conducted in accordance with the procedures specified in the Seventh Schedule, save that all creditors shall vote as one class.

(4) Where a meeting of creditors under this section does not confirm the appointment of the administrator, the administrator shall cease to hold office with effect from the close of the meeting.

(5) Where a meeting of creditors under this section confirms the appointment of the administrator, the administrator shall continue in office and shall prepare proposals in accordance with the provisions of section 406.

Effect of
confirmation
of
administrator.

405. (1) During the period for which an administrator holds office after the expiry of the initial period—

- (a) no resolution may be passed or order made for the winding up of the company ;
- (b) no receiver of the property of the company may be appointed ;
- (c) no other steps may be taken to enforce any security over any property of the company or to re-possess any goods in the company's use or possession under any hire-purchase agreement, except with—
 - (i) the consent of the administrator ; or
 - (ii) the leave of the court and subject to such terms as the court may impose ;
- (d) no other proceedings and no execution or other legal process may be commenced or continued and no distress may be levied against the company or its property, except with—
 - (i) the consent of the administrator ; or
 - (ii) the leave of the court and subject to such terms as the court may impose ;

(2) Nothing in subsection (1) requires the consent of the administrator or the leave of the court for—

- (a) filing a petition to wind up the company ; or
- (b) giving notice in relation to a default under a charge over property of the company or under an agreement relating to property in the use, possession, or occupation of the company.

ADMINISTRATOR'S PROPOSALS

406. (1) Within two months after the end of the initial period or such longer period as the court may allow, the administrator shall—

Statement of proposals.

- (a) prepare a statement of his proposals for achieving the purpose or purposes specified in the order appointing him ;
- (b) deliver a copy of the statement to the Registrar ;
- (c) send a copy of the statement to all creditors of the company so far as he is aware of their addresses.

(2) The administrator shall call a meeting of creditors to consider the statement, not less than five and not more than ten working days after the date on which copies of the statement had been sent to creditors.

(3) The administrator shall also within two months of the date of his appointment and before the date of the meeting of creditors to consider the statement, either—

- (a) send a copy of the statement to all shareholders of the company ; or
- (b) give public notice of an address at which shareholders of the company can obtain a copy of the statement free of charge.

(4) Where an administrator fails to comply with the requirements of this section he shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

Consideration of proposals by creditors' meeting.

407. (1) A meeting of creditors called under the provisions of section 406 shall decide whether to approve the administrator's proposals.

(2) The meeting may approve the proposals with modifications, if the administrator consents to the modifications.

(3) The meeting shall be conducted in accordance with the procedure specified in the Seventh Schedule and within ten working days of such meeting the administrator shall give notice of the result to the Registrar.

(4) Where the administrator's proposals are approved, the administrator shall continue in office if the proposals so provide or shall cease to hold office in the circumstances set out in the proposals.

(5) Where the administrator's proposals are not approved, the administrator shall cease to hold office five working days after the date of the meeting.

(6) Where the administrator fails to comply with the requirements of subsection (4) he shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

Consequential orders where administrator cease to hold office.

408. The court may on the application of a company or an administrator or former administrator, make such orders consequential upon the discharge of an administrator as it thinks fit.

Approval of substantial revisions to proposals.

409. (1) Where—

(a) the proposals of the administrator have been approved under section 407 ; and

- (b) the administrator proposes to make substantial revisions to those proposals,

the administrator shall send to all creditors of the company so far as he is aware of their addresses, a written statement of the proposed revisions.

(2) The administrator shall call a meeting of the creditors to consider the revisions, not less than five and not more than ten working days after the date on which copies of the statement had been sent to the creditors.

(3) The administrator shall also before the date of the scheduled meeting of the creditors to consider the statement, either—

- (a) send a copy of the statement to all shareholders of the company ; or
- (b) give public notice of an address at which shareholders of the company can obtain a copy of the statement free of charge.

(4) The meeting may approve the proposed revisions with modifications, if the administrator consents to the modifications.

(5) The meeting shall be conducted in accordance with the procedure specified in the Seventh Schedule, and at the conclusion of such meeting the administrator shall give notice of the result of the meeting to the Registrar.

NOTICE OF ADMINISTRATION

410. (1) An administrator shall forthwith after being appointed—

Notice of appointment of administrator.

- (a) give public notice of his appointment, including—
 - (i) his full name ;

(ii) the date of the appointment ;

(iii) his office address ; and

(b) send a copy of the public notice to the Registrar.

(2) Where the administrator fails to comply with the requirements of this section he shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

Notice of
administration

411. (1) Where an administrator is appointed in respect of a company, every agreement entered into and every document issued by or on behalf of the company or the administrator and on which the name of the company appears, shall state clearly that an administrator has been appointed.

(2) A failure to comply with the requirements of subsection (1) shall not affect the validity of the agreement or document.

(3) Every person who—

(a) contravenes the requirements of subsection (1); or

(b) knowingly or willfully authorises or permits a contravention of subsection (1),

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

THE ADMINISTRATOR

Qualifications of
administrator.

412. (1) The following persons may not be appointed or act as administrator of a company :—

(a) a person who is under eighteen years of age;

(b) a creditor of the company;

- (c) a person who is or who has within the period of two years immediately preceding the commencement of the receivership, been an officer or employee of the company;
 - (d) a person who has or who has had within the period of two years preceding the commencement of the administration, an interest whether direct or indirect, in a share issued by the company;
 - (e) a person who is an undischarged insolvent;
 - (f) a person who has been adjudged to be of unsound mind under the Mental Diseases Ordinance (Cap. 227);
 - (g) a person in respect of whom an order has been made under subsection (5) of section 468;
 - (h) a person who was prohibited from being a director of or being concerned or taking part in the promotion, formation or management of a company under section 188 of the Companies Act, No. 17 of 1982, or who would be so prohibited but for the repeal of that Act; or
 - (i) a person who is prohibited from being a director or promoter of or being concerned or taking part in the management of a company under section 213 or 214.
- (2) A body corporate shall not be appointed or act as an administrator.
- (3) A person who acts in contravention of subsection (1) or subsection (2), shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees.

Validity of
acts of
administrator.

413. Any act done by a person as an administrator shall be valid notwithstanding the fact that such person is not qualified to act as an administrator.

Consent to
be
appointed.

414. The appointment of a person as an administrator shall be of no effect, unless that person consents in writing to being appointed as an administrator.

Vacancy in
office of
administrator.

415. (1) The office of administrator shall become vacant if the person holding that office resigns, dies, is removed from office by the court or becomes disqualified under section 412.

(2) A person may resign from the office of administrator by appointing another person as his successor, and delivering notice in writing of the appointment of his successor to the company and to the Registrar.

(3) The court may on the application of the company or a shareholder or a director or creditor of the company or the Registrar, review the appointment of a successor to an administrator and may if it thinks fit, appoint another person to be the administrator of the company in his place.

(4) Where for any reason other than resignation a vacancy occurs in the office of administrator, written notice of the vacancy shall forthwith be delivered to the company and to the Registrar by the person vacating office or, if that person is unable to act, by his personal representative .

(5) If as the result of the vacation of office by an administrator no person is appointed to act as administrator, the board of the company may appoint a person to act as administrator.

(6) Where a vacancy occurs in the office of administrator or a person has been appointed to act as an administrator under subsection (5), as the case may be, the court may on the application of the company or a shareholder or director or creditor of the company or the Registrar, appoint another person to be the administrator of the company.

(7) An administrator appointed under subsection (5) or subsection (6) shall, within ten working days of being appointed deliver a notice of his appointment to the Registrar.

(8) An administrator may at any time be removed from office by the court.

(9) A person vacating the office of administrator shall where practicable, provide such information and give such assistance to his successor as that person may reasonably require.

(10) On the application of a person appointed to fill a vacancy in the office of administrator, the court may make any order that it considers necessary or desirable to facilitate the performance of the administrator's duties.

(11) Every person who fails without reasonable excuse to comply with the requirements of subsection (4) or who fails to comply with the provisions of subsection (7) shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

POWERS OF ADMINISTRATOR

416. (1) An administrator—

Powers of
administrators.

- (a) shall manage the affairs, business and property of the company;
- (b) may do all such things as may be necessary or desirable for the management of the affairs, business and property of the company;
- (c) without limiting the powers specified in paragraphs (a) and (b), shall have all the powers that could be exercised by a receiver of the whole of the property and undertaking of the company under sections 443, 445 and 446.

(2) The administrator may apply to the court for directions in relation to any matter arising in connection with the carrying out of his functions.

(3) Where the exercise of any power conferred on the company or its board or officers by this Act or by the company's articles could interfere with the exercise by the administrator of his powers, such power shall not be exercised by the company, its board or officers, as the case may be, except with the consent of the administrator, which may be given generally or in relation to particular cases.

(4) Without limiting the generality of subsection (3), any disposal or other dealing with the property of the company without first obtaining the consent of the administrator, which may be given generally or in relation to particular cases, shall unless the court otherwise orders, be void.

(5) In exercising his powers the administrator is deemed to act as the company's agent, and a person dealing with the administrator in good faith and for value, shall not be required to inquire whether the administrator is acting within his powers.

Power to deal
with charged
property &c.,

417. (1) The administrator of a company may dispose of or otherwise exercise his powers in relation to any property of the company which is subject to a security to which this subsection applies, as if the property were not subject to the security.

(2) Provisions of subsection (1) shall apply to any security which, when it was created, was a floating charge.

(3) Where on an application by the administrator, the court is satisfied that the disposal (with or without other assets) of—

- (a) any property of the company subject to a security to which subsection (1) does not apply; or

- (b) any goods in the possession of the company under a hire-purchase agreement,

would be likely to promote the purpose or one or more of the purposes specified in the order appointing the administrator, the court may by order authorise the administrator to—

- (c) dispose of the property as if it were not subject to the security; or
- (d) dispose of the goods as if all rights of the owner under the hire purchase agreement were vested in the company.

(4) Where property is disposed of under subsection (1), the holder of the security has the same priority in respect of any property of the company directly or indirectly representing the property disposed of, as he would have had in respect of the property subject to the security.

(5) It shall be a condition of an order made by the court under subsection (3) that—

- (a) the net proceeds of the disposal; and
- (b) where those proceeds are less than such amount as may be determined by the court to be the net amount that would be realised on a sale of the property or goods in the open market, such sums as may be required to make good the deficiency,

shall be applied towards discharging the sums secured by the security, or payable under the hire purchase agreement.

(6) Where a condition imposed under subsection (5) relates to two or more securities, that condition requires the net proceeds of the disposal and any sum mentioned in paragraph (b) of that subsection to be applied towards discharging the sums secured by those securities, in the order of their priorities.

(7) A copy of any order made under subsection (3) shall within ten working days after the making of the order, be sent by the administrator to the Registrar.

(8) Where the administrator fails to comply with the requirements of subsection (7), he shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

General duties
of administrator.

418. (1) The administrator on his appointment shall take into his custody or control, all the property to which the company is or appears to be entitled.

(2) The administrator shall manage the affairs, business and property of the company—

- (a) at any time before a proposal has been approved under section 407 in accordance with any directions of the court; and
- (b) at any time after a proposal has been so approved, in accordance with the proposal as from time to time revised and with any directions of the court.

(3) The administrator shall summon a meeting of the creditors of the company if—

- (a) he is requested to do so in writing by one tenth in value of the creditors; or
- (b) he is directed to do so by the court.

Discharge of
administrator or
variation of
resolution
appointing
administrator.

419. (1) The administrator shall, where—

- (a) it appears to him that the purpose or each of the purposes specified in the resolution appointing him either have been achieved or is incapable of achievement;

- (b) he is required to do so by a meeting of the company's creditors summoned for the purpose,

may at any time, give notice to the company notifying that the—

- (c) administration ought to be terminated; or
- (d) resolution appointing him as administrator ought to be varied to specify an additional purpose.

(2) The administrator shall cease to hold office five working days after giving a notice under paragraph (c) of subsection (1), or on such later date as may be specified in the notice, but in any event no more than ten working days after the date on which the notice is given.

(3) Where the administrator gives notice under paragraph (d) of subsection (1), the resolution shall be deemed to be amended accordingly.

(4) Where a notice is given under subsection (1), the administrator shall within ten working days after giving the notice, deliver a copy of the notice to the Registrar.

(5) Where the administrator fails to comply with subsection (4) he shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

420. (1) The remuneration to be paid to and expenses of the administrator and any indemnity to which he is entitled under section 421, shall be paid out of the property of the company, and shall have priority over any security which, as created, was a floating charge.

Remuneration
and expenses of
administrator.

(2) The court may on the application of the administrator or the company or any creditor of the company, review or fix the remuneration of the administrator in respect of any period at a level which is reasonable in the circumstances.

Liability of
administrator.

421. (1) Subject to the provisions of subsections (2) and (3), an administrator is personally liable—

- (a) on a contract entered into by the administrator in the exercise of any of the administrator's powers; and
- (b) for payment of wages or salary that during his administration, accrue under a contract of employment entered into before his appointment, if notice of the termination of the contract is not lawfully given within ten working days after the date of appointment.

(2) The court may, on the application of an administrator, extend the period within which notice of the termination of a contract is required to be given under paragraph (b) of subsection (1), on such terms and conditions as the court thinks fit, provided that application is made before the expiry of the period referred to in such paragraph.

(3) Subject to the provisions of subsection (6), an administrator is personally liable to the extent specified in subsection (4) for rent and any other payments becoming due under an agreement subsisting at the date of his appointment, relating to the use, possession, or occupation of property by the company.

(4) The liability of an administrator under subsection (3) is limited to that portion of the rent or other payments which is attributable to the period, commencing ten working days after the date of the appointment of the administrator and ending on—

- (a) the date on which the administration ends; or
- (b) the date on which the company ceases to use, possess, or occupy the property,

whichever is the earlier.

(5) The court may, on the application of an administrator—

- (a) limit the liability of the administrator to a greater extent than that specified in subsection (4); or
- (b) exempt the administrator from liability under subsection (3).

(6) Nothing in subsection (3) or subsection (4)—

- (a) shall be taken as giving rise to an adoption by an administrator of an agreement referred to in subsection (3); or
- (b) shall render an administrator liable to perform any other obligation under such an agreement.

(7) An administrator is entitled to an indemnity out of the property of the company in respect of his personal liability under this section.

422. (1) The court may relieve a person who has acted as an administrator from all or any personal liability incurred in the course of the administration, if it is satisfied that—

Relief from liability.

- (a) the liability was incurred solely by reason of a defect in the appointment of the administrator or in the order of the court under which the administrator was appointed; and
- (b) the administrator acted honestly and reasonably and ought in the circumstances to be exempted.

(2) The court may exercise its powers under subsection (1) subject to such terms and conditions as it thinks fit.

ASCERTAINMENT AND INVESTIGATION OF COMPANY'S AFFAIRS

Obligations of
company and
directors to
provide
information &c.

423. (1) Where an administrator is appointed, the company and every director of the company shall—

- (a) make available to the administrator all books, documents, and information relating to the business, affairs and property of the company in the company's possession or under its control;
- (b) if required to do so by the administrator, verify by affidavit that the books, documents, and information are complete and correct;
- (c) give the administrator such assistance as the administrator may reasonably require;
- (d) if the company has a common seal, make the common seal available for use by the administrator.

(2) Where the company or a director fails to comply with the requirements of subsection (1), the court may on the application of the administrator, make an order requiring the company or a director of the company to comply with the same.

MISCELLANEOUS

Creditors'
committee.

424. (1) Where a meeting of creditors has approved the administrator's proposals, the meeting may if it thinks fit, establish a committee (hereinafter referred to as the "creditors' committee"), to exercise the functions conferred on it under this Act.

(2) Where a creditors' committee is established, it may on giving not less than five working days notice, require the administrator to attend before it at any reasonable time and provide it with such information relating to the carrying out of his functions as it may reasonably require.

425. (1) During any time at which an administrator holds office, a creditor or shareholder of a company may apply to the court for an order under this section, on the ground that—

Protection of interests of creditors and share holders.

- (a) the company's affairs, business and property are being or have been managed by the administrator in a manner which is unfairly discriminatory or unfairly prejudicial to the interests of the creditor or shareholder; or
- (b) any actual or proposed act or omission of the administrator is or would be unfairly discriminatory or unfairly prejudicial to the interests of such creditor or shareholder.

(2) On an application being made to court under this section, court may, where it considers it just and equitable to do so and subject to the provisions of subsection (3), make such order as it thinks fit including, without limiting the generality of this subsection, and order—

- (a) regulating the future management by the administrator of the company's affairs, business and property;
- (b) requiring the administrator to refrain from doing or continuing an act complained of by the applicant or to do an act which the applicant has complained he has omitted to do;
- (c) requiring the calling of a meeting of creditors or shareholders for the purpose of considering such matters as the court may direct;
- (d) discharging the administrator and making such consequential provisions as the court thinks fit.

(3) An order under this section shall not prejudice or prevent—

- (a) the implementation of a compromise or arrangement approved under Part IX or Part X of this Act; or
- (b) where the application for the order was made more than twenty working days after the approval of any proposals or any revised proposals under section 407 or section 409, as the case may be, the implementation of those proposals or revised proposals.

Application to administrator of provisions relating to receivers.

426. (1) The provisions contained in sections 453, 454, 460, 468, 469 and 470 shall apply to an administrator and to a company under administration with all necessary modifications, and in particular as if—

- (a) the administrator were a receiver appointed by the court ;
- (b) references to the property in receivership were references to the property and undertaking of the company ; and
- (c) references to the grantor were references to the company.

PART XIV

FLOATING CHARGES

Company may grant floating charge.

427. (1) A company may grant a charge to which this Part of this Act applies (in this Act referred to as a “floating charge”) over the whole or any part of the property and undertaking of the company, for the purpose of securing a debt or any other obligation incurred or to be incurred by the company or any other person.

(2) A floating charge may apply to any property of the company whether held by the company at the time of creation of the floating charge or acquired thereafter, including—

- (a) movable and immovable property ;
- (b) uncalled capital ;
- (c) circulating assets, including cash, stock in trade, raw materials, book debts and other receivables.

(3) A floating charge created under this Part of this Act shall, notwithstanding the provisions contained in any other law, have effect as a security over the property of the company to which it is expressed to apply, in the manner and to the extent specified in this Part—

- (a) subject to the provisions of the Registration of Documents Ordinance (Cap. 117) where applicable ; and
- (b) subject to section 103 of the Mortgage Act (Cap. 89).

428. (1) A floating charge may be created by a company only by the execution under the name of the company in accordance with the provisions of paragraph (a) of subsection (1) of section 19, of an instrument which is expressed to create such a charge.

Instrument
creating floating
charge.

(2) An instrument which creates a floating charge over property which includes land, shall be registered under the Registration of Documents Ordinance (Cap. 117) as an instrument affecting that land.

(3) An instrument which creates a floating charge over property which includes movable property, shall be registered under the Registration of Documents Ordinance (Cap. 117) as if it were a bill of sale. Where the floating charge also

includes land, the provisions of sections 16 to 22 of the Registration of Documents Ordinance (Cap. 117) shall not in any way affect the instrument, in so far as it relates to land.

(4) The provisions of sections 17 and 20 of the Registration of Documents Ordinance (Cap. 117) shall apply in relation to a floating charge, as if registration of that floating charge—

(a) under Chapter IV of that Ordinance in the district in which the registered office of the company is situated ; and

(b) under Part VI of this Act,

were registration under Chapter IV of that Ordinance, in every district in Sri Lanka.

(5) For the avoidance of doubt, nothing in section 63 of the Mortgage Act (Cap. 89) shall apply to or in relation to any instrument creating a floating charge.

Provisions of
instrument
creating floating
charge.

429. (1) The terms specified in the Eleventh Schedule hereto shall be implied terms of every instrument which creates a floating charge, except to the extent that the terms of any such instrument expressly exclude or are inconsistent with those implied terms.

(2) An instrument creating a floating charge may contain—

(a) provisions prohibiting or restricting the creation of any fixed security or any other floating charge having priority over or ranking equally with the floating charge ; or

(b) provisions regulating the order in which the floating charge shall rank with any other subsisting or future floating charges or fixed securities over that property or any part of it.

430. (1) Subject to the terms of the instrument under which it is created, the creation of a floating charge in respect of any property shall not affect the ability of the company to deal with that property in the normal course of business.

Dealing with property subject to floating charge before attachment.

(2) Where—

- (a) any property of a company is subject to a floating charge which has not attached to that property ; and
- (b) the company has sold or disposed of that property,

any person who receives that property from the company shall be liable to account to the person entitled to the benefit of the floating charge for the value of the property, in the circumstances set out in subsection (3) or subsection (4).

(3) A person may be liable to account for the value of property received by that person under subsection (2), if—

- (a) the sale or disposal of the property did not take place in the normal course of the company's business ; and
- (b) that person knew or by reason of his relationship with the company ought to have known, that the sale or disposal did not take place in the normal course of the company's business.

(4) A person may be liable to account for the value of property received by that person under subsection (2), if—

- (a) the sale or disposal of the property is a breach of the instrument creating the floating charge ; and
- (b) that person knew or by reason of his relationship with the company ought to have known, of the terms of the instrument and the circumstances giving rise to a breach of those terms.

Ranking of
floating
charges.

431. (1) Where any property of a company is subject both to a floating charge and to a fixed security arising by operation of law, the fixed security shall have priority over the floating charge.

(2) Where any property of a company is subject both to a floating charge and to a fixed security granted by the company, the fixed security shall have priority over the floating charge, unless—

- (a) the instrument creating the floating charge—
 - (i) prohibited the granting by the company of that fixed security ; and
 - (ii) had been registered under Part VI of this Act before the date on which the fixed security was granted by the company ; or
- (b) the instrument creating the floating charge is expressed to take priority over the fixed security, and the person entitled to the benefit of the fixed security has consented in writing to that priority ; or
- (c) before the date on which the fixed security was granted by the company, the floating charge had attached to the property pursuant to section 433 and either—
 - (i) a receiver had been appointed in respect of the property and the person to whom the fixed security was granted had notice of the appointment of the receiver ; or
 - (ii) the person to whom the fixed security was granted knew or by reason of his relationship with the company ought to have known, that—
 - (A) the floating charge had attached to that property ;

- (B) the grant of the fixed security was a breach of the instrument creating the floating charge ; or
- (C) the grant of the fixed security did not occur in the normal course of the company's business.

(3) Where any property of a company is subject to more than one floating charge, those floating charges shall rank among themselves according to the date of registration under Part VI, subject to any provision to the contrary in an instrument creating a floating charge which has been consented to in writing by the person entitled to the benefit of the floating charge, the priority of which is postponed by that provision.

(4) For the avoidance of doubt and subject to the terms of the instrument under which it is created, the priority of a floating charge shall not be affected by the fact that all or any part of the debts or obligations secured by that floating charge, were incurred or arose after —

- (a) the creation and registration by the company of a subsequent floating charge ; or
- (b) the grant by the company of any fixed security in respect of the whole or any part of the property comprised in the floating charge.

(5) A person shall be deemed to have received notice of the appointment of a receiver for the purposes of subsection (2), if—

- (a) the person knows or ought by reason of his relationship with the company to know that a receiver has been appointed ; or
- (b) public notice of the appointment of the receiver has been given in accordance with paragraph (b) of subsection (1) of section 440.

(6) Without limiting the provisions contained in subsection (3) of section 427, where land owned by a company is subject to a floating charge and to a fixed security which has been registered under the Registration of Documents Ordinance (Cap. 117), the fixed charge shall have priority over the floating charge, unless the floating charge was registered in respect of that land under the Registration of Documents Ordinance (Cap. 117) prior to the registration of the fixed security.

Alteration and
discharge of
floating charges.

432. (1) The terms of an instrument creating a floating charge may be varied in the same manner in which an instrument may be executed by the company.

(2) Subject to the modifications contained in subsection (3) of this section subsections (1) and (3) of section 102, sections 103 and 108 shall apply to an instrument of alteration under this section, which—

- (a) prohibits or restricts creation of any fixed security or any other floating charge having priority over or ranking equally with the floating charge ;
- (b) varies or otherwise regulates the order of and the ranking of the floating charge in relation to fixed securities or to other floating charges ;
- (c) releases property from the floating charge ; or
- (d) where the floating charge secures a specified obligation or a specified amount, alters that obligation or increases that amount, as the case may be.

(3) The provisions of subsections (1) and (3) of sections 102, 103 and 108 shall apply in respect of an instrument of alteration to which subsection (2) applies, as if—

- (a) references to a charge were references to an alteration to a floating charge ; and

- (b) references to the creation of a charge, were references to the execution of the instrument of alteration.

(4) Where an alteration to the terms of an instrument creating a floating charge has the effect of extending the floating charge to property not previously comprised in the floating charge, the priority of the floating charge in respect of the additional property shall be determined, as if the instrument by which the amendments were affected were an instrument creating a new floating charge in respect of that additional property.

(5) A floating charge may be released in respect of the whole or any part of the property comprised in it, in the same manner in which such a charge may be created.

433. (1) A floating charge shall attach to and constitute a fixed charge in respect of all property comprised in the charge, on the occurrence of any of the following events :—

Circumstances in which floating charge attaches to property.

- (a) the appointment of a receiver of the whole or any part of the property or undertaking of the company, whether under the terms of the instrument creating the floating charge or otherwise ;
- (b) the commencement of the winding up of the company ;
- (c) the disposal by the company of the whole or any part of its undertaking, other than in the normal course of its business ;
- (d) the company ceasing to carry on business ;
- (e) any other event the occurrence of which is expressed in the instrument creating the floating charge to have the effect of causing that charge to attach to the property comprised in it.

(2) Where—

- (a) a floating charge has attached to any property of a company ; and
- (b) the company sells or otherwise disposes of any property to which the charge has attached,

the person to whom the property is sold or otherwise disposed of, shall be liable to account to the person entitled to the benefit of the floating charge for the value of the property, if—

- (c) a receiver had been appointed in respect of the property and that person had notice of the appointment of the receiver ; or
- (d) that person knew or ought by reason of his relationship with the company to have known that —
 - (i) the floating charge had attached to that property ;
 - (ii) the sale or disposal was a breach of the instrument creating the floating charge ; or
 - (iii) the sale or disposal did not occur in the normal course of the company's business.

(3) Nothing in subsection (2) shall apply to a sale of property—

- (a) by or under the authority of a receiver appointed in respect of the property, by the person entitled to the benefit of the floating charge ;

- (b) pursuant to a floating charge or other security in respect of the property which ranks prior to the floating charge, to the benefit of which the person making the claim is entitled ; or
- (c) by the court.

(4) A person who is liable to account to the holder of a floating charge for the value of property disposed of by the company, shall be given credit for the value of any consideration provided to the company for that property which has become available to the holder of the floating charge, in substitution for that property.

(5) A person shall be deemed to have received notice of the appointment of receiver for the purposes of subsection (2), if—

- (a) the person knows or ought by reason of his relationship with the company to know, that a receiver has been appointed ; or
- (b) public notice of the appointment of the receiver has been given in accordance with paragraph (b) of subsection (1) of section 440.

(6) For the avoidance of doubt, where a floating charge has become a fixed charge under this section, the grantee may without prejudice to any right he may have to appoint a receiver under Part XV, exercise any other remedy which is available to the holder of a fixed charge under the Mortgage Act (Cap. 89) or under any other written law.

PART XV

RECEIVERS AND MANAGERS

Interpretation.

434. (1) In this Part of this Act, unless the context otherwise requires—

“creditor” includes a person to whom the grantor owes a debt or is under a liability, whether present or future, certain or contingent and whether an ascertained debt or liability or a liability in damages ;

“grantee” means in relation to an instrument which creates a floating charge, the person entitled to the benefit of the instrument ;

“grantor” means the person in respect of whose property a receiver is or may be appointed ;

“liquidator” means a liquidator appointed under Part XII ;

“mortgage” includes a charge on property for securing money or money’s worth ;

“mortgagee” includes a person from time to time deriving title under the original mortgagee, but does not include a receiver ;

“preferential claims” means the claims referred to in the Ninth Schedule (except paragraph 1 of that Schedule) ;

“property” includes—

(a) movable and immovable property ;

(b) an interest in movable or immovable property ;

- (c) a debt ;
- (d) any thing in action ;
- (e) any other right or interest ;

“property in receivership” means property in respect of which a receiver is appointed ;

“receiver” means a receiver or a manager or a receiver and a manager in respect of any property, appointed—

- (a) under any instrument ; or
- (b) by the court in the exercise of a power conferred on the court by this Act,

whether or not the person appointed is empowered to sell any of the property in receivership, but does not include—

- (c) a mortgagee who, whether personally or through an agent, exercises a power to—
 - (i) receive income from mortgaged property ;
 - (ii) enter into possession or assume control of mortgaged property ; or
 - (iii) sell or otherwise alienate mortgaged property ; or
- (d) an agent of any such mortgagee.

POWER TO APPOINT RECEIVER

435. An instrument that creates a floating charge in respect of the whole of the property and undertaking of a company, may confer on the grantee the power to appoint a receiver of the property and undertaking of the company.

Instrument may confer power to appoint receiver.

QUALIFICATIONS OF RECEIVERS

Qualifications
of receivers.

436. (1) The following persons may not be appointed or act as a receiver :—

- (a) a person who is under eighteen years of age ;
- (b) a creditor of the grantor ;
- (c) a person who is or who has within the period of two years immediately preceding the commencement of the receivership, been—
 - (i) an officer or employee of the grantor; or
 - (ii) an officer or employee of the mortgagee of the property in receivership;
- (d) a person who has or who has had within the period of two years preceding the commencement of the receivership, an interest, whether direct or indirect, in a share issued by the grantor;
- (e) a person who is an undischarged insolvent;
- (f) a person who has been adjudged to be of unsound mind under the Mental Diseases Ordinance (Cap. 227);
- (g) a person in respect of whom an order has been made under subsection (5) of section 468;
- (h) a person who was prohibited from being a director or promoter of or being concerned or taking part in the management of a company under section 186 of the Companies Act, No. 17 of 1982, or who would be so prohibited but for the repeal of that Act;

- (i) a person who is prohibited from being a director or promoter of or being concerned or taking part in the management of a company under section 213 or 214;
 - (j) a person who is disqualified from acting as a receiver by the instrument that confers the power to appoint a receiver.
- (2) A body corporate shall not be appointed or act as a receiver.
- (3) A person who contravenes subsection (1) or subsection (2), shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees.

APPOINTMENT OF RECEIVER

437. (1) Where an instrument confers on the grantee the power to appoint a receiver of the property and undertaking of a company, the grantee may appoint a receiver by an instrument in writing signed by or on behalf of the grantee.

Appointment of receiver under an instrument.

- (2) A receiver appointed by or under a power conferred by an instrument shall be the agent of the grantor, unless the instrument expressly provides otherwise.
- (3) A receiver may be appointed under this section —
- (a) notwithstanding anything to the contrary contained in any other law; and
 - (b) whether or not the property in respect of which the receiver is appointed includes immovable property.
- (4) For the avoidance of doubt—
- (a) the appointment of a receiver under this section is not a hypothecary action; and

- (b) nothing in section 46 of the Mortgage Act (Cap. 89) shall affect, or shall apply in relation to, the appointment of a receiver under this section.

Extent of power to appoint a receiver.

438. (1) A power conferred by an instrument to appoint a receiver includes the power to appoint—

- (a) two or more receivers;
- (b) a receiver additional to one or more presently in office;
- (c) a receiver to succeed a receiver whose office has become vacant,

unless the instrument expressly provides otherwise.

(2) Two or more receivers may act jointly or severally to the extent that they have the same powers, unless the instrument under which or the order of the court by which they are appointed, expressly provides otherwise.

Court may appoint a receiver.

439. (1) Without limiting the inherent jurisdiction of the court under any other written law, the court may appoint a receiver of any property which is subject to a fixed security or a floating charge granted by a company, on the application of the grantee of that security or charge, where it is satisfied that—

- (a) the company has failed to pay a debt due to the grantee or has otherwise failed to meet any obligation to the grantee;
- (b) the company proposes to sell or otherwise dispose of the secured property in breach of the terms of any instrument creating the security or charge; or
- (c) it is necessary to do so to ensure the preservation of the secured property for the benefit of the grantee.

(2) A receiver may be appointed under this section—

- (a) notwithstanding anything to the contrary in any other law; and
- (b) whether or not the property in respect of which the receiver is appointed, includes immovable property.

(3) For the avoidance of doubt—

- (a) the appointment of a receiver under this section is not a hypothecary action; and
- (b) nothing in section 46 of the Mortgage Act (Cap. 89) shall affect, or shall apply in relation to the appointment of a receiver under this section.

440. (1) A receiver shall forthwith after being appointed and in any event no later than ten working days after being appointed —

Notice of
appointment of
receiver.

- (a) give written notice of his or her appointment to the grantor;
- (b) give public notice of his or her appointment, including —
 - (i) the receiver's full name;
 - (ii) the date of the appointment;
 - (iii) the receiver's office address; and
 - (iv) a brief description of the property in receivership ; and
- (c) send a copy of the public notice to the Registrar.

(2) Where the appointment of the receiver is in addition to a receiver who already holds office or is in place of a person who has vacated office as receiver, as the case may be, every notice under this section shall state that fact.

(3) Every receiver who acts in contravention of this section shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

Notice of
receivership.

441. (1) Where a receiver is appointed in respect of the property and undertaking of a company, every agreement entered into and every document issued by or on behalf of the grantor or the receiver and on which the name of the grantor appears, shall state clearly that a receiver has been appointed.

(2) Where a receiver is appointed in relation to a specific asset or assets, every agreement entered into and every document issued by or on behalf of the grantor or the receiver that relates to the asset or assets, and on which the name of the grantor appears, shall state clearly that a receiver has been appointed.

(3) A failure to comply with subsection (1) or subsection (2) shall not affect the validity of the agreement or document.

(4) Every person who—

(a) acts in contravention of subsection (1) or subsection (2); or

(b) knowingly or willfully authorises or permits a contravention of subsection (1) or subsection (2),

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

Vacancy in
office of
receiver.

442. (1) The office of receiver shall become vacant if the person holding office resigns, dies, or becomes disqualified under section 436.

(2) A receiver appointed under a power conferred by an instrument, may resign office by giving not less than five working days' written notice of his intention to resign, to the person by whom the receiver was appointed.

(3) If, for any reason other than resignation, a vacancy occurs in the office of receiver, written notice of the vacancy shall forthwith be delivered to the Registrar by the person vacating office or if that person is unable to act, by his legal representative.

(4) A receiver appointed by the court shall not resign office without prior leave of the court.

(5) A person vacating the office of receiver shall where practicable, provide such information and give such assistance in the conduct of the receivership to his or her successor as that person may reasonably require.

(6) On the application of a person appointed to fill a vacancy in the office of receiver, the court may make any order that it considers necessary or desirable to facilitate the performance of the receiver's duties.

(7) Every person who fails without reasonable cause to comply with subsection (3), shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

POWERS OF RECEIVERS

443. (1) A receiver shall have the powers and authorities expressly or impliedly conferred by the instrument or the order of the court by or under which the appointment was made.

Powers of receivers.

(2) Subject to the instrument or the order of the court by or under which the appointment was made, a receiver shall have and may exercise the powers specified in the Twelfth Schedule.

Precedence
among
receivers.

444. (1) Where there are two or more floating charges subsisting over all or any part of the property of the company, a receiver may be appointed under this Part of this Act by virtue of each such charge. A receiver appointed by or on the application of the holder of a floating charge, which has priority over any other floating charge by virtue of which a receiver has been appointed, has the powers conferred on a receiver by this Act, to the exclusion of any other receiver.

(2) Where two or more floating charges rank equally with one another, and two or more receivers have been appointed by virtue of such charges, the receivers so appointed are deemed to have been appointed as joint receivers, and shall act jointly, unless the instrument of appointment or each of the respective instruments of appointment, otherwise provide.

(3) Subject to subsection (4), the powers of a receiver appointed by or on the application of the holder of a floating charge are suspended by, and as from the date of the appointment of a receiver by or on the application of the holder of a floating charge having priority over that charge, to such extent as may be necessary to enable the receiver second mentioned, to exercise his powers under this Act. Any powers so suspended shall take effect again when the prior floating charge ceases to attach to the property subject to the charge, or when the appointment of a receiver under the prior floating charge ceases in respect of that property, whichever occurs first.

(4) The suspension of the powers of a receiver under subsection (3) does not have the effect of requiring him to release any part of the property (including any letters or documents) of the company from his control, until he receives from the receiver superceding him a valid indemnity (subject to the limit of the value of such part of the property as is subject to the charge, by virtue of which he was appointed) in respect of any expenses, charges and liabilities he may have incurred in the performance of his functions as receiver.

(5) The suspension of the powers of a receiver under this section shall not cause the floating charge by virtue of which he was appointed, to cease to attach to the property in respect of which he was appointed.

(6) Nothing in this section shall prevent the same receiver being appointed by virtue of two or more floating charges.

445. (1) A receiver has the same powers as the board of a company has or if the company is being wound up, as the board would have had if it was not being wound up, to make calls on the shareholders of the company in respect of uncalled capital that is charged under the instrument by or under which the receiver was appointed, and to charge interest on and enforce payment of calls.

Power to make calls on shares.

(2) For the purposes of subsection (1), the expression “uncalled capital” includes any amount payable in respect of the issue of shares or under the articles of the company.

(3) The making of a call or the exercise of a power under subsection (1) is, as between the shareholders of the company affected and the company, deemed to be a proper call or power made or exercised by the directors of the company.

446. (1) A receiver may execute in the name and on behalf of the company, all documents necessary or incidental to the exercise of the receiver’s powers.

Execution of documents.

(2) A document signed on behalf of a company by a receiver, shall be deemed to have been properly signed on behalf of the company for the purposes of section 19.

(3) Notwithstanding anything to the contrary in any other law or the articles of association of a company, where the

instrument under which a receiver is appointed empowers the receiver to execute documents and to use the company's common seal for that purpose, the receiver may execute documents in the name and on behalf of the company by affixing the company's common seal to the documents, and attesting the affixing of the common seal.

(4) Any document which is executed in the manner prescribed in subsection (3), shall be deemed to have been properly executed by the company.

Obligations
of company
and
directors.

447. (1) Where a receiver is appointed in respect of the whole or any part of the property of a company, the company and every director of the company shall—

- (a) make available to the receiver all books, documents, and information relating to the property in receivership in the company's possession or under the company's control;
- (b) if required to do so by the receiver, verify by affidavit that the books, documents and information are complete and correct;
- (c) give the receiver such assistance as he or she may reasonably require;
- (d) if the company has a common seal, make the common seal available for use by the receiver.

(2) On the application of the receiver, the court may make an order requiring the company or a director of the company, to comply with the requirements of subsection (1).

Validity of
acts of
receivers.

448. (1) Subject to subsection (2), no act of a receiver shall be deemed to be invalid merely because the receiver was not validly appointed, or is disqualified from acting as a receiver, or is not authorised to do the act.

(2) No transaction entered into by a receiver shall be deemed to be invalid merely because the receiver was not validly appointed or is not authorised to enter into the transaction, unless the person dealing with the receiver has or ought to have, by reason of his or her relationship with the receiver or the person by whom the receiver was appointed, knowledge that the receiver was not validly appointed or did not have authority to enter into the transaction.

449. (1) Where the consent of a mortgagee is required for the sale of property in receivership and the receiver is unable to obtain that consent, the receiver may apply to the court for an order authorising the sale of the property, either by itself or together with other assets.

Consent of mortgagee to sale of property.

(2) The court may on an application under subsection (1) of this section, make such order as it thinks fit authorising the sale of the property by the receiver, if satisfied that—

- (a) the receiver has made reasonable efforts to obtain the mortgagee's consent; and
- (b) the sale—
 - (i) is in the interests of the grantor and the grantor's creditors; and
 - (ii) will not substantially prejudice the interests of the mortgagee.

(3) An order under this section may be made subject to such terms and conditions as the court thinks fit.

DUTIES OF RECEIVERS

General duties of receivers.

450. (1) A receiver shall exercise his or her powers in good faith.

(2) A receiver shall exercise his or her powers in a manner he or she believes on reasonable grounds to be in the interest of the person in whose interests he or she was appointed.

(3) Without prejudice to the provisions contained in subsections (1) and (2), a receiver shall exercise his or her powers having reasonable regard to the interests of —

- (a) the grantor;
- (b) persons claiming through the grantor, interests in the property in receivership;
- (c) unsecured creditors of the grantor; and
- (d) sureties who may be called upon to fulfil obligations of the grantor.

(4) Where a receiver appointed under an instrument acts or refrains from acting in accordance with any directions given by the person in whose interests he or she was appointed, the receiver shall be deemed not to be in breach of the duty referred to in subsection (2), but shall remain liable for any breach of the duty referred to in subsection (1) or the duty referred to in subsection (3).

(5) Nothing in this section shall limit or affect the application of section 451.

Duty of receiver selling property.

451. A receiver who exercises a power of sale of property in receivership, owes a duty to the grantor to obtain the best price reasonably obtainable as at the time of sale.

452. Notwithstanding anything to the contrary in any other law or anything contained in the instrument by or under which a receiver is appointed—

No defence or indemnity.

- (a) it shall not be a defence to proceedings against a receiver for a breach of the duty imposed by section 451, that the receiver was acting as the grantor's agent or under a power of attorney from the grantor;
- (b) a receiver shall not be entitled to compensation or indemnity from the property in receivership or the grantor, in respect of any liability incurred by the receiver arising from a breach of the duty imposed by section 451.

453. A receiver shall keep money relating to the property in receivership separate from other money received in the course of but not relating to the receivership, and from other money held by or under the control of the receiver.

Duty in relation to money.

454. (1) A receiver shall at all times keep accounting records that correctly record and explain all receipts, expenditure, and other transactions relating to the property in receivership.

Accounting records.

(2) The accounting records shall be retained by the receiver for not less than five years after the receivership ends.

REPORTS OF RECEIVERS

455. (1) A receiver shall, not later than two months after his appointment, prepare a report on the state of affairs with respect to the property in receivership, including —

First report by receivers.

- (a) particulars of the assets comprising the property in receivership;
- (b) particulars of the debts and liabilities to be satisfied from the property in receivership;

- (c) the names and addresses of the creditors with an interest in the property in receivership;
- (d) particulars of any encumbrance over the property in receivership held by any creditor, including the date on which it was created;
- (e) particulars of any default by the grantor in making relevant information available; and
- (f) such other information as may be prescribed.

(2) The report referred to in subsection (1) shall also include details of—

- (a) the events leading up to the appointment of the receiver, so far as the receiver is aware of them ;
- (b) property disposed of and any proposals for the disposal of property in receivership ;
- (c) amounts owing as at the date of appointment, to any person in whose interest the receiver was appointed ;
- (d) amounts owing as at the date of appointment, to creditors of the grantor having preferential claims ; and
- (e) amounts likely to be available for payment to creditors, other than those referred to in paragraph (c) or paragraph (d).

(3) A receiver may omit from the report details of any proposals for disposal of the property in receivership, if he considers that their inclusion would materially prejudice the exercise of his functions.

(4) A receiver who fails to comply with this section shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

456. (1) A receiver or a person who was a receiver at the end of the receivership, as the case may be, shall not later than two months after—

Further reports
by receiver.

- (a) the end of each period of six months after his appointment as receiver ; and
- (b) the date on which the receivership ends,

prepare a further report summarising the state of affairs with respect to the property in receivership as at those dates, and the conduct of the receivership including all amounts received and paid, during the period to which the report relates.

(2) The report referred to in subsection (1) shall include details of—

- (a) property disposed of since the date of any previous report and any proposals for the disposal of property in receivership ;
- (b) amounts owing as at the date of the report, to any person in whose interest the receiver was appointed ;
- (c) amounts owing as at the date of the report, to creditors of the grantor having preferential claims ; and
- (d) amounts likely to be available as at the date of the report for payment to creditors, other than those referred to in paragraph (b) or paragraph (c).

(3) A receiver may omit from the report required to be prepared in accordance with paragraph (a) of subsection (1),

details of any proposals for disposal of property in receivership, if he or she considers that their inclusion would materially prejudice the exercise of his or her functions.

(4) Every person who fails to comply with the requirements of this section shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

Extension of
time for
preparing
reports.

457. (1) A period of time within which a person is required to prepare a report under section 455 or section 456 may be extended, on the application of that person, by-

- (a) the court, where the person was appointed a receiver by the court ; or
- (b) the Registrar, where the person was appointed a receiver by or under an instrument.

Persons entitled
to receive
reports.

458. (1) A copy of every report prepared under section 455 or section 456 shall be sent by the person required to prepare it, to —

- (a) the grantor ; and
- (b) every person in whose interest the receiver was appointed.

(2) A person appointed as a receiver by the court shall file a copy of every report prepared under section 455 or section 456 in the office of the court.

(3) Not later than fifteen working days after receiving a written request for a copy of any report prepared under section 455 or section 456 from —

- (a) a creditor, director, or surety of the grantor ; or
- (b) any other person with an interest in any of the property in receivership,

and on payment of the reasonable costs of making and sending the copy, the person who prepared the report shall send a copy of the report to the person who requested for it.

(4) Within ten working days after preparing a report under section 455 or section 456, the person who prepared the report shall send or deliver a copy of the report to the Registrar.

(5) Every person who fails to comply with this section shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

459. A person to whom a report must be sent in accordance with the provisions of section 458 is entitled to inspect the report during normal office hours at the office of the person required to send it.

Persons entitled to inspect reports.

460. (1) A receiver of a company who considers that the company or any director or officer of the company has committed an offence under this Act or the Securities and Exchange Commission of Sri Lanka Act, No. 36 of 1987, shall report that fact to the Registrar.

Duty to notify breaches of any provisions of this Act.

(2) Nothing in subsection (1) shall impose any duty on a receiver to investigate whether any offence of the kind referred to in that subsection has been committed.

(3) A receiver who fails to comply with the provisions of subsection (1) shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

461. (1) Not later than ten working days after the receivership of a company ceases, the person who held office as receiver at the end of the receivership shall send or deliver to the Registrar, notice in writing of the fact that the receivership has ceased.

Notice of end of receivership.

(2) Every person who fails to comply with the requirements of subsection (1) shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

APPLICATION OF PROPERTY AND LIABILITY FOR COMPANY OBLIGATIONS

Preferential
claims.

462. (1) The provisions of this section applies to a receiver who was appointed under an instrument that created a floating charge.

(2) Subject to the provisions of section 449 and to the rights of any of the persons referred to in subsection (3), a receiver to whom this section applies shall pay moneys received by him to the grantee of the floating charge by virtue of which the receiver was appointed, in or towards satisfaction of the debt secured by the floating charge.

(3) The following persons shall be entitled to payment out of the property of a company subject to a floating charge, in priority to the grantee of the charge, and in the following order of priority :—

- (a) first, the holder of any fixed security, over any part of the property that ranks prior to the floating charge ;
- (b) second, the receiver, for his expenses and remuneration and any indemnity to which he is entitled out of the property of the company ; and
- (c) third, persons entitled to preferential claims, to the extent and in the order of priority specified in the Ninth Schedule (except paragraphs 1 and subparagraph (b) of paragraph 7).

(4) In the application of the provisions of the Ninth Schedule in accordance with the provisions of subsection (3) —

- (a) references to a “liquidator” shall be read as references to a “receiver” ;
- (b) references to the “commencement of the winding up” shall be read as references to the “appointment of the receiver” ;

- (c) references to “company being ordered to be wound up” or to the “winding up of the company” shall be read as references to the “company being put into or being in receivership”.

463. (1) Subject to the provisions of subsection (2), a receiver may be appointed or continue to act as a receiver and exercise all the powers of a receiver in respect of property of a company that is being wound up, unless the court orders otherwise.

Powers of receiver on liquidation.

(2) A receiver holding office in respect of property referred to in subsection (1) may act as the agent of the grantor, only with the approval of the court or with the written consent of the liquidator.

(3) A receiver who by reason of subsection (2) is not able to act as the agent of the grantor, does not by reason only of that fact, become the agent of a person by whom or in whose interests the receiver was appointed.

(4) A debt or liability incurred by a grantor through the acts of a receiver who is acting as the agent of the grantor in accordance with subsection (2), is not a cost, charge or expense of the liquidation.

464. (1) Subject to the provisions of subsections (2) and (3), a receiver is personally liable –

Liability of receiver.

- (a) on a contract entered into by the receiver in the exercise of any of the receiver’s powers ; and
- (b) for payment of wages or salary that during the receivership, accrue under a contract of employment relating to the property in receivership and entered into before his appointment, if notice of the termination of the contract is not lawfully given within ten working days after the date of appointment.

(2) The terms of a contract referred to in paragraph (a) of subsection (1) may exclude or limit the personal liability of a receiver, other than a receiver appointed by the court.

(3) The court may on the application of a receiver, extend the period within which notice of the termination of a contract is required to be given under paragraph (b) of subsection (1), and may extend that period on such terms and conditions as the court thinks fit.

(4) Every application under subsection (3) shall be made before the expiry of the period referred to.

(5) Subject to the provisions of subsection (7), a receiver is personally liable, to the extent specified in subsection (6), for rent and any other payments becoming due under an agreement subsisting at the date of his appointment, relating to the use, possession, or occupation by the grantor of property in receivership.

(6) The liability of a receiver under subsection (5), is limited to that portion of the rent or other payments which is attributable to the period commencing ten working days after the date of the appointment of the receiver, and ending on the date on which the receivership ends or the date on which the grantor ceases to use, possess, or occupy the property, whichever is the earlier.

(7) The court may on the application of a receiver —

- (a) limit the liability of the receiver to a greater extent than that specified in subsection (6) ; or
- (b) exempt the receiver from liability under subsection (5).

(8) Nothing contained in subsection (5) or subsection (6) shall —

- (a) be taken as giving rise to an adoption by a receiver of an agreement referred to in subsection (5) ; or

- (b) render a receiver liable to perform any other obligation under the agreement.

(9) A receiver is entitled to an indemnity out of the property in receivership, in respect of his personal liability under this section.

(10) Nothing contained in this section shall —

- (a) limit any other right of indemnity to which a receiver may be entitled ;
- (b) limit the liability of a receiver on a contract entered into without authority ; or
- (c) confer on a receiver a right to an indemnity in respect of liability on a contract entered into without authority.

465. (1) The court may relieve a person who has acted as a receiver from all or any personal liability incurred in the course of the receivership, if it is satisfied that :—

Relief from liability.

- (a) the liability was incurred solely by reason of a defect in the appointment of the receiver, or in the instrument or order of the court by or under which the receiver was appointed ; and
- (b) the receiver acted honestly and reasonably and ought in the circumstances to be exempted from liability.

(2) The court may exercise its powers under subsection (1) subject to such terms and conditions as it thinks fit.

(3) A person in whose interest a receiver was appointed is liable, subject to such terms and conditions as the court thinks fit, to the extent to which the receiver is relieved from liability under subsection (1).

COURT SUPERVISION OF RECEIVERS

Court
supervision of
receivers.

466. The court may on the application of a receiver —

- (a) give directions in relation to any matter arising in connection with the performance of the functions of the receiver ;
- (b) revoke or vary, any such directions.

(2) The court may, on the application of any of the persons referred to in subsection (3) —

- (a) in respect of any period, review or fix the remuneration of a receiver at a level which is reasonable in the circumstances ;
- (b) to the extent that an amount retained by a receiver as remuneration is found by the court to be unreasonable in the circumstances, order the receiver to refund the amount ;
- (c) declare whether or not a receiver was validly appointed in respect of any property or validly entered into possession or assumed control of any property.

(3) Any of the following person may make an application to the court under subsection (2) :—

- (a) the receiver ;
- (b) the grantor ;
- (c) a creditor of the grantor ;
- (d) a person claiming through the grantor an interest in the property in receivership ;
- (e) a liquidator.

(4) The powers conferred under subsections (1) and (2) shall be —

- (a) in addition to any other powers the court may exercise under this Act, any other enactment or in exercising its inherent jurisdiction ; and
- (b) exercised whether or not the receiver has ceased to act as receiver, when the application is made.

(5) The court may, on the application of a person referred to in subsection (3), revoke or vary an order made under subsection (2).

(6) Subject to the provisions of subsection (7), it would be a defence to a claim against a receiver in relation to any act or omission by the receiver, that such act or omission was done or omitted to be done in compliance with a direction given under subsection (1).

(7) The court may on the application of a person referred to in subsection (3), order that by reason of the circumstances in which a direction was obtained under subsection (1), a receiver is not entitled to the protection given by subsection (6).

467. (1) The court may subject to the provisions of subsection (2), on the application of the grantor or a liquidator of the grantor —

Court may terminate or limit receivership.

- (a) order that a receiver shall cease to act as such as from a specified date and prohibit the appointment of any other receiver in respect of the property in receivership ;
- (b) order that a receiver shall as from a specified date, act only in respect of specified assets forming part of the property in receivership.

(2) An order under subsection (1) may be made only where the court is satisfied that —

- (a) the purpose of the receivership has been satisfied so far as possible ; or
- (b) circumstances no longer justify its continuation.

(3) Unless the court orders otherwise, a copy of an application under this section shall be served on the receiver not less than five working days before the hearing of the application, and the receiver may appear and be heard at the hearing.

(4) An order under subsection (1) may be made on such terms and conditions as the court thinks fit.

(5) An order under this section shall not affect a security or charge over the property, in respect of which the order is made.

(6) The court may on the application of any person who applied for or is affected by the order, rescind or amend an order made under this section.

Orders to enforce
receiver's duties.

468. (1) An application for an order under this section may be made by —

- (a) the registrar ;
- (b) a receiver ;
- (c) a person seeking appointment as a receiver ;
- (d) the grantor ;
- (e) the grantee,
- (f) a person with an interest in the property in receivership ;

- (g) a creditor of the grantor ;
- (h) a guarantor of an obligation of the grantor ;
- (i) a liquidator of the grantor;
- (j) a receiver of the property of a grantor, in relation to a failure to comply by another receiver of the property of the grantor.

(2) No application may be made to the court under paragraph (j) of subsection (1) in relation to a failure to comply, unless notice of such failure to comply has been served on the receiver not less than five working days before the date of the application and , as at the date of the application, there is a continuing failure to comply.

(3) Where the court is satisfied that there is or has been a failure to comply, the court may —

- (a) relieve the receiver of the duty to comply, wholly or in part ; or
- (b) without prejudice to any other remedy that may be available in relation to a breach of duty by the receiver, order the receiver to comply to the extent specified in the order.

(4) The court may in respect of a person who fails to comply with an order made under paragraph (b) of subsection (3), or is or becomes disqualified under section 436 to become or remain a receiver —

- (a) remove the receiver from office ; or
- (b) order that the person may be appointed to act or may continue to act as a receiver, notwithstanding the provisions of section 436.

(5) If it is shown to the satisfaction of the court that a person is unfit to act as a receiver by reason of —

- (a) persistent failures to comply ; or
- (b) the seriousness of a failure to comply,

the court shall make in relation to that person, a prohibition order for a period not exceeding five years.

(6) A person to whom a prohibition order applies shall not—

- (a) act as a receiver in any receivership ;
- (b) act as a liquidator in any winding up ; or
- (c) act as an administrator under Part XIII.

(7) In making an order under this section, the court may, if it thinks fit —

- (a) make an order extending the time for compliance ;
- (b) impose any term or condition ;
- (c) make any other ancillary order.

(8) A copy of every order made under subsection (5) shall, within ten working days of the order being made, be delivered by the applicant to the Registrar who shall keep it on a public file indexed by reference to the name of the receiver concerned.

(9) Evidence that on two or more occasions within the preceding five years —

- (a) a court has made an order to comply under this section in respect of the same person ; or

- (b) an application for an order to comply under this section has been made in respect of the same person, and that in each case the person has complied after the making of the application and before the hearing,

is, in the absence of special reasons to the contrary, evidence of persistent failures to comply for the purposes of this section.

(10) For the purpose of this section, “failure to comply” in relation to a receiver means, a failure by a receiver to comply with a relevant duty, arising—

- (a) under the instrument or the order of the court by or under which the receiver was appointed ; or
- (b) under this or any other Act or rule of law or Rules of Court ; or
- (c) under any order or direction of the court, other than an order to comply made under that section,

and “comply”, “compliance”, and “failed to comply” shall have corresponding meanings.

469. The court may on making an order that removes or has the effect of removing a receiver from office, make such orders as it thinks fit —

Orders
protecting
property in
receivership.

- (a) for preserving the property in receivership ;
- (b) requiring the receiver for that purpose to make available to any person specified in the order, any information and documents in the possession or under the control of the receiver.

REFUSAL TO SUPPLY ESSENTIAL SERVICES

Refusal to
supply essential
services
prohibited.

470. (1) For the purposes of this section, an “essential service” means —

- (a) the retail supply of electricity ;
- (b) the supply of water ; and
- (c) telecommunications services.

(2) Notwithstanding the provisions of any other written law to the contrary or any contract, a supplier of an essential service shall not —

- (a) refuse to supply the service to a receiver or to the owner of property in receivership, by reason of the grantor’s default in paying charges due for the service in relation to a period before the date of the appointment of the receiver ; or
- (b) make it a condition of the further supply of the service to a receiver or to the owner of property in receivership, that payment be made of outstanding charges due for the service in relation to a period before the date of the appointment of the receiver.

(3) For the avoidance of doubt, nothing in this section shall prevent the supplier of an essential service from exercising any right or power under any contract or under any written law, in respect of a failure by a company to pay charges due for the service in relation to any period, after the commencement of the liquidation.

PART XVI

REGISTRAR-GENERAL OF COMPANIES AND REGISTRATION

APPOINTMENT OF OFFICERS

471. (1) There may be appointed—

Appointment of officers.

- (a) a person by name or by office, to be or to act as the Registrar-General of Companies ;
- (b) persons by name or by office, to be or to act as Deputy Registrar-Generals of Companies ;
- (c) persons by name or by office, to be or to act as Assistant Registrar-Generals of Companies ; and
- (d) such other officers and servants as may from time to time be required for the purposes of this Act.

(2) Any person appointed under subsection (1) as a Deputy Registrar-General of Companies or an Assistant Registrar-General of Companies may, subject to the general directions of the Registrar, exercise all the powers, perform all the duties and discharge all the functions of the Registrar under this Act.

472. (1) A person who is aggrieved by an act or decision of the Registrar may appeal to the court within fifteen working days after the date of receiving notice of the act or decision, or such further time as the court may allow.

Appeals from Registrar's decisions.

(2) The court may on an appeal made under this section, confirm, revise, modify or set aside the act or decision against which the appeal is made and make any order as the interest of justice may require.

REGISTERS AND REGISTRATION OF DOCUMENTS

Registers to be kept.

473. (1) The Registrar shall establish and maintain a Register containing a record—

- (a) of companies registered or deemed to be registered under this Act ; and
- (b) of overseas companies registered or deemed to be registered under this Act.

(2) The Register may be kept in such manner as the Registrar thinks fit, including either wholly or partly by means of a device or facility that—

- (a) records or stores information electronically or by other means ; and
- (b) permits that information to be readily inspected or reproduced in legible form.

(3) The Minister may make regulations—

- (a) identifying or categorizing documents which may be destroyed by the Registrar under subsection (4) ; and
- (b) providing for all such matters as may become necessary, to give effect to any device or facility kept by the Registrar under subsection (2) for recording information.

(4) The Registrar shall have the power to destroy all such documents prescribed under paragraph (a) of subsection (3).

(5) Where the Registrar reproduces electronically or by any other means any document prior to its destruction, such reproduced document shall for all purposes, be treated as it were the original document, notwithstanding anything in any law to the contrary.

(6) Without prejudice to the above provisions of this section, where any document filed with or in the custody of the Registrar is damaged or is in danger of becoming illegible, the Registrar may if he thinks fit, direct a copy to be made of it, verified and certified in such manner as he may determine, and that copy shall be substituted for, and shall for all purposes of this Act be deemed to be, the document which is damaged or in danger of becoming illegible.

474. The Registrar may direct a seal or seals to be prepared for the authentication of documents required for or connected with the authentication of documents required for or connected with the registration of companies.

Authentication
of documents by
seal.

475. (1) The Registrar may, subject to the provisions of subsections (2) and (3), accept and register or record or file—

Registration of
documents,
copies of
documents,
notices &c.

- (a) any document which is by any provision of this Act required or authorised to be registered or recorded by, or filed with, the Registrar ; and
- (b) any document or copy of a document, and any return or notice, which is by any provision of this Act required or authorised to be sent, forwarded, given, delivered, produced or in any way notified to the Registrar.

(2) Where a document which is received by the Registrar for registration under this Act—

- (a) required to be submitted in the prescribed form is not in such prescribed form ;
- (b) does not comply with the provisions of this Act, or any regulations made thereunder ;
- (c) is not printed or typewritten ;
- (d) has not been properly completed ; or

- (e) contains material that is not clearly legible,

the Registrar may refuse to register such document, and in that event shall request either—

- (f) that the document be appropriately amended or completed and submitted for registration again ; or
- (g) that a fresh document be submitted in its place.

Translations of documents filed.

476. (1) Where any document required to be delivered to the Registrar under this Act is in a language other than an official language or English, the Registrar may request in writing the delivery of a printed translation in such language as may be decided by the Registrar, certified in the prescribed manner to be a correct translation.

(2) Where a request under subsection (1) has not been complied with, the Registrar shall take no further action on such document.

Fees.

477. (1) Regulations may be made under this Act for prescribing the fees payable to the Registrar for—

- (a) the registration of a limited company ;
- (b) the registration of an unlimited company ;
- (c) the registration of a company limited by guarantee ;
- (d) the registration of any document required or authorised to be registered or required to be delivered, sent, given or forwarded to or filed with, the Registrar, other than the notices and reports required to be delivered to the Registrar by a receiver or manager, an administrator or a liquidator ;
- (e) the recording of any fact required or authorised by this Act to be recorded by the Registrar ;

- (f) the registration of off-shore companies under Part XI ; and
- (g) the registration of overseas companies under Part XVIII.

(2) Where no special provision is made for the payment of a fee in respect of the registration, recording or filing of any document, the fee to be paid to the Registrar in respect of that registration, recording or filing shall be the same as the fee for making a record of any fact.

(3) The Registrar may refuse to exercise a power or perform a function, until the prescribed fee in respect of such function is paid.

478. Where any expenses or fees payable to the Registrar under this Act are not paid by the person liable to pay them upon demand, the default may be reported to a Magistrate, and the amount of those expenses or fees shall be recovered in the same manner as if it were a fine imposed by the Magistrate, who shall direct that the amount in default be credited to the Fund.

Recovery of expenses and fees.

FUND

479. (1) For the purposes of this Act, there shall be established a Fund which shall be maintained in such manner as the Secretary to the Ministry of the Minister, in consultation with the Registrar may direct.

Fund.

(2) There shall be paid into the Fund two-thirds of every fee or charge prescribed, levied or recovered under this Act by the Registrar.

(3) One-third of every fee or charge prescribed, levied or recovered under this Act by the Registrar, shall be paid into the Consolidated Fund.

(4) There shall be paid out of the Fund, all sums of money required to defray any expenditure incurred by the Registrar-General in the exercise, discharge and performance of his powers, functions and duties under this Act, and all sums of money as are required to be paid out of the Fund by or under this Act or any regulation made thereunder.

(5) The Secretary to the Ministry of the Minister shall as soon as possible after the end of each financial year, prepare a report on the administration of the Fund and shall cause to be maintained a full and appropriate account of the Fund in respect of each financial year.

(6) The Auditor-General shall audit the accounts of the Fund in accordance with Article 154 of the Constitution.

INSPECTION AND PRODUCTION OF DOCUMENTS, ENFORCEMENT OF DUTY
OF COMPANIES TO MAKE RETURNS AND THE PRODUCTION AND
INSPECTION OF BOOKS

Inspection,
production
and evidence
of
documents
kept by
Registrar.

480. (1) Any person may, on the payment of the prescribed fee, inspect—

- (a) any document which forms part of the register ; or
- (b) particulars of any registered document that have been entered on any device or facility of the kind referred to in subsection (2) of section 473.

(2) Any person may on the payment of the prescribed fee, require the Registrar to provide and certify—

- (a) a certificate of incorporation of a company;
- (b) a copy of or extract from any other document which forms part of the Register;
- (c) particulars of any registered document that have been entered on any device or facility of the kind referred to in subsection (2) of section 473; or

- (d) a copy of or extract from any registered document, particulars of which have been entered on any device or facility of the kind referred to in subsection (2) of section 473.

(3) Nothing contained in the provisions of subsection (1) or (2) shall apply to—

- (a) any report of an inspector appointed under sections 172, 173 or 180, unless the Registrar directs otherwise ;
- (b) any financial statements delivered to the Registrar by a private company under subsection (2) of section 170 or under the Companies Act, No. 17 of 1982, unless the person applying to inspect the document or requiring a copy or extract of it, is a shareholder or creditor of that company ;
- (c) a report filed by a receiver or administrator of a company, unless the person applying to inspect the document or requiring a copy or extract of it, is a shareholder or creditor of that company.

(4) 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 shall state that it is issued with the leave of the court.

(5) A copy of or extract from any document kept and registered at any of the offices for the registration of companies in Sri Lanka, certified to be a true copy or extract by the Registrar, shall in all legal proceedings be admissible in evidence as of equal validity with the original document.

(6) Any person untruthfully stating himself to be a shareholder or creditor of a company for the purposes of subsection (3), shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees.

Enforcement of duty of company to make returns to Registrar.

481. (1) Where a company has failed to comply with any provision of this Act which requires it to file with, deliver or send to the Registrar any document or to give notice to him of any matter, and fails to make good the default within ten working days from the date of service of a notice on the company requiring it to do so, the court may on an application made to the court by the Registrar or any creditor of the company, 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.

(2) Any order made under subsection (1) 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.

(3) Nothing in this section shall, rejudice the operation of any enactment imposing penalties on a company or its officers, in respect of any default to which subsection (1) applies.

Unlawful disclosure of information relating to companies.

482. Any person who, being or having been employed in the Department of the Registrar-General, communicates any information relating to any documents filed by a company under the provisions of this Act with the Registrar, or matters connected therewith, obtained by him during the course of his employment in or at the Department of the Registrar-General, to any person not entitled or authorised to receive such information, or who makes any other unlawful use of such information, shall be guilty of an offence and be liable on conviction to a fine not exceeding five hundred thousand rupees or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Production and inspection of books where an offence is suspected.

483. (1) Where on an application made to a Magistrate in chambers by the Attorney-General, the Registrar or any officer of police not below the rank of Assistant Superintendent, there is shown to be reasonable cause to believe that any person has while an officer of a company,

committed an offence in connection with the management of the company's affairs, and evidence of the commission of the offence is to be found in any books or papers of or under the control of the company, an order may be made—

- (a) authorising any person named in it to inspect those books or papers or any of them, for the purpose of investigating and obtaining evidence of the offence ;
or
- (b) requiring the secretary of the company or such other officer of the company as may be named in the order, to produce those books or papers or any of them to a person named in the order at a place so named.

(2) The provisions of subsection (1) shall apply in relation to any books or papers of a person carrying on the business of banking so far as they relate to the company's affairs, as it applies to any books or papers of or under the control of the company, except that no order of the kind referred to in paragraph (b) of that subsection, shall be made by virtue of the provisions of this subsection.

(3) No appeal shall lie from a decision of a Magistrate on an application made under this section.

484. (1) The Registrar may by written notice, direct any company to furnish or produce before a date specified in the notice —

Registrar's
power to call for
information and
to inspect books,
registers and
documents.

- (a) such information relating to the company as the Registrar may require for the purposes of this Act; or
- (b) such information or explanations as the Registrar may require in respect of any particulars stated in any return, declaration or other document furnished by the company—
 - (i) which have or should have been stated in any return, declaration or other document furnished by the company; or

- (ii) which should have been stated in any return or other document which should have, but actually has not, been furnished by the company,

as at the date or dates specified in the notice; and

- (c) to produce before a date specified in the notice, any book, register or other document kept or required to be kept by the company, in connection with its business or transactions.

(2) Where a company fails to comply with any direction given by the Registrar under subsection (1)—

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding one hundred thousand rupees;
- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

PART XVII

APPLICATION OF ACT TO EXISTING COMPANIES

Application of Act to existing companies.

485. (1) In the application of the provisions of this Act to existing companies, it shall apply—

- (a) in the case of a limited company other than a company limited by guarantee, as if the company has been formed and registered under the provisions of this Act as a limited company;
- (b) in the case of a company limited by guarantee, as if the company had been formed and registered under the provisions of this Act as a company limited by guarantee;

- (c) in the case of a company other than a limited company, as if the company had been formed and registered under the provisions of this Act as an unlimited company; and
 - (d) in the case of a company which is a people's company, as if had been formed and registered under the provisions of this Act as a limited company.
- (2) An existing company which is a private company, shall continue under this Act as a private company to which Part II of this Act applies.
- (3) An existing company which is an off-shore company, shall continue under this Act as an off-shore company to which Part XI of this Act applies.
- (4) Any reference express or implied, to the date of registration of an existing company, shall be construed as a reference to the date on which the company was first incorporated under any written law.
- (5) An existing company—
- (a) which is a private limited company formed and registered under the Joint Stock Companies Ordinance 1861, the Joint Stock Banking Ordinance 1897, and the Companies Ordinance (Cap. 145) shall be deemed to have changed its name to include the suffix “(Pvt) Limited” or the abbreviation “(Pvt) Ltd.”; and
 - (b) which is a public listed company, shall be deemed to have changed its name to include the suffix “Public Limited Company” or the abbreviation “PLC”.
- (6) (a) The Registrar shall enter the new name on the register in place of the former name, consequent to the deemed change of name under the provisions of subsection (5), and issue a fresh certificate of incorporation including the said suffix or the said abbreviation, as the case may be, in such certificate of incorporation.

(b) Such fresh certificate shall be issued after the Registrar has assigned a new number in terms of the provisions of section 487.

Provisions
relating to
articles of
existing
companies.

486. (1) The model articles shall not apply to an existing company unless it resolves that they shall apply, under subsection (1) of paragraph (b) of section 15.

(2) The memorandum of association of an existing company shall be deemed to form part of the articles of the company.

(3) The articles of an existing company shall continue to be the articles of such company for the purposes of this Act, and where such articles has adopted all or any of the rules set out in Table A of the First Schedule to the Companies Act, No. 17 of 1982, those rules shall be deemed to be incorporated in such articles of the company, as if set out in full in those articles.

Provisions
relating to
company
numbers of
existing
companies
&c.

487. (1) Subject to the provisions of subsection (2), the number which an existing company has been assigned by the Registrar for administrative purposes, shall be the company number of that company.

(2) Within a period of twelve months from the coming into operation of this Act, all existing companies shall apply to the Registrar to assign a new number as its company number, in a form as may be prescribed by the Registrar. The new number so assigned shall be entered in the register and also on the fresh certificate of incorporation to be issued under the provisions of subsection (6) of section 485.

(3) Where an existing company fails to comply with the requirements imposed under subsection (2) of this section within the time specified therein, the Registrar shall cause to be published the name of such company in a daily newspaper in the Sinhala, Tamil and English Language, and where such company continues to fail to comply with those requirements

thereafter, the Registrar shall, within six months of the publication of its name in the newspapers, strike off the name of such company from the register maintained by him under the provisions of section 473.

(4) During the period of six months referred to in subsection (3), in addition to a director of the company, a shareholder of such company or a person who has registered a charge under section 102 or a person who has a money claim pending before a court or in arbitration proceedings, shall also be entitled to apply to the Registrar to have a new number assigned to such company under subsection (2).

(5) Where a company's name is struck off from the register under subsection (3), all property and rights whatsoever vested in or held on trust for the company immediately before the date on which the name is struck off, (including leasehold property but not including property held by the company on trust for any other person), shall vest in and be at the disposal of the State.

PART XVIII

OVERSEAS COMPANIES

488. For the purposes of this Part of this Act, the expressions — Interpretation.

“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;

“overseas company” means any company or body corporate incorporated outside Sri Lanka, which —

- (a) after the appointed date, established a place of business within Sri Lanka; or

- (b) has, before the appointed date, established a place of business within Sri Lanka and continues to have an established place of business within Sri Lanka on the appointed date;

“place of business” includes a share transfer or share registration office;

“registered overseas company” means an overseas company which has delivered or is deemed to have delivered to the Registrar, the documents and particulars required under section 489; and

“secretary” includes any person occupying the position of secretary, by whatever name called.

Documents and particulars to be delivered to Registrar by overseas companies.

489. (1) Every company incorporated outside Sri Lanka which after the appointed date, establishes a place of business within Sri Lanka, shall within one month from the date of establishment of its place of business, deliver to the Registrar for purpose of 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 where that instrument is not in an official language of Sri Lanka or in English, a translation of that instrument in such language as may be specified by the Registrar;
- (b) a list of the directors of the company, containing such particulars with respect to the directors as are by this Act required to be contained with respect to directors, in the register of the directors of a company;
- (c) the names and addresses of one or more persons resident in Sri Lanka authorized to accept on behalf of the company, service of documents and of any notices required to be served on the company;

- (d) a statement containing the full address of—
 - (i) the registered or principal office of the company; and
 - (ii) the principal place of business of the company within Sri Lanka ;
- (e) a certified copy, certified of recent date, of any document effecting or evidencing the incorporation of the company.

(2) The Registrar may upon sufficient cause being shown by the defaulting company, extend the period of one month specified in subsection (1).

(3) Every company incorporated outside Sri Lanka which, on or before the appointed date, establishes or has established a place of business within Sri Lanka shall, subject to subsection (4), within a period of one month from that date, deliver to the Registrar for registration, the documents and particulars specified in subsection (1).

(4) Where an overseas company has established a place of business within Sri Lanka before the appointed date, and has complied with the requirements of Part XIII of the Companies Act, No. 17 of 1982 in relation to the delivery to the Registrar, of documents and particulars —

- (a) such company shall be deemed to have complied with subsection (3); and
- (b) the Registrar shall enter on the register of overseas companies, the documents and particulars delivered under Part XIII of the Companies Act, No. 17 of 1982, and issue a certificate of registration to such overseas company.

(5) The Registrar may upon receipt of the documents referred to in subsections (1) or (3), as the case may be, register the company as a registered overseas company and enter its

name in the register of overseas companies. A certificate of registration shall be issued to every registered overseas company, upon its registration.

(6) The Registrar may extend the period of one month referred to in subsection (3), if it appears to him expedient to do so having regard to the circumstances of any particular case.

(7) A company incorporated outside Sri Lanka shall not establish a place of business within Sri Lanka or be registered as an overseas company, where the business being carried on by that company does not conform to the stipulations made by or under the Exchange Control Act.

Power of overseas companies to hold lands.

490. A registered overseas company shall have the same power to hold lands in Sri Lanka, as if it were a company incorporated under this Act.

Return to be delivered to Registrar where documents &c. altered.

491. Where in the case of a registered overseas company, any alteration is made in—

- (a) the charter, statutes, or memorandum and articles of the company or any other instrument constituting or defining the constitution of the company;
- (b) the directors of the company or the particulars contained in the list of the directors;
- (c) the names and addresses of the persons authorised to accept service on behalf of the company; or
- (d) the address of —
 - (i) the registered or principal office of the company; or
 - (ii) the principal place of business of the company within Sri Lanka,

the company shall, within the prescribed time, deliver to the Registrar for registration, a return containing the prescribed particulars of the alteration.

492. (1) Every registered overseas company shall in every calendar year prepare financial statements, and where the company is a holding company, group financial statements, in such form and containing such particulars and including such documents, as under the provisions of this Act (subject however to any prescribed exceptions) it would, if it had been a company of the same description within the meaning of this Act, have been required to prepare and deliver certified copies of those documents to the Registrar for registration.

Financial
statements of
overseas
company.

(2) Where any document referred to in subsection (1) is not in an official language of Sri Lanka or in English, there shall be annexed to it a translation in a language specified by the Registrar and certified in the prescribed manner.

493. (1) Where it appears to the Registrar that the corporate name of a registered overseas company is a name by which the company, had it been formed under this Act, would on the relevant date have been precluded from being registered under section 7 of this Act, or in respect of which a direction could have been given under subsection (1) of section 10, the Registrar may serve a notice on that registered overseas company stating why the name could not have been registered, or the grounds on which such a direction could have been given, as the case may be.

Name of
overseas
company.

(2) No notice under subsection (1) may be served on a company later than twelve months after the relevant date.

(3) The “relevant date” for the purposes of subsections (2) and (3) is—

- (a) the date on which the overseas company has complied with the provisions of section 489; or

- (b) if there has been a change in the corporate name of the overseas company, the date on which notice of that change was given under section 491.

(4) A registered overseas company on which a notice has been served under subsection (1) —

- (a) may deliver to the Registrar a notice in the prescribed form, specifying a name approved by the Registrar, other than its corporate name under which it proposes to carry on business in Sri Lanka; and
- (b) may after that name has been registered, at any time deliver to the Registrar, a notice in the prescribed form specifying a name approved by the Registrar, other than its corporate name, in substitution for the name previously registered.

(5) The name by which an overseas company is for the time being registered under subsection (4), shall for all purposes of the law of Sri Lanka, be deemed to be the name of the company. The provisions of this subsection—

- (a) shall not affect references to the corporate name of the company in this section;
- (b) shall not affect any rights or obligations of the company or render defective any legal proceedings by or against the company. Any legal proceedings that might have been commenced or continued against the company by its corporate name, may be commenced or continued against it by the name by which it is for the time being registered.

(6) The Registrar may withdraw a notice given under subsection (1), if he is satisfied that it ought not to have been given, or that the circumstances in which it was given have changed, and at the time of withdrawal there would not be any grounds on which such a notice could be given. The provisions of subsection (7) shall not apply in respect of a notice that has been withdrawn under this subsection.

(7) A registered overseas company on which a notice has been served under subsection (1), shall not at any time after the expiration of two months from the service of that notice, (or such longer period as may be specified in the notice) carry on business in Sri Lanka under its corporate name.

(8) Where a registered overseas company fails to comply with the requirements of subsection (7)—

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees;
- (b) every officer of the company who is in default shall be guilty of an offence, and be liable on conviction to a fine not exceeding one hundred thousand rupees.

494. Every registered overseas company shall—

Obligation to state name and particulars of company.

- (a) in every prospectus inviting subscriptions for its shares or debentures in Sri Lanka, state the country in which the company is incorporated;
- (b) ensure that at every place where it carries on business in Sri Lanka, the name of the company and the country in which the company is incorporated are clearly displayed;
- (c) ensure that its name and the name of the country in which it is incorporated, are clearly stated in—
 - (i) all business letters of the company;
 - (ii) all notices and other official publications of the company;
 - (iii) all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods signed on behalf of the company;
 - (iv) all invoices, receipts and letters of credit of the company; and

- (v) all other documents issued or signed by the company which evidence or create a legal obligation of the company; and
- (d) where the liability of the members of the company is limited, cause notice of that fact to be clearly stated in every such prospectus and in all letters and other documents referred to in paragraph (c), and to be clearly displayed at every place where it carries on its business.

Service on
overseas
company.

495. (1) Any document or notice required to be served on a registered overseas company, shall be sufficiently served if addressed to any person whose name has been delivered to the Registrar under this Part of this Act, and left at or sent by post to the address which has been so delivered.

(2) Where—

- (a) any registered overseas company has failed to deliver to the Registrar the name and address of a person resident in Sri Lanka, who is authorised to accept on behalf of the company service of documents or notices; or
- (b) at any time, all the persons whose names and addresses have been so delivered are dead or have ceased to reside in Sri Lanka 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 Sri Lanka.

Registrar to be
notified when
company ceases
to have place of
business in Sri
Lanka.

496. Where any registered overseas company ceases to have a place of business in Sri Lanka, it shall forthwith give notice of the fact to the Registrar. As from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease.

497. (1) An application may be made to the court for the winding up of the assets in Sri Lanka of an overseas company in accordance with Part XII, subject to the modifications and exclusions set out in the Thirteenth Schedule.

Liquidation of assets in Sri Lanka of overseas company.

(2) An application may be made under subsection (1), whether or not the overseas company—

- (a) is a registered overseas company;
- (b) has given notice under section 496 that it has ceased to have a place of business in Sri Lanka ; or
- (c) has been dissolved or otherwise ceased to exist as a company, under or by virtue of the laws of any other country.

498. Where any company to which this Part of this Act applies, fails to comply with any of the provisions of this Part other than section 493, the company, and every officer or agent of the company who knowingly and willfully authorises or permits the default, shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

Penalties for non-compliance.

499. (1) Where any overseas company has failed to comply with any provision of this Part of this Act, and fails to make good the default within ten working days from the date of service of a notice on the company requiring it to do so, the court may on an application made to the court by the Registrar or by any creditor of the company or by any other person who appears to the court to be interested, 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.

Enforcement of duty to comply with provisions of this Part.

(2) Any order made under subsection (1) 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.

(3) Nothing in this section shall prejudice the operation of any enactment imposing penalties on a company or its officers, in respect of any default referred to in subsection (1).

RESTRICTIONS ON SALE OF SHARES AND OFFER OF SHARE
FOR SALE

Dating of prospectus and particulars to be contained therein.

500. (1) It shall not be lawful for any person to issue, circulate, or distribute in Sri Lanka any prospectus offering for subscription any shares in or debentures of a company, incorporated or to be incorporated outside Sri Lanka, whether the company has or has not established or when formed will or will not establish a place of business in Sri Lanka, unless the prospectus is dated and—

- (a) contains particulars with respect to the following matters :—
 - (i) the instrument constituting or defining the constitution of the company ;
 - (ii) the enactments or provisions having the force of an enactment, by or under which the incorporation of the company was effected ;
 - (iii) an address in Sri Lanka where the said instrument, enactments, or provisions or copies thereof and if the same are in a language other than the official language of Sri Lanka or in English, a translation thereof in a language specified by the Registrar and certified in the prescribed manner, can be inspected ;
 - (iv) the date on which and the country in which the company was incorporated ;
 - (v) whether the company has established a place of business in Sri Lanka and, if so, the address of its principal office in Sri Lanka ;

- (b) states the matters specified in Part I of the Fourth Schedule hereto, and subject to the provisions contained in Part III, sets out the reports specified in Part II, of that Schedule :

Provided that the provisions of subparagraphs (i), (ii) and (iii) of paragraph (a) shall not apply in the case of a prospectus issued more than two years from the date on which the company is entitled to commence business, and in the application of Part I of the Fourth Schedule hereto for the purposes of this subsection, paragraph 3 of Part I of such Schedule shall have effect with the substitution for the reference to the articles, of a reference to the constitution, of the company.

(2) Any condition requiring or binding an applicant for shares or debentures, to waive compliance with any requirements imposed by virtue of paragraph (a) or paragraph (b) of subsection (1), 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 for any person to issue to any person in Sri Lanka a form of application for shares in or debentures of such a company or intended company as is referred to in subsection (1), unless the form is issued with a prospectus which complies with this Part and the issue thereof in Sri Lanka, does not contravene the provisions of subsection (1) of section 501 :

Provided that the provisions of this subsection shall not apply, where it is shown that the form of application was issued in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

(4) In the event of non-compliance with or contravention of any of the requirements imposed by paragraphs (a) and (b) of subsection (1), a director or other person responsible for

the issue of the prospectus shall not incur any liability by reason of such non-compliance or contravention, where—

- (a) as regards any matter not disclosed, he proves he was not cognizant thereof ;
- (b) he proves that such non-compliance or contravention arose from a *bona fide* mistake of fact on his part ; or
- (c) such 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 17 of the Fourth Schedule hereto, 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) The provisions of this section—

- (a) 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 has or does not have a right to renounce in favour of other persons ; and
- (b) except in so far as it requires a prospectus to be dated, shall not apply to the issue of a prospectus relating to shares or debentures which are or are to be in all respects, uniform with the shares or debentures previously issued,

but, subject as aforesaid, the provisions of 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.

(6) Nothing in this section shall limit or diminish any liability which any person may incur under the provisions of this Act, other than this section.

501. (1) It shall not be lawful for any person to issue, circulate or distribute in Sri Lanka, any prospectus offering for subscription shares in or debentures of a company incorporated outside Sri Lanka, whether the company has or has not established or when formed, will or will not be established, a place of business in Sri Lanka—

Provisions as to expert's consent and allotment.

- (a) if, where the prospectus includes a statement purporting to be made by an expert, he has not given or has before delivery of the prospectus for registration withdrawn his written consent to the issue of the prospectus, with the statement included in the form and context in which it is included, or there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as aforesaid ; or
- (b) if the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by all the provisions other than penal provisions of section 47, so far as applicable thereto.

(2) In this section the expression “expert” includes an engineer, a valuer, an accountant and any other person whose profession gives authority to a statement made by him, and for the purposes of this section, a statement shall be deemed to be included in a prospectus, if it is contained in or in any report or memorandum appearing on the face of or by reference incorporated in or issued with, such prospectus.

Registration of prospectus.

502. It shall not be lawful for any person to issue, circulate or distribute in Sri Lanka, any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Sri Lanka, whether the company has or has not established or when formed will not establish a place of business in Sri Lanka, unless before the issue, circulation or distribution of the prospectus in Sri Lanka, a copy thereof certified by the Chairman of the company as having been approved by resolution of the managing body, has been so delivered and there is endorsed on or attached to the copy—

- (a) any consent to the issue of the prospectus required by the provisions of section 501 ; and
- (b) where the person making any report in accordance with Part II of the Fourth Schedule hereto, have made therein or have without giving reasons indicated therein, any such adjustments as are mentioned in paragraph 30 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

Penalty for contravention of section 500, section 501 or section 502.

503. Any person who is knowingly responsible for the issue, circulation or distribution of prospectus or for the issue of a form of application for shares or debentures in contravention of any of the provisions of section 500, section 501, or section 502, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty thousand rupees.

Civil liability for misstatements in prospectus.

504. The provisions of section 41 shall extend to every prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Sri Lanka, whether the company has or has not established or when formed will or will not establish a place of business in Sri Lanka, with the substitution for any reference to section 38, of the reference to section 501.

505. (1) Where any document by which shares in or debentures of a company incorporated outside Sri Lanka are offered for sale to the public would, where the company concerned had been a company within the meaning of this Act, have been deemed by virtue of the provisions of section 43 to be a prospectus issued by the company, that document shall be deemed to be for the purposes of this Part of this Act, a prospectus issued by the company.

Interpretation of provisions as to prospectuses.

(2) An offer of shares or debentures for subscription or sale to any person, whose ordinary business it is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed to be an offer to the public for the purposes of this Part.

(3) In this Part, the expressions “prospectus”, “shares” and “debentures” shall have the same meanings as and when used in relation to a company incorporated under this Act.

PART XIX

ADVISORY COMMISSION

506. (1) For the purposes of advising the Minister on any matters in relation to the law relating to companies, the Minister may—

Appointment &c. of Advisory Commission.

- (a) constitute a Commission (hereinafter referred to as the “Advisory Commission”) consisting of not less than five and not more than ten persons with suitable qualifications ; and
- (b) appoint one of such persons to be Chairman of the said Advisory Commission.

(2) It shall be the duty of the Advisory Commission—

- (a) to inquire into and report to the Minister on any matter or question relating to companies and the

law applicable to companies, which may be referred to it from time to time by the Minister ;

- (b) to review the law relating to companies from time to time and to make proposals to the Minister for the alteration, modification or addition to such law ;
- (c) in making the recommendations referred to in paragraph (a) or (b), to consult and take into consideration where the Advisory Commission deems necessary, the views of trade chambers, professional organisations, monetary institutions, governmental authorities and the general public.

(3) The Registrar shall be an *ex-officio* member of the Advisory Commission, and shall also function as its Convener and Secretary.

(4) Subject to the provisions of subsections (6), (7) and (8), the term of office of the members of the Advisory Commission shall be three years :

Provided that a member appointed in place of a member who resigns or is removed or otherwise vacates office, shall hold office for the unexpired part of the term of office of the member whom he succeeds.

(5) Any member of the Advisory Commission who vacates office by effluxion of time, shall be eligible for re-appointment.

(6) A member of the Advisory Commission may resign from office by letter to that effect addressed to the Minister.

(7) All members of the Advisory Commission shall hold office during good behaviour, and may be removed from office by the Minister.

(8) Where a member is temporarily unable to discharge the duties of his or her office on account of ill-health, absence from Sri Lanka or any other cause, the Minister may appoint some other person to act as a member in his or her place.

(9) The Advisory Commission may, with the approval of the Minister, appoint such officers and servants as it thinks fit to assist the Advisory Commission in carrying out its duties under this Part of this Act.

(10) The members of the Advisory Commission, its Secretary and other officers and servants may be paid such remuneration out of the Fund, as may be determined by the Minister.

PART XX

COMPANIES DISPUTES BOARD

507. (1) The Minister may constitute a board (in this Act referred to as the “Companies Disputes Board”) for the purposes of carrying out the functions conferred on such Board by the provisions of this Part of this Act.

Companies
Disputes Board.

(2) The Companies Disputes Board shall consist of not less than three and not more than five persons appointed by the Minister, with substantial experience in relation to the law relating to companies or the administration of companies.

(3) The Minister may appoint one of the members of the Companies Disputes Board to be the President of the Board.

(4) Subject to the provisions of subsections (6), (7) and (8), the term of office of the members of the Companies Disputes Board shall be five years :

Provided that a member appointed in place of a member who resigns or is removed or otherwise vacates office, shall hold office for the unexpired part of the term of office of the member whom he succeeds.

(5) Any member of the Companies Disputes Board who vacates office by effluxion of time, shall be eligible for re-appointment.

(6) A member of the Companies Disputes Board may resign from office by letter to that effect addressed to the Minister.

(7) A member of the Companies Disputes Board shall hold office during good behaviour, and may be removed from office by the Minister.

(8) Where a member is temporarily unable to discharge the duties of his office on account of ill-health, absence from Sri Lanka or any other cause, the Minister may appoint some other person to act as a member in his place.

(9) The Companies Disputes Board may, with the approval of the Minister, appoint such officers and servants as it thinks fit to assist the Companies Disputes Board in carrying out its duties under this Part of this Act.

(10) The members of the Companies Disputes Board and its officers and servants may be paid such remuneration out of the Fund, as may be determined by the Minister.

Board members
may mediate
disputes.

508. (1) The parties to a dispute—

- (a) arising in giving effect to the provisions of this Act ;
or
- (b) which relates to the affairs or management of any company,

may, with the approval of the President of the Companies Disputes Board, refer the dispute for mediation before a member of the Board.

(2) A court may if it thinks fit, refer any proceeding pending before such court to mediation before a member of the Companies Disputes Board, with the consent of all parties to that proceeding. The proceedings shall be stayed until either a settlement is reached or a notice is given to the court by such Board, that the mediation has not resulted in a settlement.

(3) Where the parties to a dispute or proceeding referred to mediation under this section agree to settle that dispute or proceeding—

- (a) the settlement agreement shall be recorded in writing and signed by the parties and by the member of the Board who acted as mediator ; and
- (b) a certified copy of the settlement agreement shall be filed in the court, and shall have effect as if it were a judgment of the court.

(4) Regulations may be made prescribing the procedure for the conduct of proceedings in any dispute referred to mediation under this section.

(5) Where the parties to a dispute or proceeding referred to mediation under this section do not agree to settle that dispute or proceeding within three months of the reference to mediation, or within any extended period agreed to by all those parties, the member of the Board shall forthwith give notice—

- (a) to the parties ; and
- (b) if the matter was referred to mediation by the court, to the court,

that the mediation has not resulted in a settlement.

Privilege in respect of mediations proceeding.

509. All statements made in the course of or in relation to a mediation before a member of the Companies Disputes Board—

- (a) shall be deemed to be made for the purposes of arriving at a settlement of the dispute or proceeding referred to mediation ;
- (b) shall not be disclosed to any person other than the parties to the mediation and their legal advisers, without the consent of all parties to the mediation ;
- (c) shall not be admissible in evidence in any civil or criminal proceedings without the consent of all parties to the mediation.

Fees payable in respect of mediation.

510. (1) Where a matter is referred to mediation under section 508, the parties shall pay to the Companies Disputes Board such amount in respect of the costs incurred and such fee as may be agreed to by the President of the Board and the parties to the mediation. The parties shall, subject to any agreement to the contrary, bear the costs and the fee payable equally.

(2) Subject to subsection (3), all amounts payable under this section shall be credited to the Fund established under this Act.

(3) The President may direct that any fee payable under this section in respect of a mediation, shall be paid by the Board in whole or in part, to the member of the Board who acted as mediator.

PART XXI

OFFENCES

MISCELLANEOUS OFFENCES

511. Where in any return, report, certificate, balance sheet or other document, required by or for the purposes of this Act, any person wilfully makes a statement which is false in any material particular knowing it to be false, shall be guilty of an offence and be liable on conviction to a fine not exceeding one million rupees or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

Penalty for false statement.

512. (1) Any person who, with intent to defraud or deceive a person—

Penalty for falsification of records.

- (a) destroys, parts with, mutilates, alters or falsifies, or is a party to the destruction, mutilation, alteration or falsification of any register, accounting records, book, paper or other document belonging or relating to a company ; or
- (b) makes or is a party to the making of a false entry in any register, accounting records, book, paper or other document belonging or relating to a company,

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

513. Where any person or persons or trade 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 guilty of an offence and shall be liable on conviction to a fine not exceeding fifty thousand rupees.

Penalty for improper use of word “Limited”.

GENERAL PROVISIONS AS TO OFFENCES

Compounding
of certain
offences.

514. (1) Where any company has made default in complying with any provision of this Act requiring it to file with or deliver or send to the Registrar any account, document or return or to give notice to him of any matter, and has by reason of such default committed an offence under this Act, the Registrar may, if he thinks fit, instead of instituting proceedings in court or where such proceedings have already been instituted, instead of continuing such proceedings against the company or any officer of the company in respect of such offence, accept from the company or the officer, such sum of money as the Registrar may think proper in composition of the offence. Any sum so accepted shall be credited to the Fund established under this Act.

(2) Where the Registrar has accepted any sum of money under subsection (1) in composition of any offence, proceedings shall not be taken against the company or any officer of the company in respect of that offence or if already taken, shall not be continued.

(3) Where any sum of money payable in composition of an offence under the provisions of subsection (1) remains unpaid for a period of one month from the date fixed for its payment by the Registrar, or such extended time as the Registrar may allow, the Registrar may report the default in payment to a Magistrate. The amount unpaid shall be recovered from the company or any officer of the company in respect of the default, in the same manner as if it were a fine imposed by the court, and the court shall direct that the amount in default be credited to the Fund.

Offences
summarily
triable.

515. Notwithstanding anything contained in any other law to the contrary, all offences under this Act may be tried summarily by a Magistrate.

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

Imposition and application of fines.

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

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

Savings as to private prosecutors.

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

Savings for privileged communications.

PART XXII

MISCELLANEOUS

PROHIBITION OF PARTNERSHIP WITH MORE THAN TWENTY MEMBERS

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

Prohibition of partnership with more than twenty members.

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

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

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

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

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

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

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

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

APPLICATION AND REFERENCE TO COURT

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

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

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

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

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

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

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

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

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

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

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

Savings for attorney-at-law and bankers.

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

523. A document may be served on a company—

Service of documents on company.

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

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

Documents to be received in evidence.

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

Costs in action by certain limited companies.

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

Power of court to grant relief in certain cases.

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

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

Regulations.

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

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

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

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

Sinhala text to prevail in case of inconsistency.

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

Interpretation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“director” includes—

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

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

“distribution” means—

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

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

“dividend” shall have the same meaning as given in section 60 ;

“document” means a document in any form, including—

- (a) any writing on material ;
- (b) information recorded or stored by means of a tape recorder, computer, or other device and material subsequently derived from information so recorded or stored ;
- (c) a book, graph, or drawing ; and
- (d) a photograph, film negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced ;

“employees’ share scheme”, in relation to a company, means a scheme for encouraging or facilitating the holding of shares in the company by or for the benefit of—

- (a) the *bona fide* employees or former employees of the company or any related company ; or
- (b) the wives, husbands, widows, widowers or children or step-children of such employees or former employees ;

“existing company” means, a company formed and registered under the Joint Stock Companies Ordinance, 1861, or the Joint Stock Banking Ordinance, 1897, the Companies Ordinance (Cap. 145), or the Companies Act, No. 17 of 1982 ;

“financial statements” means—

- (a) a balance sheet for the company as at the balance sheet date ; and
- (b) in the case of—
 - (i) a company trading for profit, a profit and loss statement for the company in relation to the accounting period ending at the balance sheet date ; and
 - (ii) a company not trading for profit, an income and expenditure statement for the company in relation to the accounting period ending at the balance sheet date,

together with any notes or documents giving information relating to the balance sheet or statement ;

“Fund” means, the Fund established under section 479;

“group financial statements” means—

- (a) a consolidated balance sheet for the group as at that balance sheet date ;
- (b) where a member of the group trades for profit, a consolidated profit and loss statement for the group in relation to the accounting period ending at that balance sheet date ; and
- (c) where no member of the group trades for profit, a consolidated income and expenditure statement for the group, in relation to the accounting period ending at that balance sheet date,

together with any notes or documents giving information relating to the balance sheet or statement ;

“holding company”, a company shall be deemed to be another company’s holding company, if and only if that other company is its subsidiary. For the purpose of this definition “company” includes any body corporate;

“interest group” in relation to any action or proposal affecting rights attached to shares, means a group of shareholders—

- (a) whose affected rights are identical; and
- (b) whose rights are affected by the action or proposal in the same way;

“legal representative” means, an executor or administrator or in the case of an estate not administrable in law, the next-of -kin who have adiated the inheritance;

“listed company” means, a company, any shares or securities of which are quoted on a licensed stock exchange;

“licensed commercial bank” means, a company or institution issued with a licence under the Banking Act, No. 30 of 1988, to carry on business as a licensed commercial bank;

“manager” includes, any person occupying the position of manger by whatever name called;

“minimum subscription” means, the amount stated in a prospectus as the minimum amount, which in the opinion of the directors must be raised by the issue of share capital and reckoned exclusively of any amount payable otherwise than in cash;

“officer” in relation to a body corporate, includes a director, manager or secretary;

“ordinary resolution” means, a resolution that is approved by a simple majority of the votes of those shareholders entitled to vote and voting on the question;

“overseas company” shall have the same meaning as given in section 488;

“prescribed” means, prescribed by regulation;

“prospectus” means, any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription to or purchase of any shares or debentures of a company, and includes any such notice, circular, advertisement, or other invitation, notwithstanding that it may contain on the face thereof, that it is not a prospectus or offer of shares to the public;

“receiver” means, a receiver of the whole or a part of the property and undertaking of a company, appointed under Part XV;

“redeemable” shall have the same meaning as given in section 66;

“Register” means, the Register required to be kept under section 473;

“Registrar” means, the Registrar-General of Companies or other officer performing under this Act, the duty of registration of companies;

“resolution altering articles” shall have the same meaning as given in section 15;

“share” means, a share issued by a company;

“share register” means, the register required to be kept under section 123;

“shareholder” shall have the same meaning as given in section 86;

“stated capital” shall have the same meaning as given in section 58;

“subsidiary”, a company shall be deemed to be a subsidiary of another, if and only if—

(a) that other company either—

- (i) controls the composition of its board of directors ;
- (ii) is in a position to exercise or control the exercise of more than half the maximum number of votes that can be exercised at a meeting of the company;

- (iii) hold more than half of the issued shares of the company, other than shares that carry no right to participate beyond a specified amount in a distribution of profits or capital;
 - (iv) is entitled to receive more than half of every dividend paid on shares issued by the company, other than shares that carry no right to participate beyond a specified amount in a distribution of profits or capital; or
- (b) the first-mentioned company is a subsidiary of any company which is that other company's subsidiary.

For the purpose of this definition, the composition of a company's board of directors shall be deemed to be controlled by another company if, and only if, that other company by the exercise of any power exercisable by it without the consent or concurrence of any other person, can appoint or remove all or a majority of the directors, and that other company shall be deemed to have power to appoint a director, if—

- (a) a person cannot be appointed as a director without the exercise in his favour by that other company, of a power to so appoint ; or
- (b) a person's appointment as a director follows necessarily from his appointment as a director of that other company.

In determining whether one company is a subsidiary of another—

- (a) any shares held or power exercisable by a company in a fiduciary capacity shall be treated as not held or exercisable by it;

- (b) subject to the provisions of paragraphs (c) and (d), any shares held or power exercisable—
 - (i) by any person as a nominee for that other (except where that other is concerned only in a fiduciary capacity); or
 - (ii) by or by a nominee for a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other;

- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company, or of a trust deed for securing any issue of such debentures, shall be disregarded;
- (d) any shares held or power exercisable by or by a nominee for that other or its subsidiary (not being held or exercisable as referred to in paragraph (c)), shall be treated as not held or exercisable by that other, if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money, and the shares are held or the power is exercisable by way of security only, for the purposes of a transaction entered into in the ordinary course of that business.

For the purpose of this definition “company” includes a body corporate; and

“working day” means a day other than Saturday, Sunday or a public holiday.

- (2) For the purposes of this Act, —

- (a) a company is related to another company, if—
 - (i) that company is the subsidiary or holding company of the other company;
 - (ii) the holding company of that company is also a holding company of the other company; or
 - (iii) that company is related to a company which is related to the other company ;
- (b) where any section of this Act provides that an officer of a company who is in default shall be liable to a penalty, the expression “officer who is in default” means any director, manager, secretary or other officer of the company, who knowingly and wilfully authorizes or permits the default, refusal or contravention referred to in that section;
- (c)
 - (i) one or more groups may exist in relation to any action or proposal; and
 - (ii) if—
 - (A) action is taken in relation to some holders of shares in a class and not others; or
 - (B) a proposal expressly distinguishes between some holders of shares in a class and other holders of shares of that class,

holders of shares in the same class, may fall into two or more interest groups.
- (3) Any reference in this Act—
 - (a)
 - (i) to the shareholders of a company includes, in relation to a company which has only one shareholder, a reference to that shareholder;

- (ii) to the directors of a company includes, in relation to a company which has only one director, a reference to that director ;
 - (b) to a body corporate or to a corporation, shall be construed as not including a corporation sole but as including a company incorporated outside Sri Lanka;
 - (c) unless the context otherwise requires, to a person by whom, or in whose interests a receiver was appointed, includes a reference to a person to whom the rights and interests under any deed or agreement by or under which the receiver was appointed, have been transferred or assigned.
- (4) Where public notice of any matter is required to be given under this Act, that notice shall be given by publishing a notice of that matter—
- (a) in at least one issue of the *Gazette*; and
 - (b) in at least one issue of a daily newspaper in the Sinhala, Tamil and English languages, circulating in the area in which—
 - (i) the company's place of business;
 - (ii) if the company has more than one place of business, the company's principal place of business; or
 - (iii) if the company has no place of business or the location of neither its principal place of business nor any other place of business is known to the person required to give the notice, the company's registered office,
- is situated.

TRANSITIONAL PROVISIONS AND SAVINGS

530. (1) Without prejudice to the provisions contained in sections 5 and 10 of the Interpretation Ordinance—

Transitional provisions.

- (a) nothing in the repeal of any former written law relating to companies shall affect any order, rule, regulation, scale of fees, appointment, conveyance, mortgage, deed or agreement made, resolution passed, direction given, proceeding taken, instrument issued or thing done under any former written law relating to companies, but any such order, rule, regulation, scale of fees, appointment, conveyance, mortgage, deed or agreement, resolution, direction, proceeding, instrument or thing shall, if in force on the appointed date, continue to be in force, and so far as it could have been made, passed, given, taken, issued or done under this Act, shall have effect as if made, passed, given, taken, issued, or done under the provisions of this Act;
- (b) any document referring to a provision in any former written law relating to companies, shall be construed as referring to the corresponding provision contained in this Act;
- (c) any person appointed to any office under or by virtue of any former written law relating to companies, shall be deemed to have been appointed to that office under or by virtue of the provisions of this Act;
- (d) any Register kept under any former written law relating to companies, shall be deemed part of the Register to be kept under the corresponding provisions of this Act;
- (e) all funds and accounts constituted under the provisions of this Act, shall be deemed to be in

continuation of the corresponding funds and accounts constituted under the former written law relating to companies.

(2) In this section the expression “former written law relating to companies” means any written law repealed by the Companies Ordinance (Cap. 145) or the Companies Act, No. 17 of 1982 or this Act.

(3) All actions, proceedings or matters, other than those referred to in section 532, and pending in a District Court on the day preceding the date on which this Act came into operation, shall stand removed to the court as defined in this Act and such court shall have jurisdiction to take cognizance of, hear and determine, or continue and complete, the same:

Provided that any such action, proceeding or matter, in which the adducing of evidence has commenced in the District Court on the day preceding the date on which this Act came into operation, shall be heard and determined by the said District Court.

Savings.

531. Nothing in this Act shall affect—

- (a) the incorporation of any company registered under any written law repealed by the Companies Ordinance (Cap. 145), Companies Act, No. 17 of 1982 or this Act;
- (b) Part C of the Schedule to the Joint Stock Companies Ordinance, 1861, or any part thereof, so far as the same applies to any company in existence on the appointed date;
- (c) Table B in the Schedule to the Joint Stock Banking Ordinance, 1897, or any part thereof, so far as the same applies to any company in existence on the appointed date;

- (d) Tables A and C in the First Schedule to the Companies Ordinance (Cap. 145) or any part thereof, so far as the same applies to any company in existence on the appointed date;
- (e) Table A and C in the First Schedule to the Companies Act, No. 17 of 1982 or any part thereof, so far as the same applies to any company in existence on the appointed date.

532. (1) Subject to the provisions of subsection (2), the provisions of this Act with respect to winding up shall not apply to any company of which the winding up has commenced before the appointed date. Every such company shall be wound up in the same manner and with the same incidents, as if this Act had not been enacted, and for the purposes of the winding up, the written law under which the winding up commenced shall be deemed to remain in full force.

Savings of
pending
proceedings for
winding up.

(2) Where any company is being wound up in accordance with subsection (1), the court may, on application made by the Registrar or by any creditor of the company, and where the court is of opinion that it is expedient to do so in the circumstances of the case, make order that any specified provision of this Act with respect to liquidation shall apply to the winding up of that company, and may give such incidental or supplemental direction as may appear to the court to be necessary for the purposes of the application of such provision. Where the court makes any such order, any provision of this Act specified in the order shall, subject to any such directions, apply accordingly.

PART XXIII

REPEALS AND AMENDMENTS

Repeals.

533. (1) The Companies Act, No. 17 of 1982 is hereby repealed.

(2) The Companies (Special Provisions) Law, No. 19 of 1974 and the Foreign Companies (Special Provisions) Law, No. 9 of 1975 are hereby repealed.

Amendment of
the First
Schedule of Act,
No. 10 of 1996.

534. The First Schedule to the High Court of the Provinces (Special Provisions) Act, No. 10 of 1996 is hereby amended by the substitution for item (2) of that Schedule, of the following item :—

“(2) All application and proceedings under the Companies Act, No. 07 of 2007”.

FIRST SCHEDULE

[Section 14]

MODEL ARTICLES

A. SHARES

1. *Issue of shares*

(1) Subject to articles 1 (2) and 1 (3), of these articles, the board may issue such shares to such persons as it thinks fit in accordance with section 51 of this Act. Where the shares confer rights other than those specified in subsection (2) of section 49 of this Act, or impose any obligation on the holder, the board must approve terms of issue which set out the rights and obligations attached to the shares as required by subsection (2) of section 51.

(2) Before it issues shares, the board must decide the consideration for which the shares will be issued. The consideration must be fair and reasonable to the company and to all existing shareholders.

(3) Where the company issues shares which rank equally with or prior to existing shares, those shares must be offered to the holders of the existing shares in a manner which would, if accepted, maintain the relative voting and distribution rights of those shareholders. The offer must remain open for acceptance for a reasonable time.

2. *Calls on shares*

(1) Where a share imposes any obligation on the holder to pay an amount of money —

- (a) on a fixed date, the holder must pay that amount on that date;
- (b) when called on to do so by the board, the board may at any time give written notice to the holder requiring the payment to be made within a specified period of not less than twenty working days, and the payment must be made in accordance with that notice.

Any amount not paid by the due date shall carry interest at a rate fixed by the board not exceeding ten *per cent per annum*, accruing daily. The board may waive payment of interest.

(2) Joint holders of a share are jointly and severally liable for any payments to be made under paragraph (1) of this article.

(3) The company has a lien on every share to which paragraph (a) of article 1 applies, and on every distribution payable in respect of that share, for all amounts presently due and payable to the company in respect of that share.

(4) The company may sell in such manner as the board thinks fit, any shares on which the company has a lien, if—

- (a) the company has given written notice of its intention to do so to the shareholder; and
- (b) the shareholder has failed to make the payment in respect of which the lien has arisen, within ten working days of the giving of that notice.

The transfer may be signed on behalf of the purchaser by any person appointed to do so by the board, and the purchaser shall be registered as the holder of the shares transferred and his title shall not be affected by any irregularity or invalidity in the sale.

(5) The proceeds of a sale under paragraph (4) of this article shall be received by the company and applied first in payment of the costs of sale, and then in payment of the amount in respect of which the lien arose. The remainder shall be paid to the person entitled to the shares, at the time of the sale.

3. *Distributions*

(1) The company may make distributions to shareholders in accordance with section 56 of this Act. Subject to paragraph (2) of this article, every dividend must be approved by the board and by an ordinary resolution of the shareholders. The board must be satisfied that the company will immediately after the distribution, satisfy the solvency test. The directors who vote in favour of the distribution must sign a certificate of their opinion to that effect.

(2) The board may from time to time approve the payment of an interim dividend to shareholders, where that appears to be justified by the company's profits, without the need for approval by an ordinary resolution of the shareholders. The board must be satisfied that the company will immediately after the interim dividend is paid, satisfy the solvency test. The directors who vote in favour of the interim dividend must sign a certificate of their opinion to that effect.

(3) The company is deemed to have satisfied the solvency test if—

- (a) it is able to pay its debts as they fall due in the normal course of business; and
- (b) the value of its assets is greater than the sum of the value of its liabilities and its stated capital.

4. *Share register, share certificates and transfer and transmission of shares*

(1) The company must maintain a share register, which complies with section 123 of this Act. The share register must be kept at the registered office of the company or at any other place in Sri Lanka, notice of which has been given to the Registrar in accordance with subsection (4) of section 124 of this Act.

(2) Where shares are to be transferred, a form of transfer signed by the holder or by his legal representative shall be delivered to the company. The transfer must be signed by the transferee if the share imposes any liability on its holder.

(3) The board may resolve to refuse to register a transfer of a share within six weeks of receipt of the transfer, if any amount payable to the company in respect of the share is due but unpaid. If the board resolves to refuse to register a transfer for this reason, it must give notice of the refusal to the shareholder within one week of the date of the resolution.

(4) Where a joint holder of a share dies, the remaining holders shall be treated by the company as the holders of that share. Where the sole

holder of a share dies, that shareholder's legal representative shall be the only person recognised by the company as having any title to or interest in the share.

(5) Any person who becomes entitled to a share as a consequence of the death, bankruptcy or insolvency or incapacity of a shareholder may be registered as the holder of that shareholder's shares upon making a request in writing to the company to be so registered, accompanied by proof satisfactory to the board of that entitlement. The board may refuse to register a transfer under this article in the circumstances set out in paragraph (3) of this article.

(6) Where the company issues shares or the transfer of any shares is entered on the share register, the company must within two months complete and have ready for delivery a share certificate in respect of the shares.

B. MEETINGS OF SHAREHOLDERS

5. Rules relating to meetings of shareholders

A meeting of shareholders may determine its own procedure, to the extent that it is not governed by these articles.

6. Notice of meetings

(1) Written notice of the time and place of a meeting of shareholders must be given to every shareholder entitled to receive notice of the meeting and to every director and the auditor of the company—

- (a) not less than fifteen working days before the meeting, if the company is not a private company and it is intended to propose a resolution as a special resolution at the meeting;
- (b) not less than ten working days before the meeting, in any other case.

(2) The notice must set out—

- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it; and
- (b) the text of any resolution to be submitted to the meeting.

(3) An irregularity in a notice of a meeting is waived if all the shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such shareholders agree to the waiver.

(4) If a meeting of shareholders is adjourned for less than thirty days, it is not necessary to give notice of the time and place of the adjourned meeting, other than by announcement at the meeting which is adjourned.

7. Methods of holding meetings

A meeting of shareholders may be held either—

- (a) by a number of shareholders who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) by means of audio, or audio and visual communication by which all shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

8. Quorum

(1) Subject to paragraph (3) of this article, no business may be transacted at a meeting of shareholders if a quorum is not present.

(2) A quorum for a meeting of shareholders is present if the shareholders or their proxies are present who are between them able to exercise a majority of the votes to be cast on the business to be transacted by the meeting.

(3) If a quorum is not present within thirty minutes after the time appointed for the meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the directors may appoint. If at the adjourned meeting, a quorum is not present within thirty minutes after the time appointed for the meeting, the shareholders present or their proxies shall be deemed to form a quorum.

9. Chairperson

(1) If the directors have elected a chairperson of the board, and the chairperson of the board is present at a meeting of shareholders, he or she must chair the meeting.

(2) If no chairperson of the board has been elected or if at any meeting of shareholders the chairperson of the board is not present within fifteen minutes of the time appointed for the commencement of the meeting, the shareholders present may choose one of their number to be chairperson of the meeting.

10. *Voting*

(1) In the case of a meeting of shareholders held under paragraph (a) of article 7, unless a poll is demanded, voting at the meeting shall be by whichever of the following methods as determined by the chairperson of the meeting—

(a) voting by voice; or

(b) voting by show of hands.

(2) In the case of a meeting of shareholders held under paragraph (b) of article 7, unless a poll is demanded, voting at the meeting shall be by shareholders signifying individually their assent or dissent by voice.

(3) A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact, unless a poll is demanded in accordance with paragraph (4) of this article.

(4) At a meeting of shareholders, a poll may be demanded by —

(a) not less than five shareholders having the right to vote at the meeting; or

(b) a shareholder or shareholders representing not less than ten *per centum* of the total voting rights of all shareholders having the right to vote at the meeting.

(5) A poll may be demanded either before or after the vote is taken on a resolution.

(6) If a poll is taken, votes must be counted according to the votes attached to the shares of each shareholder present and voting.

(7) The chairperson of a shareholders' meeting is not entitled to a casting vote.

11. *Proxies*

(1) A shareholder may exercise the right to vote either by being present in person or by proxy.

(2) A proxy for a shareholder is entitled to attend and be heard at a meeting of shareholders as if the proxy were the shareholder.

(3) A proxy must be appointed by notice in writing signed by the shareholder. The notice must state whether the appointment is for a particular meeting, or for a specified term.

(4) No proxy is effective in relation to a meeting, unless a copy of the notice of appointment is given to the company not less than twenty-four hours before the start of the meeting.

12. *Minutes*

(1) The board must ensure that minutes are kept of all proceedings at meetings of shareholders.

(2) Minutes which have been signed correct by the chairperson of the meeting are *prima facie* evidence of the proceedings.

13. *Shareholders proposals*

Shareholders entitled to do so may give notice of the resolution to the company in accordance with section 142 of this Act and it shall be the duty of the company to give notice of the resolution or circulate the statement, or both, as the case may be, in accordance with section 142. The company is not required to give notice of a resolution or circulate a statement in the circumstances set out in subsections (4) or (5) of section 142.

14. *Corporations may act by representatives*

A body corporate which is a shareholder may appoint a representative to attend a meeting of shareholders on its behalf in the same manner as it could appoint a proxy.

15. *Votes of joint holders*

Where two or more persons are registered as the holder of a share, the vote of the person named first in the share register and voting on a matter, shall be accepted to the exclusion of the votes of the other joint holders.

16. *Loss of voting right if calls unpaid*

If a sum due to a company in respect of a share has not been paid, that share may not be voted at a shareholders' meeting other than a meeting of an interest group.

17. *Annual general meetings and extraordinary general meetings of shareholders*

(1) Subject to paragraphs (2) and (3) of this article, the board must call an annual meeting of the company to be held —

(a) once in each calendar year;

- (b) not later than six months after the balance sheet date of the company; and
- (c) not later than fifteen months after the previous annual meeting.

The meeting must be held on the date on which it is called to be held.

(2) The company need not hold its first annual meeting in the calendar year of its incorporation, but must hold that meeting within eighteen months of its incorporation.

(3) An extraordinary meeting of shareholders entitled to vote on an issue may be called at any time by the board, and must be called by the board on the written request of shareholders holding shares, carrying not less than ten *per centum* of votes which may be cast on that issue.

(4) A resolution in writing signed by not less than eighty-five *per centum* of the shareholders entitled to vote on the resolution at a meeting of shareholders, who together hold not less than eighty-five *per centum* of the votes entitled to be cast on that resolution, is as valid as if it had been passed at meeting of those shareholders. The company need not hold an annual meeting if every thing required to be done at the meeting (by resolution of otherwise) is done by resolution and is in accordance with this clause.

(5) Within five working days of a resolution being passed under paragraph (4) of this article, the company must send a copy of the resolution to every shareholders who did not sign it.

(6) A resolution may be passed under paragraph (4) of this article without any prior notice being given to shareholders.

18. *Voting in interest groups*

Where the company proposes to take action which affects the rights attached to shares within the meaning of section 99 of this Act, the action may not be taken unless it is approved by a special resolution of each interest group, as defined in this Act.

19. *Shareholders entitled to receive distributions, exercise pre-emptive rights, and attend and vote at meetings*

(1) The shareholders who are entitled to receive notice of a meeting of shareholders for any purpose shall be —

- (a) if the board fixes a date for the purpose, those shareholders whose names are registered in the share register on that date;

- (b) if the board does not fix a date for the purpose, those shareholders whose names are registered in the share register at the close of business on the day immediately preceding the day on which the notice is given.

(2) A date fixed under paragraph (1) of this article should not precede by more than thirty working days, the date on which the meeting is to be held.

(3) Before a meeting of shareholders, the company may prepare a list of shareholders entitled to receive notice of the meeting arranged in alphabetical order, and showing the number of shares held by each shareholder—

- (a) if a date has been fixed under paragraph (1) of this article, not later than ten working days after that date; or
- (b) if no such date has been fixed, at the close of business on the day immediately preceding the date on which the notice is given.

(4) A person named in a list prepared under paragraph (3) of this article is entitled to attend the meeting and vote in respect of the shares shown opposite his name in person or by proxy, except to the extent that—

- (a) that person has, since the date on which the shareholders entitled to receive notice of the meeting were determined, transferred any of his shares to some other person; and
- (b) the transferee of those shares has been registered as the holder of those shares, and has requested before the commencement of the meeting that his or her name be entered on the list prepared under paragraph (3) of this article.

(5) A shareholder may examine a list prepared under paragraph (3) of this article during normal business hours, at the registered office of the company.

C. DIRECTORS AND SECRETARY

20. *Appointment and removal of directors*

(1) The shareholders may by ordinary resolution fix the number of directors of the company.

(2) A director may be appointed or removed by ordinary resolution passed at a meeting called for the purpose or by a written resolution in accordance with paragraph (4) of article 17. Unless the company is a private company, the shareholders may only vote on a resolution to appoint a director if—

- (a) the resolution is for the appointment of one director; or
- (b) the resolution is a single resolution for the appointment of two or more persons as directors, and a separate resolution that it be so voted on has first been passed without a vote being cast against it.

(3) A director may resign by delivering a signed written notice of resignation to the registered office of the company. Subject to section 208 of this Act, the notice is effective when it is received at the registered office or at any later time specified in the notice.

(4) A director vacates office if he—

- (a) resigns in accordance with paragraph (3) of this article;
- (b) is removed from office in accordance with the provisions of this Act or these articles;
- (c) becomes disqualified from being a director pursuant to section 202 of this Act;
- (d) dies; or
- (e) vacates office pursuant to subsection (2) of section 210 of this Act, on the ground of his age.

21. *Power and duties of directors*

(1) Subject to section 185 of the Act which relates to major transactions, the business and affairs of the company shall be managed by or under the direction or supervision of the board. The board shall have all the powers necessary for managing and for directing and supervising the management of the business and affairs of the company.

(2) The board may delegate to a committee of directors or to a director or employee any of its' powers which it is permitted to delegate under section 186 of this Act.

(3) The directors have the duties set out in the Act, and in particular—

- (a) each director must act in good faith and in what he believes to be the best interest of the company;

- (b) no director shall act or agree to the company to Act, in a manner that contravenes any provisions of this Act or these articles.

22. *Interested directors*

(1) A director who is interested in a transaction to which the company is a party must disclose that interest in accordance with section 192 of this Act.

(2) Subject to paragraph (3) of this article, a director of a company is interested in a transaction to which the company is a party, if, and only if, the director—

- (a) is a party to or will or may derive a material financial benefit from the transaction;
- (b) has a material financial interest in another party to the transaction;
- (c) is a director, officer or trustee of another party to, or person who will or may derive a material financial benefit from the transaction, not being a party or person that is—
 - (i) the company's holding company, being a holding company of which the company is a wholly-owned subsidiary;
 - (ii) a wholly-owned subsidiary of the company; or
 - (iii) a wholly-owned subsidiary of a holding company of which the company is also a wholly-owned subsidiary;
- (d) is the parent, child or spouse of another party to or person who will or may derive a material financial benefit from the transaction; or
- (e) is otherwise directly or indirectly materially interested in the transaction.

(3) A director of a company is not interested in a transaction to which the company is a party, if the transaction comprises only the giving by the company of security to a third party which has no connection with the director, at the request of the third party, in respect of a debt or obligation of the company for which the director or another person has personally assumed responsibility in whole or in part, under a guarantee, indemnity or by the deposit of a security.

(4) Paragraph (2) of this article does not apply to any remuneration or other benefit given to a director in accordance with section 216 of the Act, or, to any insurance or indemnity provided in accordance with section 218 of the Act.

(5) A director of a company who is interested in a transaction entered into or to be entered into by the company, may—

- (a) vote on a matter relating to the transaction;
- (b) attend a meeting of directors at which a matter relating to the transaction arises and be included among the directors present at the meeting for the purpose of a quorum;
- (c) sign a document relating to the transaction on behalf of the company; and
- (d) do any other thing in his capacity as a director in relation to the transaction,

as if he were not interested in the transaction.

(6) A director of a company who has information in his capacity as a director or employee of the company which would not otherwise be available to him, must not disclose that information to any person or make use of or act on the information, except—

- (a) for the purposes of the company;
- (b) as required by law; or
- (c) in accordance with paragraph (7) of this article.

(7) A director of a company may disclose, make use of or act on information if—

- (a) the director is first authorized to do so by the board under paragraph (8) of this article; and
- (b) particulars of the authorization are entered in the interests register.

(8) The board may authorize a director to disclose, make use of or act on information, if it is satisfied that to do so will not be likely to prejudice the company.

(9) A director must disclose all dealings in shares of the company in which he has a relevant interest, in accordance with sections 198, 199 and 200 of the Act.

23. Procedure at meetings of directors

(1) Articles 24 to 30 sets out the procedure to be followed at meetings of directors.

(2) A meeting of directors may determine its own procedure, to the extent that it is not governed by these articles.

24. Chairperson

(1) The directors may elect one of their number to be the chairperson of the board and may determine the period for which the chairperson is to hold office.

(2) If no chairperson is elected or if at a meeting of the board the chairperson is not present within five minutes after the time appointed for the commencement of the meeting, the directors present may choose one of their number to be chairperson of the meeting,

25. Notice of meeting

(1) A director, the secretary or if requested by a director to do so, an employee of the company, may convene a meeting of the board by giving notice in accordance with this article.

(2) Not less than twenty-four hours notice of a meeting of the board must be given to every director who is in Sri Lanka.

(3) An irregularity in the notice of a meeting is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all directors entitled to receive notice of the meeting agree to the waiver.

26. Methods of holding meetings

A meeting of the board may be held either—

- (a) by a number of the directors who constitute a quorum being assembled together at the place, date and time appointed for the meeting; or
- (b) by means of audio or audio and visual communication by which all directors participating and constituting a quorum can simultaneously hear each other throughout the meeting.

27. Quorum

(1) A quorum for a meeting of the board is a majority of the directors.

(2) No business may be transacted at a meeting of directors if a quorum is not present.

28. *Voting*

(1) Every director has one vote.

(2) The chairperson has a casting vote.

(3) A resolution of the board is passed if it is agreed to by all directors present without dissent or if a majority of the votes cast on it are in favour of it.

(4) A director present at a meeting of the board is presumed to have agreed to and to have voted in favour of a resolution of the board, unless he or she expressly dissents from or votes against the resolution at the meeting.

29. *Minutes*

The board must ensure that minutes are kept of all proceedings at meetings of the board.

30. *Unanimous resolution*

(1) A resolution in writing signed or assented to by all directors entitled to receive notice of a board meeting, is as valid and effective as if it had been passed at a meeting of the board duly convened and held.

(2) Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form, each signed or assented to by one or more directors.

(3) A copy of any such resolution must be entered in the minute book of board proceedings.

31. *Managing director and other executive directors*

(1) The board may from time to time appoint a director as managing director for such period and on such terms as it thinks fit.

(2) Subject to the terms of a managing director's appointment, the board may at any time cancel an appointment of a director as managing director.

(3) A director who holds office as managing director ceases to hold office as managing director, if he ceases to be a director of the company.

(4) The managing director shall be paid such remuneration as may be agreed between him and the board. His remuneration may be by way of salary, commission, participation in profits or any combination of these methods or any other method of fixing remuneration.

(5) The board may delegate to the managing director, subject to any conditions or restrictions which they consider appropriate, any of their powers which can be lawfully delegated. Any such delegation may at any time be withdrawn or varied by the board. The delegation of a power of the board to the managing director does not prevent the exercise of the power by the board, unless the terms of the delegation expressly provide otherwise.

(6) A director other than the managing director who is employed by the company shall be paid such remuneration as may be agreed to between him and the board. His remuneration may be by way of salary, commission, participation in profits or any combination of these methods or any other method of fixing remuneration.

32. *Secretary*

(1) The company must at all times have a secretary.

(2) The board may appoint the secretary for such term and on such conditions as it thinks fit. The remuneration of the secretary shall be agreed to by the board and the secretary.

(3) The board may remove the secretary.

(4) The secretary may not be —

- (a) the sole director of the company; or
- (b) a corporation, the sole director of which is the sole director of the company.

(5) Where the Act or these articles require something to be done by a director and the secretary, it is not satisfied by the same person doing that thing acting in both capacities.

D. ACCOUNTS AND AUDIT

33. *Accounting records, financial statements, audit etc.*

(1) The board must ensure that the company keeps accounting records which —

- (a) correctly record and explain the company's transactions;
- (b) will at any time enable the financial position of the company to be determined with reasonable accuracy;

(c) will enable the board to prepare financial statements in accordance with this Act; and

(d) will enable the financial statements of the company to be readily and properly audited.

(2) The accounting records must comply with subsection (2) of section 148 of this Act.

(3) The board shall ensure that within five months after the balance sheet date of the company, financial statements which comply with section 151 of the Act (and if applicable, group financial statements which comply with section 153 of the Act) are completed in relation to that balance sheet date and are dated and signed on behalf of the board by two directors or if the company has only one director, by that director.

(4) At every annual meeting, the company must appoint an auditor for the following year in accordance with section 154 of the Act. An auditor who is appointed at an annual meeting is deemed to be reappointed at the following annual meeting, unless —

(a) he is not qualified for re-appointment;

(b) the company resolves at that meeting to appoint another person in his place; or

(c) the auditor has given notice to the company that he does not wish to be re-appointed.

(5) The board must within five months after the balance sheet date of the company, prepare an annual report on the affairs of the company during the accounting period ending on that date which complies with section 166 of this Act. The board must send a copy of the annual report to every shareholder not less than twenty working days before the date fixed for holding the annual meeting of shareholders.

E. LIQUIDATION AND REMOVAL FROM THE REGISTER

34. *Resolution to appoint liquidator*

The shareholders may resolve to wind up the company voluntarily by special resolution.

35. *Distribution of surplus assets*

(1) The surplus assets of the company available for distribution to shareholders after all creditors of the company have been paid, shall be distributed in proportion to the number of shares held by each shareholder, subject to the terms of issue of any shares.

(2) The liquidator may with the approval of a special resolution, divide the surplus assets of the company among the shareholders in kind. For this purpose he may set such value as he considers fair on any property to be divided, and may determine how the division will be carried out as between the shareholders or different classes of shareholders.

F. MISCELLANEOUS

36. *Documents to be kept by company*

(1) The company must keep at its registered office or at some other place notice of which has been given to the Registrar in accordance with subsection (4) of section 116 of the Act, the following documents :—

- (a) the certificate of incorporation and the articles of the company;
- (b) minutes of all meetings and resolutions of shareholders within the last ten years;
- (c) an interests register, unless it is a private company which has dispensed with the need to keep such a register;
- (d) minutes of all meetings and resolutions of directors and directors' committees within the last ten years;
- (e) certificates given by directors under this Act within the last ten years;
- (f) the register of directors and secretaries required to be kept under section 223 of this Act;
- (g) copies of all written communication to all shareholders or all holders of the same class of shares during the last ten years, including annual reports prepared under article 33(5);
- (h) copies of all financial statements and group financial statements required to be completed under this Act for the last ten completed accounting periods of the company;
- (i) the copies of instruments creating or evidencing charges and the register of charges required to be kept under sections 109 and 110 of this Act;
- (j) the share register required to be kept under section 123 of the Act; and

- (k) the accounting records required by section 148 of this Act for the current accounting period and for the last ten completed accounting periods of the company.

(2) The references in paragraph (1) of this article to “ten years” and to “ten completed accounting periods” shall include such lesser periods as the Registrar may approve, by notice in writing to the company.

37. *Rights of directors and shareholders to documents etc.*

(1) The directors of the company are entitled to have access to the company’s records in accordance with section 118 of the Act.

(2) A shareholder of the company is entitled—

- (a) to inspect the documents referred to in section 119 of the Act, in the manner specified in section 121 of the Act; and
- (b) to require copies of or extracts from any document which he may inspect, within five working days of making a request in writing for the copy or extract, on payment of any reasonable copying and administration fee determined by the company. The fee may be determined by any director or by the secretary, subject to any directions from the board.

38. *Name of company*

The company may change its name by special resolution in accordance with section 8 of the Act.

39. *Notices*

(1) Where the company is required to send any document to a shareholder or to give notice of any matter to a shareholder, it shall be sufficient for the company to send the document or notice to the registered address of the shareholder by ordinary post. Any document or notice so sent is deemed to have been received by the shareholder within three working days of the posting of a properly addressed and prepaid letter containing the document or notice.

(2) A shareholder whose registered address is outside Sri Lanka may give notice to the company of an address in Sri Lanka to which all documents and notices are to be sent, and the company shall treat that address as the registered address of the shareholder for all purposes.

(3) A document may be sent or notice given by the company to the joint holders of a share, by giving the notice to the holder first named on the share register in respect of the share.

(4) Where a shareholder has died or has become bankrupt or insolvent, the company may continue to send all notices and documents in respect of his shares addressed to him at his registered address, notwithstanding that some other person has by reason of the death, bankruptcy or insolvency, become entitled to those shares, or may send any notice or document to an address to which that other person requests the company to send such notices.

(5) A copy of every notice or document sent to all shareholders must be sent to the auditor of the company.

40. Insurance and indemnity

(1) The company shall indemnify every director, auditor and secretary of the company for the time being against any costs incurred in the course of defending any proceeding that relates to any act or omission in his capacity as director, auditor or secretary, in which judgment is given in his favour or in which, he is acquitted or which is discontinued.

(2) The company may indemnify a director or employee in circumstances where paragraph (1) does not apply, to the extent permitted by subsection (3) of section 218 of the Act, if the board considers it appropriate to do so.

41. Modification in respect of private companies

(1) If the company is registered as a private company, this article shall apply to that company.

(2) The company must not offer any shares or other securities issued by it to the public.

(3) The company must at no time have more than fifty shareholders, not including shareholders who are —

- (a) employees of the company; or
- (b) former employees who became shareholders of the company while being employed by it, and who have continued to be shareholders after ceasing employment with the company.

(4) The company may by unanimous resolution of its shareholders dispense with the keeping of an interests register. Any such resolution shall cease to have effect if any shareholder gives notice in writing to the company that he requires it to keep an interests register.

(5) Where all the shareholders of the company agree to or concur in any action which has been taken or is to be taken by the company —

- (a) the taking of that action is deemed to be validly authorized by the company, notwithstanding anything in these articles; and
- (b) the provisions of this Act referred to in the Second Schedule to this Act, do not apply in relation to that action, pursuant to section 31 of the Act.

42. *Interpretation*

- (1) In these articles “the Act” means the Companies Act, No. 07 of 2007, and terms which are defined in the Act, shall have the same meaning in these articles.

SECOND SCHEDULE [Section 31 (1)]

PROVISIONS WHICH DO NOT APPLY TO PRIVATE COMPANIES ACTING WITH UNANIMOUS
SHAREHOLDER APPROVAL

Section 52 (Consideration for issue of shares)
Section 53 (Pre-emptive rights to new issues)
Section 56 (Distributions)
Section 60 (Dividends)
Section 61 (Recovery of distributions)
Section 64 (Purchase of own shares)
Section 70 (Restrictions on giving financial assistance)
Section 90 (Exercise of powers reserved to shareholders)
Section 92(1) (b) (Powers exercised by special resolution)
Section 99 (Alteration of shareholder rights)
Section 185 (Major transactions)
Section 192 (Disclosure of interest)
Section 193 (Avoidance of transactions)
Section 216 (Remuneration and other benefits)
Section 217 (Restrictions on loans to directors)
Section 218 (Indemnity and insurance)

THIRD SCHEDULE [Section 35 (1)]

PROVISIONS WHICH DO NOT APPLY TO COMPANIES LIMITED BY GUARANTEE

Part IV (Shares and Debentures)

Sections 93 to 98 (Minority buy-out rights)

Sections 99 to 101 (Interest groups)

Section 123(1)(b) and (c) (Company to maintain share register)

Section 124(1) and (3) (Place of share register)

Sections 198 to 200 (Disclosure of director's interests in shares)

Section 220 (Duty of directors on serious loss of capital)

Part VIII (Amalgamations)

Sub-paragraphs (b) and (e) to (j) of the Fifth Schedule (Matters to be included in Annual Return).

FOURTH SCHEDULE [Section 37(1)]

MATTERS TO BE SPECIFIED IN PROSPECTUS AND REPORTS TO BE SET OUT THEREIN

PART 1

MATTERS TO BE SPECIFIED

1. The business which the subscribers or promoters intend that the company should carry out during the period of five years from the date of commencement of business by the company.
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, descriptions and addresses of the directors or proposed directors.
5. Where shares are offered to the public for subscription, particulars as to—
 - (a) 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 :—

- (i) 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 ;
 - (ii) 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 ;
 - (iii) the repayment of any moneys borrowed by the company in respect of any of the aforesaid matters ;
 - (iv) working capital ; and
- (b) 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 time of the opening and closing of the subscription lists.
7. The amount payable on application and allotment on each share, and in the case of 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.
8. The number, description and amount of any shares in, or debentures of the company which any person has or is entitled to be given an option to subscribe for, together with the following particulars of the option, that is to say—
- (a) the period during which it is exercisable ;
 - (b) the price to be paid for shares or debentures subscribed for under it ;
 - (c) the consideration (if any) given or to be given for it or for the right to it ;
 - (d) the names and addresses of the persons to whom it or the right to it was given or if given to existing shareholders or debenture-holders as such, the relevant shares or debentures.

9. 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 for a consideration other than cash and the consideration for which those shares or debentures, have been issued or are proposed or intended to be issued.
10. (1) As respects any property to which this paragraph applies –
 - (a) the names and addresses of the vendors ;
 - (b) 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 ;
 - (c) short particulars of any transaction relating to the property completed within the two preceding years in which any vendor of the property to the company or any person who is or was at the time of the transaction, a promoter or a director or proposed director of the company had any interest, direct or indirect.
- (2) The property to which this paragraph applies is 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 the issue of the prospectus, other than property—
 - (a) the contract for the purchase or acquisition whereof was entered into in the ordinary course of the company's business, the contract not being made in contemplation of the issue nor the issue in consequence of the contract ; or
 - (b) as respects which the amount of the purchase money is not material.
11. The amount if any, paid or payable as purchase money in cash, shares or debentures for any property to which the last foregoing paragraph applies, specifying the amount if any, payable for goodwill.
12. 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.

13. The amount or estimated amount of preliminary expenses and the persons by whom any of those expenses have been paid or are payable and the amount or estimated amount of the expenses of the issue and the persons by whom any of those expenses have been paid or are payable.
14. Any amount or benefit paid or given within the two preceding years or intended to be paid or given to any promoter and the consideration for the payment or the giving of the benefit.
15. The dates or parties to and general nature of 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.
16. The names and addresses of the auditors, if any, of the company.
17. 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 service rendered by him or by the firm in connection with the promotion or formation of the company.
18. Where 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 other rights and obligations attached to the several classes of shares, respectively.
19. In the case of a company which has been carrying on business or 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

REPORT TO BE SET OUT

20. (1) A report by the auditors of the company with respect to—
 - (a) profits and losses and assets and liabilities in accordance with the provisions of sub-paragraph (2) or sub-paragraph (3) of this paragraph, as the case requires ; and

- (b) 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 five financial years immediately preceding the issue of the prospectus, 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 five years ending on the date three months before the issue of the prospectus, containing a statement of that fact.

(2) Where the company has no subsidiaries, the report shall—

- (a) so far as regards profits and losses, deal with the profits or losses of the company in respect of each of the five financial years immediately preceding the issue of the prospectus ; and
- (b) so far as regards assets and liabilities, deal with the assets and liabilities of the company as at the last date to which the accounts of the company were made up.

(3) Where the company has subsidiaries, the report shall—

- (a) so far as regards profits and losses, deal separately with the company's profit or losses as provided by the provisions of sub-paragraph (2) of this paragraph and in addition, deal either—
 - (i) as a whole with the combined profits and losses of its subsidiaries, so far as they concern members of the company ; or
 - (ii) individually with the profits or losses of each subsidiary, so far as they concern members of the company,

or, instead of dealing separately with the company's profits or losses, deal as a whole with the profits or losses of the company and so far as they concern members of the company with the combined profits or losses of its subsidiaries ; and

- (b) so far as regards assets and liabilities, deal separately with the company's assets and liabilities as provided by

the provisions of sub-paragraph (a) above, and in addition deal either—

- (i) as a whole with the combined assets and liabilities of its subsidiaries with or without the company's assets and liabilities ; or
- (ii) individually with the assets and liabilities of each subsidiary,

and shall indicate as respects the assets and liabilities of the subsidiaries, the allowances to be made for persons other than members of the company.

21. Where 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—

- (a) the profits or losses of the business in respect of each of the five financial years immediately preceding the issue of the prospectus ; and
- (b) the assets and liabilities of the business at the last date to which the accounts of the business were made up.

22. (1) Where—

- (a) 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 any manner resulting in the acquisition by the company of shares in any other body corporate; and
- (b) by reason of that acquisition or anything to be done in consequence thereof or in connection therewith, that body corporate will become a subsidiary of the company,

a report made by accountants (who shall be named in the prospectus) upon—

- (i) the profits and losses of the other body corporate in respect of each of the five financial years immediately preceding the date of issue of the prospectus ; and

- (ii) the assets and liabilities of the other body corporate at the last date to which the accounts of the body corporate were made up.
- (2) The report referred to in sub-paragraph (i) shall—
 - (a) indicate how the profits or losses of the other body corporate dealt with in the report would in respect of the shares to be acquired, have concerned members of the company and what allowance would have fallen to be made in relation to assets and liabilities so dealt with for holders of other shares, if the company had at all material times held the shares to be acquired ; and
 - (b) where the other body corporate has subsidiaries deal with the profits or losses and the assets and liabilities of the body corporate and its subsidiaries in the manner provided by sub-paragraph (3) of paragraph 20 in relation to the company and its subsidiaries.

PART III

PROVISIONS APPLICABLE TO PARAGRAPHS 1 TO 22

- 23. The provisions of paragraphs 3, 4, 13 (so far as it relates to preliminary expenses) and 17 shall not apply in the case of a prospectus issued more than two years after the date on which the company is entitled to commence business.
- 24. 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 fulfillment on the result of that issue.
- 25. 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, the expression “purchase money” included the consideration for the lease, and the expression “sub-purchaser” included a sub-lessee.

26. Any references in paragraph 8 to subscribing for shares or debentures shall include acquiring them from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.
27. For the purposes of paragraph 10 where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors.
28. Where in the case of a company which has been carrying on business or of a business which has been carried on for less than five years, the accounts of the company or business have only been made up in respect of four years, three years, two years or one year, provisions of paragraphs 20, 21 and 22 shall have effect as if reference to four years, three years, two years or one year, as the case may be, were substituted for references to five years.
29. The expression “financial year” in paragraphs 20, 21 and 22 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 lesser period shall for the purpose of those paragraphs be deemed to be a financial year.
30. Any report required by paragraphs 20, 21 and 22 shall either indicate by way of a note, any adjustments as respect the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the person making the report necessary, or shall make those adjustments and indicate that adjustments have been made.
31. Any report by accountants required by paragraphs 20, 21 and 22 shall be made by accountants qualified under this Act for appointment as auditors of a company, and shall not be made by any accountant who is an officer or servant or a partner of or in the employment of an officer or servant of the company or of the company’s subsidiary or holding company or of a subsidiary of the company’s holding company, and for the purpose of this paragraph the expression “officer” shall include a proposed director, but not an auditor.

FIFTH SCHEDULE

[Section 131]

MATTERS TO BE INCLUDED IN ANNUAL RETURN

The following matters shall be included in the annual return of a company, other than any matters which are specified in regulations made under this Act, as matters which all companies or any class of companies may omit from their annual return :—

- (a) a list of all persons who, on the fourteenth day from the date of the first or only ordinary general meeting in the year, are shareholders of the company, and all persons who have ceased to be shareholders since the date of the last return or in the case of the first return, of the incorporation of the company ;
- (b) the names and addresses of all the past and present shareholders mentioned in the return, and the number of shares held by each of the existing shareholders 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 shareholders and have ceased to be shareholders respectively, and the dates of registration of the transfers. If the names are not arranged in alphabetical order, the return shall have annexed to it an index sufficient to enable the name of any person in such list to be readily found ;
- (c) the date of incorporation and any change of name of the company ;
- (d) the address of the registered office of the company ;
- (e) the total number of shares issued by the company ;
- (f) the stated capital of the company ;
- (g) the total number of shares forfeited ;
- (h) the total amount of shares for which share warrants are outstanding at the date of the return ;
- (i) the total amount of share warrants issued and surrendered respectively since the date of the last return ;
- (j) the number of shares comprised in each share warrant ;

- (k) all such particulars with respect to the persons who at the date of the return are the directors or the secretary of the company, as are required to be contained in the register of directors and secretaries of a company ;
- (l) 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 Act ;
- (m) the name and address of the auditor of the company, at the date of the return.

SIXTH SCHEDULE [Section 186]

PROVISIONS WHICH CONFER POWERS ON BOARD WHICH MAY NOT BE DELEGATED

Section 51 (Issue of shares)
Section 52 (Consideration for issue of shares)
Section 56 (Distributions)
Section 58 (2) and (3) (Stated capital)
Section 59 (4) (Reduction of stated capital)
Section 64 (Purchase of own shares)
Section 67 (Redemption option of company)
Section 70 (Restrictions on giving financial assistance)
Section 114 (Change of registered office)
Section 241 (Approval of amalgamation proposal)
Section 242 (Short form amalgamation)
Section 401 (Power of board to appoint administrator)
Section 415 (Vacancy in office of administrator)

SEVENTH SCHEDULE [Section 249(2)]

PROCEEDINGS AT MEETINGS OF CREDITORS

1. *Methods of holding meetings*

A meeting of creditors may be held—

- (a) by assembling together those creditors entitled to take part and who choose to attend at the place, date, and time appointed for the meeting;

- (b) by means of audio or audio and visual communication, by which all creditors participating can simultaneously hear each other throughout the meeting; or
- (c) by conducting a postal ballot in accordance with paragraph 7 of this Schedule, of those creditors entitled to take part.

2. *Notice of meeting*

(1) Written notice of—

- (a) the time and place of every meeting to be held under paragraph 1 (a) of this Schedule;
- (b) the time and method of communication for every meeting to be held under paragraph 1(b) of this Schedule; or
- (c) the time and address for the return of voting papers for every meeting to be held under paragraph 1 (a) or (b) or (c) of this Schedule,

shall be sent to every creditor entitled to attend the meeting and to any liquidator not less than five working days before the meeting.

(2) The notice shall —

- (a) state nature of the business to be transacted at the meeting in sufficient detail to enable a creditor to form a reasoned judgment in relation to it;
- (b) set out the text of any resolution to be submitted to the meeting; and
- (c) include a voting paper in respect of each such resolution and voting and mailing instructions.

(3) An irregularity in or a failure to receive a notice of any meeting of creditors does not invalidate anything done by a meeting of creditors, if—

- (a) the irregularity or failure is not material;
- (b) all the creditors entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity or failure; or
- (c) all such creditors agree to waive the irregularity or failure.

(4) If the meeting of creditors agrees, the chairperson may adjourn the meeting from time to time and from place to place.

(5) An adjourned meeting shall be held in the same place unless another place is specified in the resolution for the adjournment.

(6) Where a meeting of creditors under paragraph 1 (a) or (b) of this Schedule is adjourned for less than thirty days, it will not be necessary to give notice of the time and place of the adjourned meeting, other than by announcement at the meeting which is adjourned.

3. *Chairperson*

(1) Where a liquidator has been appointed and is present or if the liquidator has appointed a nominee and the nominee is present, he or she shall act as chairperson of a meeting held in accordance with paragraph 1 (a) or (b) of this Schedule.

(2) In any case where there is no liquidator or neither the liquidator nor any nominee of the liquidator is present, the creditors participating shall choose one of their number to act as chairperson of the meeting.

(3) The person convening a meeting under paragraph 1 (c) of this Schedule shall do everything necessary that would otherwise be done by the person chairing a meeting.

4. *Quorum*

(1) A quorum for a meeting of creditors is present, if—

- (a) three creditors who are entitled to vote or their proxies are present or have cast postal votes; or
- (b) if the number of creditors entitled to vote does not exceed three, the creditors who are entitled to vote or their proxies are present or have cast postal votes.

(2) Where a quorum is not present within thirty minutes after the time appointed for the meeting, the meeting shall be adjourned to the same day in the following week at the same time and place or to such other date, time, and place as the chairperson may appoint, and if at the adjourned meeting a quorum is not present within thirty minutes after the time appointed for the meeting, the creditors present or their proxies shall be deemed to form a quorum.

5. *Voting*

(1) At any meeting of creditors or a class of creditors, other than a meeting held for the purposes of section 250 or section 407, a resolution

is adopted, if a majority in number and value of the creditors or the class of creditors, voting in person or by proxy, vote in favour of the resolution.

(2) At any meeting of creditors or a class of creditors held for the purposes of section 250 or section 407, a resolution is adopted, if a majority in number representing seventy-five *per centum* in value of the creditors or class of creditors voting in person or by proxy, vote in favour of the resolution.

(3) The chairperson of the meeting shall not have a casting vote.

6. Proxies

(1) A creditor may exercise the right to vote either by being present in person or by proxy.

(2) A proxy for a creditor is entitled to attend and be heard at a meeting of creditors, as if the proxy were the creditor.

(3) A proxy shall be appointed by notice in writing signed by the creditor and the notice shall state whether the appointment is for a particular meeting or a specified term not exceeding twelve months.

(4) No proxy is effective in relation to a meeting, unless a copy of the notice of appointment is delivered to the liquidator or if no liquidator is acting, to the person by whom the notice convening the meeting was given, not later than twenty-four hours before the start of the meeting.

7. Postal votes

(1) A creditor entitled to vote at a meeting of creditors held in accordance with paragraph 1 (a) or (b) or (c) of this Schedule, may exercise the right to vote by casting a postal vote in relation to a matter to be decided at that meeting.

(2) The notice of meeting shall state the name of the person authorised to receive and count postal votes in relation to that meeting.

(3) If no person has been authorised to receive and count postal votes in relation to a meeting, or if no person is named as being so authorised in the notice of the meeting—

(a) every director;

(b) if the company is under administration, the administrator; or

(c) if the company is in liquidation, the liquidator,

is deemed to be so authorised

(4) A creditor may cast a postal vote on all or any of the matters to be voted on at the meeting, by sending a marked voting paper to a person authorised to receive and count postal votes in relation to that meeting, so as to reach that person not later than twenty-four hours before the start of the meeting or if the meeting is held under paragraph 1 (c) of this Schedule, not later than the date named for the return of the voting paper.

(5) It is the duty of a person authorised to receive and count postal votes in relation to a meeting—

- (a) to collect together all postal votes received by him or her; and
- (b) in relation to each resolution to be voted on—
 - (i) to count the number of creditors or creditors belonging to a class of creditors, as the case may be, voting in favour of the resolution and determine the total amount of the debts owed by the company to those creditors; and
 - (ii) to count the number of creditors or creditors belonging to a class of creditors, as the case may be, voting against the resolution and determine the total amount of the debts owed by the company to those creditors; and
- (c) to sign a certificate—
 - (i) that he or she has carried out the duties set out in sub-paragraphs (a) and (b); and
 - (ii) stating the results of the counts and determinations required by sub-paragraph (b); and
- (d) to ensure that the certificate required by sub-paragraph (c) above, is presented to the person chairing or convening the meeting.

(6) If a vote is taken at a meeting held under paragraph 1 (a) or (b) of this Schedule on a resolution on which postal votes have been cast, the person chairing the meeting shall include the results of voting by all creditors who have sent in a voting paper, duly marked as for or against the resolution.

(7) A certificate given under sub-paragraph (5) in relation to the postal votes cast in respect of a meeting of creditors, shall be annexed to the minutes of the meeting.

8. *Minutes*

(1) The person chairing a meeting of creditors or in the case of a meeting held under paragraph 1(c) of this Schedule, the person convening the meeting shall ensure that minutes are kept of all proceedings.

(2) Minutes which have been signed correct by the person chairing or convening the meeting are *prima facie* evidence of the proceedings.

9. *Corporations may act by representatives*

A body corporate which is a creditor, may appoint a representative to attend a meeting of creditors on its behalf.

10. *Other proceedings*

Except as provided in this Schedule and in any regulations made under this Act, a meeting of creditors may regulate its own procedure.

EIGHTH SCHEDULE [Section 355 (2)]

PROVISIONS WHICH DO NOT APPLY IN THE CASE OF A WINDING UP SUBJECT TO
SUPERVISION OF THE COURT

Section 283 (Statement of company's affairs to be submitted to official receiver)

Section 284 (Report by official receiver)

Section 285 (Power of court to appoint liquidators)

(Section 286 (Appointment and powers of provisional liquidator)

Section 287 (Appointment, style, &c., of liquidators in winding up)

Section 288 (Provisions where person other than official receiver is appointed liquidator)

Section 289 (General provisions as to liquidators)

Section 293 (Exercise and control of liquidators' powers)

Section 294 (Books to be kept by liquidator)

Section 295 (Payments by liquidator into bank)

Section 296 (Audit of liquidators' accounts)

Section 297 (Control of Registrar over liquidators)

Section 298 (Release of liquidators)

Section 299 (Meeting of creditors and contributories to determine whether committee of inspection shall be appointed)

Section 300 (Constitution and proceedings of Committee of Inspection)

Section 301 (Powers of court where there is no Committee of Inspection)

Section 307 (Appointment of special manager)

Section 311 (Power to order public examination of promoters, directors, &c.)

Section 213 (Persons prohibited from managing companies)

Section 315 (Delegation to liquidator of certain powers of court)

NINTH SCHEDULE [Section 365 (2)]

PREFERENTIAL CLAIMS

1. The liquidator shall first pay, in the order of priority in which they are listed:—
 - (a) the fees and expenses properly incurred by the liquidator in carrying out the duties and exercising the powers of the liquidator and the remuneration of the liquidator;
 - (b) the reasonable costs of a person who applied to the court for an order that the company be put into liquidation, including the reasonable costs of a person appearing on the application whose costs are allowed by the court;
 - (c) the actual out-of-pocket expenses necessarily incurred by a liquidation committee.
2. After paying the claims referred to in paragraph 1, the liquidator shall next pay the following claims :—
 - (a) all provident fund dues, employees trust fund dues and gratuity payments due to any employee;
 - (b) income tax charged or chargeable for one complete year prior to the commencement of the liquidation, that year to be selected by the Commissioner-General of Inland Revenue in accordance with the provisions of the Inland Revenue Act, No. 10 of 2006;
 - (c) turnover tax charged or chargeable for one complete year prior to the commencement of the liquidation;
 - (d) value added tax charged or chargeable for four taxable periods prior to the commencement of the liquidation, such taxable periods to be selected by the Commissioner-General of Inland Revenue in accordance with the provisions of the Value Added Tax Act, No. 14 of 2002;

- (e) all rates or taxes (other than income tax) due from the company at the commencement of the liquidation which became due and payable within the period of twelve months prior to that date;
 - (f) all dues to the Government as recurring payments for any services given or rendered periodically;
 - (g) industrial court awards and other statutory dues payable to any employee;
 - (h) subject to paragraph 4, all wages or salary of any employee whether or not earned wholly or in part by way of commission, and whether payable for time or for piece work, in respect of services rendered to the company during the four months preceding the commencement of the liquidation;
 - (i) holiday pay becoming payable to an employee (or where the employee has died, to any other person in the employee's right), on the termination of the employment before or by reason of the commencement of the liquidation;
 - (j) unless the company has at the commencement of the liquidation, rights capable of being transferred to and vested in an employee under a contract of the kind referred to in section 24 of the Workmen's Compensation Ordinance, all amounts due in respect of any compensation or liability for compensation under that Ordinance, which have accrued before the commencement of the liquidation;
 - (k) subject to paragraph 4, amounts deducted by the company from the wages or salary of an employee in order to satisfy obligations of the employee.
3. After paying the claims referred to in paragraph 2, the liquidator must next pay the amount of any costs referred to in paragraph (d) of section 254 of this Act.
 4. The sum to which priority is to be given under paragraph 2 (h) shall not, in the case of any one employee, exceed twelve thousand rupees or such greater amount as is determined at the commencement of the liquidation.
 5. Where any compensation under the Workmen's Compensation Ordinance is a fortnightly payment, the amount due in respect of that compensation shall, for the purposes of paragraph 2(i), be the amount of the lump sum for which those payments may be commuted under that Ordinance.

6. Where a payment has been made—

- (a) to an employee of a company on account of wages or salary; or
- (b) to any such employee or where the employee has died, to any other person on behalf of the employee on account of holiday pay,

out of money advanced by some person for that purpose, the person by whom the money was advanced has in a liquidation, the same right of priority in respect of the money so advanced as the employee or other person receiving the payment on behalf of the employee would have, if the payment had not been made.

7. The claims listed in each of paragraphs 1, 2, and 3—

- (a) rank equally among themselves and shall be paid in full, unless the assets are insufficient to meet them, in which case they 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, shall have priority over the claims of persons in respect of assets which are subject to a floating charge, and shall be paid accordingly out of those assets.

For the purposes of this paragraph, the term “floating charge” includes a security that conferred a floating charge at the time of its creation, but has since become a fixed or specific charge.

8. For the purposes of this Schedule—

- (a) remuneration in respect of a period of holiday or of absence from work through sickness or other good cause, shall be treated as wages in respect of services rendered to the company during that period;
- (b) the expression “holiday pay” in relation to a person, includes all sums which by virtue of his contract of employment or any enactment (including any Order made or direction given under any written law) are payable to that person by the company on account of the remuneration which would in the ordinary course, have become payable to him in respect of a period of holiday, had his period of employment continued until he became entitled to be allowed the holiday;

- (c) the expression “rates” or “taxes” means any rate charge, tax or assessment imposed or made by the Government or by any Provincial Council or local authority or any other authority established by or under any written law.

TENTH SCHEDULE [Section 366 (5)]

PAYMENT OF CLAIMS IN LIQUIDATION

1. The liquidator may from time to time distribute such amount of the funds held by him as he thinks fit to creditors who have made a claim in the liquidation.
2. Before making any payment to creditors the liquidator shall prepare a list showing all claims received, the amount of the claim and the amount to be paid to each person who has made a claim.
3. Before making a payment, the liquidator may—
 - (a) fix a date before which any creditor who wishes to participate in the payment shall file a claim; and
 - (b) give public notice that a payment is to be made and of the date fixed under sub-paragraph (a).
4. A date fixed for the purpose of sub-paragraph (a) of paragraph 3, shall not be less than twenty working days after the date of the public notice given under sub-paragraph (b) of paragraph 3 or more than twenty working days before the date of the proposed payment.
5. The liquidator may exclude from a payment, any creditor who does not make a claim before the date specified in a notice given under paragraph 3.
6. The list prepared by the liquidator under paragraph 2 shall be available for inspection by any creditor who has made a claim or any shareholder of the company, on each working day which is less than ten working days before the date of the payment.
7. The liquidator shall make the payment on the date specified in the public notice given under paragraph 3 to each creditor shown on the list, unless notice of an application under subsection (3) of section 292 or section 348, for an order reversing or modifying the decision of the liquidator to accept the claim of that creditor, has been served on the liquidator before that date. No payment made in accordance with this paragraph shall be liable to be disturbed as a consequence of any subsequent challenge to the liquidator’s acceptance of a claim.

8. Where a creditor makes a claim after one or more payments have been made to creditors by the liquidator—
 - (a) that creditor shall be paid at the same rate in respect of his claim as all other creditors with equal ranking claims have previously been paid, to the extent that the assets of the company are sufficient to do so;
 - (b) any payments which have already been made to other creditors shall not be disturbed;
 - (c) that creditor shall be entitled to participate in the same manner as other creditors with equal ranking claims in any further payments to such creditors.
9. Where at the time a payment is made to creditors, a claim by any creditor—
 - (a) has been rejected by the liquidator, and the creditor has applied to the court under subsection (3) of section 292 or section 348 for an order reversing or modifying the decision of the liquidator; or
 - (b) has been allowed by the liquidator, but notice of an application under subsection (3) of section 292 or section 348 for an order reversing or modifying the decision of the liquidator has been served on the liquidator,the liquidator—
 - (c) shall not make a payment to that creditor in respect of that claim;
 - (d) may if he thinks fit, make provision for the payment that would be made in respect of that claim and for the probable cost of the application if the claim is admitted, before making any payment to the other creditors.
10. A guarantor of any debt or obligation of the company who has paid or discharged the debt or obligation in whole or in part, whether before or after the commencement of the liquidation, may, subject to any agreement with the principal creditor to the contrary—
 - (a) if the principal creditor has made a claim in the liquidation in respect of the amount which has been paid or discharged, stand in the place of the principal creditor so far as the claim in respect of that amount is concerned; or

- (b) otherwise, make a claim in respect of the amount of the debt or obligation paid or discharged.

ELEVENTH SCHEDULE [Section 429 (1)]

TERMS IMPLIED IN INSTRUMENTS CREATING FLOATING CHARGES

1. The company shall not sell or otherwise dispose of the property comprised in the floating charge (referred to in this Schedule as the “secured property”) other than in the normal course of business.
2. The floating charge shall be security for the payment of all sums owing by the company to the grantee, from time to time.
3. The floating charge and the instrument creating it shall remain in full force and effect and shall be a continuing security for the payment of any sums owing by the company to the grantee from time to time, notwithstanding that any sum or sums may be paid to the grantee and that any account between the company and the grantee may from time to time be in credit, and notwithstanding any settlement of account or other matter or thing whatsoever, until a final discharge of the floating charge is executed by the grantee in respect of the property comprised in it.
4. The company undertakes to—
 - (a) duly and punctually comply with all laws binding on it;
 - (b) duly and punctually perform and comply with the terms of all agreements between the company and the grantee;
 - (c) pay or discharge on or before the due date, all its liabilities, debts, outgoings, expenses and obligations of a monetary nature, including rents, taxes, insurance premiums and other outgoings in respect of the secured property;
 - (d) comply with all obligations, duties and restrictions binding on the company whether arising from contract or otherwise including all leases, sub-leases, agreements to lease, tenancy agreements or licences in respect of the secured property;
 - (e) keep all its assets in good order, repair and condition and maintain, service, renew or replace, assets essential to its business in accordance with good commercial practice;

- (f) obtain, keep current and not dispose of or allow to lapse any authorisations which are now or may become required or commercially advantageous for the conduct of its business, and comply with all conditions and stipulations in those authorisations;
 - (g) insure and keep insured such parts of the secured property as shall for the time being be of an insurable nature against loss or damage by fire, accident, theft, malicious damage, flood and earthquake;
 - (h) duly pay the premiums payable in respect of all such insurances.
- 5. Where the company neglects or fails to perform or observe any of the terms expressed or implied in the instrument or of any agreement between the company and the grantee, the grantee shall have the right to perform or observe any such term, whether by payment or action on behalf of the company, but shall not be obliged to do so. All costs, expenses and charges paid or incurred by the grantee under this paragraph, shall be added to and shall form part of the moneys secured by the floating charge.
- 6. The company shall—
 - (a) deliver to the grantee as soon as practicable and in any event within three months after the last day of each of its financial years, all financial statements which it is required by law to prepare, together with all auditors' reports, annual reports and other documents required by law to be prepared by the company and sent to shareholders;
 - (b) provide such other information about the business, financial condition and operations of the company as the grantee may by written notice reasonably require;
 - (c) at the same time as any notices, documents, or information are sent to its shareholders, deliver copies of the notices, documents or information to the grantee.
- 7. Notwithstanding any other agreement between the company and the grantee, all sums secured by this floating charge shall become immediately due and payable by the grantee on demand by the grantor, on the occurrence of any of the following events:—
 - (a) the company failing to pay on the due date any amount payable by the company to the grantee;

- (b) the company failing to perform or observe any of the terms of the instrument or of any other agreement between the company and the grantee;
 - (c) any holder of a security interest in any property of the company, taking possession or a receiver or liquidator being appointed in respect of the whole or any part of the secured property;
 - (d) any creditor of the company obtaining execution against the whole or any part of the secured property;
 - (e) the commencement of the winding up of the company;
 - (f) the appointment of an administrator of the company;
 - (g) the disposal by the company of the whole or any part of its undertaking, other than in the normal course of business ;
 - (h) the company ceasing to carry on business.
8. Where the secured property comprises all the property and undertaking of the company, the grantee may appoint a receiver of the secured property on the occurrence of any of the events specified in paragraph 7, whether before or after demand is made under that paragraph.

TWELFTH SCHEDULE [Section 443 (2)]

POWERS OF RECEIVERS

1. Every receiver appointed under Part XV shall, subject to the instrument or the order of the court by or under which the appointment was made, have the power to—
- (a) demand and recover by action or otherwise, income of the property in receivership;
 - (b) issue receipts for income recovered;
 - (c) manage the property in receivership;
 - (d) insure the property in receivership;
 - (e) repair and maintain the property in receivership;
 - (f) inspect at any reasonable time books or documents that relate to the property in receivership and that are in the possession or under the control of the grantor;

- (g) exercise on behalf of the grantor, a right to inspect books or documents that relate to the property in receivership and that are in the possession or under the control of a person other than the grantor;
 - (h) in a case where the receiver is appointed in respect of all or substantially all of the property and undertaking of a company, change the registered office of the company;
 - (i) do all other things incidental to the exercise of the powers set out in this paragraph or conferred by any other provision of this Act.
2. Without limiting the provisions of paragraph 1, a receiver who is appointed in respect of the whole of the property and undertaking of a company shall, subject to the instrument or the order of the court by or under which the appointment was made, have power to—
- (a) take possession of, collect and get in the property of the company, and for that purpose to take such proceedings as may seem to him expedient;
 - (b) sell or otherwise dispose of the property of the company by public auction, private auction or private contract;
 - (c) raise or borrow money and grant security for such money over the property of the company;
 - (d) appoint a solicitor or accountant or other professionally qualified person to assist him in the performance of his functions;
 - (e) bring or defend any action or legal proceedings in the name and on behalf of the company;
 - (f) refer to arbitration any question affecting the company;
 - (g) use the company's seal if it has one;
 - (h) do all acts and to execute in the name and on behalf of the company any document;
 - (i) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company;
 - (j) appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent, and to employ and dismiss employees;

- (k) do all such things (including the carrying out of works) as may be necessary for the realisation of the property of the company;
- (l) make any payment which is necessary or incidental to the exercise of his functions;
- (m) effect and maintain insurances in respect of the business and property of the company;
- (n) carry on the business of the company;
- (o) establish subsidiaries of the company;
- (p) transfer to subsidiaries of the company the whole or any part of the business and property of the company;
- (q) grant or accept a surrender of a lease or tenancy of any property of the company and to take a lease or tenancy of any property required or convenient for the business of the company;
- (r) make any arrangement or compromise on behalf of the company;
- (s) rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the company and to receive dividends and to accede to trust deeds for the creditors of any such person;
- (t) apply for the appointment of a liquidator of the company;
- (u) do all other things incidental to the exercise of the powers set out in this paragraph.

THIRTEENTH SCHEDULE [Section 497 (1)]

LIQUIDATION OF ASSETS OF OVERSEAS COMPANIES

1. Part XII shall apply to the winding up of the assets in Sri Lanka of an overseas company with all necessary modifications and exclusions, and in particular the following :—
 - (a) references to assets shall be taken as references to assets in Sri Lanka;
 - (b) references to a company shall be taken as including references to an overseas company;

- (c) references to dissolution shall be taken as references to ceasing to carry on business in Sri Lanka;
 - (d) the following provisions shall not apply to such a winding up:—
 - (i) paragraphs (b) and (c) of subsection (1) of section 267;
 - (ii) sections 268, 269, 316, 319 to 355 (both inclusive), 393, 394 and 395;
 - (e) from the commencement of the winding up, the overseas company and its directors shall cease to have any powers, functions and duties in relation to the company's assets in Sri Lanka, other than those required or permitted to be exercised under Part XII.
2. Nothing contained in this Act shall exclude or affect the right of a creditor of an overseas company in relation to the assets of which a liquidator has been appointed—
- (a) to bring proceedings outside Sri Lanka against the overseas company, in relation to a debt not claimed in the liquidation or the balance of a debt remaining unpaid after the completion of the liquidation; or
 - (b) to bring proceedings in Sri Lanka in relation to the balance of a debt remaining unpaid after the completion of the liquidation.

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