

## COMPANIES

AN ORDINANCE TO AMEND AND CONSOLIDATE THE LAW RELATING TO COMPANIES.

[1<sup>st</sup> April  
, 1939 ]

Short title. 1. This Ordinance may be cited as the Companies Ordinance.

### PART I

#### INCORPORATION OF COMPANIES AND MATTERS INCIDENTAL THERETO MEMORANDUM OF ASSOCIATION

Mode of  
forming  
incorporated  
company.

[2, 6 of 1939]

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

(2) Such a company may be either-

(a) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Ordinance termed "a company limited by shares"); or

(b) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Ordinance termed "a company limited by guarantee"); or

(c) a company not having any limit on the liability of its members (in this Ordinance termed "an unlimited company").

**Requirements 3.**  
with respect to  
memorandum.

- (1) The memorandum of every company must state-
- (a) the name of the company, with " Limited " as the last word of the name in the case of a company limited by shares or by guarantee ; (b) the district in which the registered office of the company is to be situate;
  - (c) the objects of the company.
- (2) The memorandum of a company limited by shares or by guarantee must also state that the liability of its members is limited. (3) The memorandum of a company limited by guarantee must also state that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges, and expenses of winding up, and for adjustment of the rights of the contributors among themselves, such amount as may be required, not exceeding a specified amount.
- (4) In the case of a company having a share capital-
- (a) the memorandum must also, unless the company is an unlimited company, state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;
  - (b) no subscriber of the memorandum may take less than one share;
  - (c) each subscriber must write opposite to his name the number of shares he takes.

Stamp and signature of and must be signed by each subscriber in the presence of at least one witness who must attest the signature.

**Restriction on** 5. A company may not alter the conditions contained in its alteration of memorandum except in the cases, in the mode and to the extent for memorandum, which express provision is made in this Ordinance.

6.

Mode in which and extent In which objects of company may be altered.

- (1) Subject to the provisions of this section, a company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it-
- (a) to carry on its business more economically or more efficiently; or
  - (b) to attain its main purpose by new or improved means; or
  - (c) to enlarge or change the local area of its operations; or
  - (d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or
  - (e) to restrict or abandon any of the objects specified in the memorandum; or
  - (f) to sell or dispose of the whole or any part of the undertaking of the company; or
  - (g) to amalgamate with any company or body of persons :
- (2). The alteration shall not take effect until, and except in so far as, it is confirmed on petition by the court.

(3). Before confirming the alteration the court must be satisfied-

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

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

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

(4) The court may make an order confirming the alteration wholly or in part, and on such terms and conditions as it thinks fit. (5) The court shall in exercising its discretion under this section have regard to the right and interest of the members of the company or of any class of them, as well as to the rights, and interest of the creditors, and may, if it thinks fit, adjourned the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interest of dissentient members, and may give such directions and make such orders as it may think expedient for facilitating or carrying in to effect any such arrangement :

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

(6) A Copy certified by the secretary of the court of the order confirming the alterations, together with the printed copy of the memorandum as altered, shall within fifteen days from the date of order , be delivered by the company to the Registrar of companies, and he shall register the copy so delivered and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this ordinance with respect to the alteration and the confirmations thereof have been complied with , and henceforth the memorandum as so altered shall be the memorandum of the company.

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

(7) If a company makes default in delivering to the Registrar of companies any document required by this section to be delivered to him the company shall be guilty of an offence and shall be liable to a fine not exceeding one hundred rupees for every day during which the default continues.

#### ARTICLES OF ASSOCIATION

Articles prescribing regulations for companies.

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

Regulations required in case of unlimited company or company limited by guarantee.	<p>8.</p> <p>(1) In the case of an unlimited company the articles, if the company has a share capital, must state the amount of share capital with which the company proposes to be registered.</p> <p>(2) In the case of an unlimited company or a company limited by guarantee, the articles, if the company has not a share capital, must state the number of members with which the company proposes to be registered.</p> <p>(3) Where a company not having a share capital has increased the number of its members beyond the registered number, it shall, within fifteen days after the increase was resolved on or took place, give to the Registrar of Companies notice of the increase, and the Registrar shall record the increase.</p> <p>If default is made in complying with this subsection the company and every officer of the company who is in default shall be liable to a default fine.</p>
Adoption and application of Table A.	<p>9.</p> <p>(1) Articles of association may adopt all or any of the regulations contained in Table A.</p> <p>(2) In the case of a company limited by shares and registered after the appointed date, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations contained in Table A, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.</p>
Printing, stamp, and signature of articles.	<p>10. Articles must-</p> <ul style="list-style-type: none"> <li>(1) be printed;</li> <li>(2) be divided into paragraphs numbered consecutively;</li> <li>(3) bear a stamp of the value of ten rupees;</li> <li>(4) be signed by each subscriber of the memorandum of association in the presence of at least one witness who must attest the signature.</li> </ul>
Alteration of articles by special resolution.	<p>11.</p> <p>(1) Subject to the provisions of this Ordinance and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles.</p> <p>(2) Any alteration or addition so made in the articles shall, subject to the provisions of this Ordinance, be as valid as if originally contained therein, and be subject in like manner to alteration by special resolution.</p>
statutory forms of memorandum and articles.	<p>12. The form of-</p> <ul style="list-style-type: none"> <li>(1) the memorandum of association of a company limited by shares.</li> <li>(2) the memorandum and articles of association of a company limited by guarantee and not having a share capital,</li> <li>(3) the memorandum and articles of association of a company limited by guarantee and having a share capital,</li> <li>(4) the memorandum and articles of association of an unlimited company having a share capital,</li> </ul> <p>shall be respectively in accordance with the forms set out in Tables B, C, D and E in the First Schedule, or as near thereto as circumstances admit.</p> <p style="text-align: center;"><b>REGISTRATION</b></p> <p>13. The memorandum and the articles, if any, shall be delivered to the Registrar of Companies and he shall retain and register them.</p>

Effect of  
registration. 18.

- (1) On the registration of the memorandum of a company the Registrar shall certify under his hand that the company is incorporated and, in the case of a limited company, that the company is limited.
- (2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers of memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Ordinance.

Power of  
company to  
hold lands. 19.

- (1) A company incorporated under this Ordinance shall have power to hold lands:
- Provided that a company formed for the purpose of promoting art, science, religion, charity or any other like object not involving the acquisition of gain by the company or by its individual members, shall not, without the licence of the director of commerce [2] , hold more than two acres of land, but the Director of commerce [2] may by licence empower any such company to hold lands in such quantity, and subject to such conditions, as he thinks fit,
- (2) A licence given by the Director of commerce [2] under this section shall be in accordance with the form set out in the Second Schedule, or as near thereto as circumstances admit.

Conclusiveness 20.  
of certificate of  
incorporation.

- (1) A certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requirements of this Ordinance in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorized to be registered and duly registered under this Ordinance.
- (2) A statutory declaration by a proctor of the supreme court engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company, of compliance with all or any of the said requirements shall be produced to the Registrar, and the Registrar may accept such a declaration as sufficient evidence of compliance.

Registration 21.  
of unlimited  
company as  
limited.

- (1) Subject to the provisions of this section, a company registered as unlimited may register under this Ordinance as limited, or a company already registered as a limited company may re-register under this Ordinance, but the registration of an unlimited company as a limited company shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by to, with or on behalf of the company before the registration and those rights or liabilities may be enforced in manner provided by Part IX of this Ordinance in the case of a company registered in pursuance of that Part.
- (2) On registration in pursuance of this section the Registrar shall close the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company, but, save as aforesaid, the registration shall take place in the same manner and shall have effect as if it were the first registration of the company under this Ordinance.

PROVISIONS WITH RESPECT TO NAMES OF  
COMPANIES

Restriction on<sup>1A.</sup>  
registration of  
companies by  
certain  
names.

- (1) No company shall be registered by a name which –
  - (a) is identical with that by which a company in existence is already registered , or so nearly resemblance that name as to be calculated to deceive , except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the registrar requires ; or
  - (b) contains the word " chamber of commerce " , unless the company is a company which is to be registered under a licence granted in pursuance of section 19 of this ordinance without the addition of the word "limited " of its name ; or
  - (c) contains the words "building society "
- (2) Except with the consent of the governor general [3] no company shall be register by a company which –
  - (a) contains the word "Royal " or "Imperial" or in the opinion of the registrar suggests patronage of Her Majesty or of any member of the Royal Family or connexion with the government or any department thereof ; or
  - (b) contains the word "Municipal" or "Chartered" or in the opinion of the registrar suggests, or his calculated to suggest, connexion with any municipality or other local authority or with any society or body incorporated by Royal Charter ; or
  - (c) contains the word " Co-operative "

[2, 19 of 1942]

- (3) Except with the consent of the Minister no banking company shall be registered by a name which contains the words "National" , "State " or "Ceylon" or which, in the opinion of the registrar, suggest or his calculated to suggest any connexion with the government or any department thereof.

Power to<sup>1A.</sup>  
dispense with  
"Limited" in  
name of  
charitable  
and other  
companies.

(1) Where it is proved to the satisfaction of the Director of Commerce [2]that an association about to be formed as a limited company is to be formed for promoting commerce, art, science, religion, charity, or any other useful object, and intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Director of Commerce [2] may by licence direct that the association may be registered as a company with limited liability, without the addition of the word " Limited " to its name, and the association may be registered accordingly.

(2) A licence by the Registrar of Companies under this section may be granted on such conditions and subject to such regulations as the Director of Commerce [2] thinks fit, and those conditions and regulations shall be binding on the association, and shall, if the Director of Commerce [2] so directs, be inserted in the memorandum and articles, or in one of those documents. (3) The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word " Limited " as any part of its name, and of publishing its name, and of sending lists of members to the Registrar of Companies. (4)

A licence under this section may at any time be revoked by the Director of Commerce [2] and upon revocation the Registrar shall enter the word " Limited " at the end of the name of the association upon the register, and the association shall cease to enjoy the exemptions and privileges granted by this section :

Provided that, before a licence is so revoked, the Director of Commerce [2] shall give to the association notice in writing of his intention, and shall afford the association an opportunity of being heard in opposition to the revocation.

(5) Where the name of the association contains the words " Chamber of Commerce" , the notice to be given as aforesaid shall include a statement of the effect of the provisions of subsection (3) of section 20.

Change of name.

- (1) A company may, by special resolution and with the approval of the Director of Commerce [2] signified in writing, change its name.
- (2) If a company, through inadvertence or otherwise, is without such consent as is mentioned in paragraph (a) of sub-section(1) of section 18, registered by a name which is identical with that by which a company in existence is previously registered, or which so nearly resembles that name as to be calculated to deceive, the first-mentioned company may change its name with the sanction of the Registrar.
- (3) Where a licence granted in pursuance of section 19 to a company the name of which contains the words "Chamber of Commerce " is revoked, the company shall, within a period of six weeks from the date of the revocation or such longer period as the Director of Commerce [2] may think fit to allow, change its name to a name which does not contain those words.

If a company makes default in complying with the requirements of this subsection, it shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues.

- (4) Where a company changes its name, the Registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case.
- (5) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company, and any legal or proceedings that might have been commenced against it by its former name may be continued or commenced against it by its new name.

#### GENERAL PROVISIONS WITH RESPECT TO MEMORANDUM AND ARTICLES

Effect of memorandum and articles.

- (1) Subject to the provisions of this Ordinance, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member to observe all the provisions of the memorandum and of the articles.
- (2) All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

Provision as<sup>11</sup>.  
to  
memorandum and articles of companies limited by guarantee.

- (1) In the case of a company limited by guarantee and not having a share capital, and registered on or after the appointed date, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.
- (2) For the purpose of the provisions of this Ordinance relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of a company limited by guarantee and registered on or after the appointed date, purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

Alterations in<sup>23</sup>. Notwithstanding anything in the memorandum or articles of a company, no member of the company shall be bound by an alteration made in the memorandum or articles after the date on which he became a member, if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date contribute to on which the alteration is made, or in any way increases his liability as share capital at that date to contribute to the share capital of, or otherwise to pay not to bind money to, the company :

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

Copies of memorandum and articles to be given to members.	¶ 4.	(1) A company shall, on being so required by any member, send to him a copy of the memorandum and of the articles, if any, subject to payment of one rupee or such less sum as the company may prescribe. (2) If a company makes default in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding twenty-five rupees.
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Issued copies of memorandum to embody alterations.	¶ 5.	(1) Where an alteration is made in the memorandum of a company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration. (2) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum which are not in accordance with the alteration, it shall be guilty of an offence and shall be liable to a fine not exceeding twenty-five rupees for each copy so issued, and every officer of the company who is in default shall be guilty of an offence and shall be liable to the like penalty.
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#### MEMBERSHIP OF COMPANY

Definition of "member."	¶ 6.	(1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members. (2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.
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#### PRIVATE COMPANIES

Meaning of "private company."	¶ 7.	(1) For the purposes of this Ordinance, the expression "private company" means a company which by its articles- (a) restricts the right to transfer its shares; and (b) limits the number of its members to fifty, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company, were while in that employment, and have continued after the determination of that employment to be, members of the company; and (c) prohibits any invitation to the public subscribe for any shares or debentures of the company. (2) Where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this section, be treated as a single member.
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Circumstances<sup>1A</sup>.  
in which  
company  
ceases to be,  
or to enjoy  
privileges of, a  
private  
company

- (1) If a company, being a private company, alters its articles in such manner that they no longer include the provisions which, under section 27, are required to be included in the articles of a company in order to constitute it a private company, the company shall, as on the date of the alteration, cease to be a private company and shall, within a period of fourteen days after the said date, deliver to the Registrar of Companies for registration a prospectus or a statement in lieu of prospectus in the form and containing the particulars set out in the Third Schedule.
- (2) If default is made in complying with the provisions of subsection (1), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine of five hundred rupees.
- (3) Where the articles of a company include the provisions aforesaid but default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies under the provisions contained in section 29, subsection (3) of section 108, subsection (1) of section 128 and paragraph (4) of section 162 and thereupon the said provisions shall apply to the company as if it were not a private company: Provided that the court, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any other person interested and on such terms and conditions as seem to the court just and expedient, order that the company be relieved from such consequences as aforesaid.

#### REDUCTION OF NUMBER OF MEMBERS

##### BELOW LEGAL MINIMUM

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

Form of contracts. <sup>1B</sup>.

#### CONTRACTS, &c

- (1) Contracts on behalf of a company may be made as follows :-

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

- (2) A contract made according to this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto. (3) A contract made according to this section may be varied or discharged in the same manner in which it is authorized by this section to be made.

Execution of ۲۲.  
deeds  
abroad.

- (1) A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in Ceylon.
- (2) A deed signed by such an attorney on behalf of the company and under his seal shall bind the company and have the same effect as if it were under its common seal.

Power for ۲۲.  
company to  
have official  
seal for use  
abroad.

- (1) A company whose objects require or comprise the transaction of business in foreign countries may, if authorized by its articles, have for use in any territory, district, or place not situate in Ceylon, an official seal, which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district, or place where it is to be used.
- (2) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company. (3) A company having an official seal for use in any such territory, district or place may, by writing under its common seal, authorize any person appointed for the purpose in that territory, district or place, to affix the official seal to any deed or other document to which the company is party in that territory, district or place.
- (4) The authority of any such agent shall, as between the company and any person dealing with the agent, continue during the period, if any, mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him. (5) The person affixing any such official seal shall, by writing under his hand, certify on the deed or other instrument, to which the seal is affixed, the date on which and the place at which it is affixed.

#### AUTHENTICATION OF DOCUMENTS AND TRANSLATION

Authentication ۲۲.  
of documents  
and  
translation.

[3, 6 of 1939]

- (1) A document or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorized officer of the company, and need not be under its common seal.
- (2) Where any document required by this Part of this Ordinance to be delivered to the Registrar is in a language other than English there shall also be annexed to it a printed translation thereof in English certified in the prescribed manner to be a correct translation.

#### PART II SHARE CAPITAL AND DEBENTURES PROSPECTUS

Dating and registration of prospectus.

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

(2) A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company, or by his agent authorized in writing, shall be delivered to the Registrar of Companies for registration on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so delivered for registration. (3) The Registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section. (4) Every prospectus shall state on the face of it that a copy has been delivered for registration as required by this section, (5) If a prospectus is issued without a copy thereof being so delivered, the company, and every person who is knowingly a party to the issue of the prospectus, shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees for every day from the date of the issue of the prospectus until a copy thereof is so delivered.

Specific requirements as to particulars in prospectus.

(1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must state the matters specified in Part I of the Fourth Schedule and set out the reports specified in Part II of that Schedule, and the said Parts I and II shall have effect subject to the provisions contained in Part III of the said Schedule.

(2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void. (3) It shall not be lawful to issue any form of application for shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of this section :

Provided that this subsection shall not apply if it is shown that the form of application was issued either

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

If any person acts in contravention of provisions of this subsection, he shall be guilty of an offence and shall be liable to a fine not exceeding five thousand rupees.

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

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

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

(5) This section shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, but save as aforesaid, this section shall apply to a prospectus or a form of application whether issued on or with reference to the formation of a company or subsequently. (6) Nothing in this section shall limit or diminish any liability which any person may incur under any written or other law or this Ordinance apart from this section.

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

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

prospectus.

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

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

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

- (i) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
- (ii) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or (iii) that after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal, and of the reason therefor; or
- (iv) that-

(a) as regards every untrue statement 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, believe, that the statement was true; and

(b) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or ~~fairly valuation of an expert, if it represented the statement, or was a correct and fair copy of or extract from the report or valuation;~~ and

(c) as regards every untrue statement purporting to be a statement made by an official person or container in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document:

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

(2) Where the prospectus contains the name of a person as a director of the company, or has having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorized or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorized the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus, or in defending himself against any action or legal proceedings brought against him in respect thereof.

(3) Every person who, by reason of his being a director or named as a director or as having agreed to become a director, or of his having authorized the issue of the prospectus, becomes liable to make any payment under this section may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation. (4)

For the purposes of this section- The expression " promoter" means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company; expression "expert" includes engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him.

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

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

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

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

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

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

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

#### ALLOTMENT

Prohibition of allotment unless minimum subscription received.

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

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 will not be paid.

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

(3) The amount payable on application on each share shall not be less than five per centum of the nominal amount of the share. (4) If the conditions aforesaid have not been complied with on the expiration of forty days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and if any such money is not so repaid within forty- eight days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per centum per annum from the expiration of the forty- eighth 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. (5) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void. (6) This section, except subsection (3) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to Registrar.

(1) A company having a share capital which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless at least three days before the first allotment of either shares or debentures there has been delivered to the Registrar of Companies for registration a statement in lieu of prospectus, signed by every person who is named therein as a director or a proposed director of the company or by his agent authorized in writing, in the form and containing the particulars set out in the Fifth Schedule.

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

(3) If a company acts in contravention of this section, the company and every director of the company who knowingly authorizes or permits the contravention shall be guilty of an offence and shall be liable to a fine not exceeding one thousand rupees.

Effect of  
irregular  
allotment.

- § 1.
- (1) An allotment made by a company to an applicant in contravention or the provisions of sections' 40 and 41 shall be avoidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, or, in any case where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment, and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.
- (2) If any director of a company knowingly contravenes, or permits or authorizes the contravention of, any of the provisions of the said sections with respect to allotment, he shall be liable to compensate the company and the allotted respectively for any loss, damages, or costs which the company or the allottee may have sustained or incurred thereby ; Provided that proceedings to recover any such loss, damages, or costs shall not be commenced after the expiration of two years from the date of the allotment.

Return asto ८३.  
allotments.

(1) Whenever a company limited by shares or a company limited by guarantee and having a share capital makes any allotment of its shares, the company shall within one month thereafter deliver to the Registrar of Companies for registration-

(a) a return of the allotments stating-

- (i) the number and nominal amount of the shares comprised in the allotment,
- (ii) the name of each allottee,
- (iii) the place at which each allottee ordinarily resides,
- (iv) the place to which any communication intended for each allottee may be sent,
- (v) a description of each allottee, and
- (vi) the amount, if any, paid or due and payable on each share; and

(b) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(2) Where such a contract as above mentioned is not reduced to writing, the company shall within one month after the allotment deliver to the Registrar of Companies for registration the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and those particulars shall be deemed to be an instrument within the meaning of the Stamp Ordinance and the Registrar may, as a condition of filing the particulars, require that the duty payable thereon be determined in accordance with the provisions of Chapter III of that Ordinance.

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

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

#### COMMISSIONS AND DISCOUNTS

Power to pay ८४.  
certain  
commissions,  
and  
prohibition of  
payment of all  
other  
commissions,  
discounts,  
&c.

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

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

(b) the commission paid or agreed to be paid does not exceed ten per centum of the price at which the shares are issued or the amount or rate authorized by the articles, whichever is the less, and (c) the amount or rate per centum of the commission paid or agreed to be paid is-

(i) in the case of shares offered to the public for subscription, disclosed in the prospectus ; or

(ii) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of ~~the~~prospectus and delivered before payment of the commission to the Registrar of Companies for registration, and, where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice ; and

(d) the number of shares which persons have agreed for a commission to subscribe absolutely is disclosed in manner aforesaid.

(2) Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount, or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise. (3) Nothing in this section shall affect the

power of any company to pay such brokerage as it has heretofore been lawful for a company to pay. (4) A vendor to, promoter of, or

other person who receives payment in money or shares from, a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

(5) If default is made in complying with the provisions of this section relating to the delivery to the Registrar of the statement in the prescribed form, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding two hundred and fifty rupees.

Statement in £<sup>0</sup>.  
balance sheet  
as to  
commissions  
and  
discounts,

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

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

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

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

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

(a) where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business;

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

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

(3) If a company acts in contravention of this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding one thousand rupees.

#### ISSUE OF REDEEMABLE PREFERENCE SHARES AND SHARES AT DISCOUNT

Power to issue  
redeemable preference shares.

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

Provided that-

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

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

If a company fails to comply with the provisions of this subsection, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding one thousand rupees.

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

(4) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purposes of any enactment relating to stamp duty be deemed to be increased by the issue of shares in pursuance of this subsection: Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this subsection unless the old shares are redeemed within one month after the issue of the new shares.

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

Power to issue shares at a discount.

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

Provided that-

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

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

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

If default is made in complying with this subsection, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine.

#### MISCELLANEOUS PROVISIONS AS TO SHARE CAPITAL

Power of company to arrange for different amounts being paid on shares.

49. A company, if so authorized by its articles, may do any one or more of the following things:-

- (1) Make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;
- (2) Accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up ;
- (3) Pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

Reserve liability of limited company.

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

Power of  
company  
limited by  
shares to  
alter its share  
capital.

- (1) A company limited by shares or a company limited by guarantee and having a share capital, if so authorized by its articles, may alter the conditions of its memorandum as follows, that is to say, it may-
- (a) increase its share capital by new shares of such amount as it thinks expedient;
  - (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
  - (c) convert all or any of its paid-up shares into stock, and reconvert that stock into paid-up shares of any denomination;
  - (d) subdivide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived ;
  - (e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

- (2) The powers conferred by this section must be exercised by the company in general meeting.  
(3) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Ordinance.

Notice to  
Registrar of  
consolidation  
of share  
capital,  
conversion of  
shares into  
stock, &c.

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

- it shall within one month after so doing give notice thereof to the Registrar of Companies specifying, as the case may be, ~~subdivided shares converted, divided, converted, redeemed or cancelled, or the stock~~  
(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine.

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

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

Provided that-

- (a) no such payment shall be made unless it is authorized by the articles or by special resolution;
- (b) no such payment, whether authorized by the articles or by special resolution, shall be made without the previous sanction of the court;
- (c) before sanctioning any such payment the court may, at the expense of the company, appoint a person to inquire and report to the court as to the circumstances of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry;
- (d) the payment shall be made only for such period as may be determined by the court, and that period shall in no case extend beyond the half-year, the half-year next after the during which the works or buildings have been actually completed or the plant provided;
- (e) the rate of interest shall in no case exceed six per centum per annum or such other rate as may for the time being be prescribed by regulation;
- (f) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid;
- (g) the accounts of the company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate.

(2) If default is made in complying with proviso (g) to subsection (1), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees.

#### REDUCTION OF SHARE CAPITAL

Special resolution for reduction of share capital.

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

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

Application to the court for confirming order. objections by creditors, and settlement of list of objecting creditors.

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

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

(a) every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction ;

(b) the court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction;

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

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

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

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

Order confirming reduction and powers of court on making such order

(1) The court, if satisfied, with respect to every creditor of the company who under section 57 is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

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

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

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

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

Registration of order and minute of reduction.

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

(2) On the registration of the order and minute, and not before, the resolution for reducing share capital confirmed by the order so registered shall take effect. (3)

Notice of the registration shall be published in such manner as the court may direct.

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

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

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

**Liability of members in respect of reduced shares**

(1) In the case of a reduction of share capital, a member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount of the share as fixed by the minute and the amount paid, or the reduced amount, if any, which is to be deemed to have been paid, on the share, as the case may be :

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

(a) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before the said date ; and

(b) if the company is wound up, the court, on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable contribute, and make and enforce calls and orders on the contributors settled on the list, as if they were ordinary contributors in a winding up.

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

**Penalty on concealment of name of creditor.**

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

(1) wilfully conceals the name of any creditor entitled to object to the reduction; or

(2) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or

(3) aids, abets or is privy to any such concealment or misrepresentation as aforesaid,

he shall be guilty of an offence and shall be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a term not exceeding one year, or to both such fine and imprisonment.

#### VARIATION OF SHAREHOLDERS RIGHTS

Rights of holders of special classes of shares	१२.	<p>(1) If in the case of a company, the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorizing the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than fifteen per centum of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the court to have the variation cancelled, and, where any such application is made, the variation shall not have effect unless and until it is confirmed by the court.</p> <p>(2) An application under this section must be made within seven days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.</p> <p>(3) On any such application the court, after hearing the applicant and any other persons who apply to the court to be heard and appear to the court to be interested in the application, may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.</p> <p>(4) The decision of the court on any such application shall be final.</p> <p>(5) The company shall within fifteen days after the making of an order by the court on any such application forward a copy of the order to the Registrar of Companies and, if default is made in complying with this provision the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine. (6) The expression "variation" in this section includes abrogation and the expression "varied" shall be construed accordingly.</p>
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#### TRANSFER OF SHARES AND DEBENTURES.

Nature of shares.	१३.	<p>EVIDENCE OF TITLE, &amp;c.</p> <p>(1) The shares or other interest of any member in a company shall be movable property, transferable in manner provided by the articles of the company, and shall not be of the nature of immovable property.</p> <p>(2) Each share in a company having a share capital shall be distinguished by its appropriate number.</p>
Transfer not to be registered except on production of instrument of transfer.	64.	<p>Notwithstanding anything in the articles of a company, it shall not be lawful for the company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company :</p> <p>Provided that nothing in this section shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.</p>
Transfer by legal representative.	65.	<p>A transfer of the share or other interest of a deceased member of a company made by his legal representative shall, although the legal representative is not himself a member of the company, be as valid as if he had been such a member at the time of the execution of the instrument of transfer.</p> <p>Registration of the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of transferor at company, the company shall enter in its register of members the name request of transferor.</p>

Notice of  
refusal to  
register  
transfer.

¶V.

- (1) If a company refuses to register a transfer of any shares or debentures, the company shall, within two months after the date on which the transfer was lodged with the company, send to the transferee notice of the refusal.
- (2) If default is made in complying with this section the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Duties of  
company with  
respect to  
Issue of  
certificates

- (1) Every company shall, within two months after the allotment of any of its shares, debentures, or debenture stock, and within two months after the date on which a transfer of any such shares, debentures, or debenture stock, is lodged with the company, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures, or debenture stock otherwise provide.

The expression " transfer" for the purpose of this subsection means a transfer duly stamped and otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register. (2) If default is made in complying with this section,

the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

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

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

70. The production to a company of any document which is by law sufficient evidence of probate of the will, or letters of administration of grant, &c. 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.

¶VI.

Issue and  
effect of  
share  
warrants to  
bearer.

- (1) A company limited by shares, if so authorized by its articles, may, with respect to any fully paid-up shares, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the shares included in the warrant.
- (2) Such a warrant as aforesaid is in this Ordinance termed a " share warrant".
- (3) A share warrant shall entitle the bearer thereof to the shares therein specified, and the shares may be transferred by delivery of the warrant.

Offences in connexion with share warrants.

(1) If any person-

- (a) with intent to defraud, forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any share warrant or coupon, or any document purporting to be a share warrant or coupon, issued in pursuance of this Ordinance; or
- (b) by means of any such forged or altered share warrant, coupon, or document, purporting as aforesaid, demands or endeavours to obtain or receive any share or interest in any company under this Ordinance or to receive any dividend or money payable in respect thereof, knowing the warrant, coupon or document to be forged or altered ; or
- (c) falsely and deceitfully personates any owner of any share or interest in any company, or of any share warrant or coupon, issued in pursuance of this Ordinance, and thereby obtains endeavours to obtain any such share or interest or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if the offender were the true and lawful owner,

he shall be guilty of an offence and shall be liable to imprisonment of either description for a term not less than three years and not exceeding twenty years.

(2) If any person without lawful authority or excuse, proof whereof shall lie on him-

- (a) engraves or makes on any plate, wood, stone, or other material any share warrant or coupon purporting to be-
    - (i) a share warrant or coupon issued or made by any particular company in pursuance of this Ordinance; or
    - (ii) a blank share warrant or coupon so issued or made ; or
    - (iii) a part of such share warrant or coupon; or
  - (b) uses any such plate, wood, stone, or other material for the making or printing of any such share warrant or coupon, or of any such blank share warrant or coupon, or any part thereof respectively ; or (c) knowingly has in his custody or possession any such plate, wood, stone, or other material,
- he shall be guilty of an offence and shall be liable to imprisonment of either description for a term not less than three years and not exceeding fourteen years.

#### SPECIAL PROVISIONS AS TO DEBENTURES

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

(1) Every register of holders of debentures of a company shall, except when duly closed, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that not less than two hours in each day shall be allowed for inspection. For the purposes of this subsection, a register shall be deemed to be duly closed if closed in accordance with provisions contained in the articles or in the debentures or, in the case of debenture stock, in the stock certificates, or in the trust deed or other document securing the debentures or debenture stock, during such period or periods, not exceeding in the whole thirty days in any year, as may be therein specified.

(2) Every registered holder of debentures and every holder of shares in a company may require a copy of the register of the holders of debentures of the company or any part thereof on payment of twenty-five cents for every hundred words required to be copied. (3) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed of the sum of fifty cents or such less sum as may be prescribed by the company, or, where the trust deed has not been printed, on payment of twenty-five cents for every hundred words required to be copied. (4) If inspection is refused, or a copy is refused or not forwarded, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees, and further shall be liable to a default fine of twenty rupees. (5) Where a company is in default as aforesaid, the court may by order compel an immediate inspection of the register or direct that the copies required shall be sent to the person requiring them.

Perpetual  
debentures.

74. 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 that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long.

Power to reissue redeemed debentures in certain cases.

(1) Where either before or after the appointed date a company has redeemed appointed date a company has redeemed any debentures previously issued, then

(a) unless any provision to the contrary, whether express or implied, is contained in the articles or in any contract entered into by the company; or (b)

unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled,

the company shall have, and shall be deemed always to have had, power to 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 power to reissue debentures which have been redeemed, particulars with respect to the debentures which can be so reissued shall be included in every balance sheet of the company.

(4) Where a company has either before or after the appointed date deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited. (5) The 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, whether the reissue or issue was made before or after the appointed date 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 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 duly or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty.

(8 Edw. vii,(6) The reissue 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 if instead of this section there were enacted in this Ordinance the provisions of section 104 of the Companies Consolidation Act, 1908, of the Parliament of the United Kingdom.

~~Specific~~ A contract with a company to take up and pay for any debentures

performance of the company may be enforced by an order for specific performance.  
of contracts  
to subscribe  
for  
debentures.

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

- (1) Where either a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding up are under the provisions of Part V of this Ordinance relating to preferential payments to be paid in priority to all other debts, shall be paid out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.
- (2) The periods of time mentioned in the said provisions of Part V of this Ordinance shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.
- (3) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

### PART III

#### REGISTRATION OF CHARGES REGISTRATION OF CHARGES WITH REGISTRAR OF COMPANIES

Registration VV.  
of charges  
created by  
companies  
registered in  
Ceylon.

(1) Subject to the provisions of this Part of this Ordinance, every charge created after the appointed date by a company registered in Ceylon and being a charge to which this section applies shall, so far as any security on the company's property or undertaking is conferred thereby, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge, together with the instrument, if any, by which the charge is created or evidenced, are delivered to or received by the Registrar of Companies for registration in manner required by this Ordinance within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a charge becomes void under this section the money secured thereby shall immediately become payable. (2) This section applies to the following charges:-

- (a) a charge for the purpose of securing any issue of debentures;
- (b) a charge on uncalled share capital of the company;
- (c) a charge created or evidenced by instrument which, if executed by an individual, would require registration as a bill of sale ;
- (d) a charge on land, wherever situate, or any interest therein;
- (e) a charge on book debts of the company;
- (f) a floating charge on the undertaking or property of the company;
- (g) a charge on calls made but not paid ;
- (h) a charge on a ship or any share in a ship;
- (i) a charge on goodwill, on a patent or a licence under a patent, on a trademark or on a copyright or a licence under a copyright.

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

## Duty of

company to  
register  
charges  
created by  
company.

v<sup>9</sup>.

(1) It shall be the duty of a company to send to the Registrar of Companies for registration the particulars of every charge created by the company and of the issues of debentures of a series requiring registration under section 78, but registration of any such charge may be effected on the application of any person interested therein.

(2) Where registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the Registrar on the registration. (3) If any company makes default in sending to the Registrar for registration the particulars of any charge created by the company, or of the issues of debentures of a series, requiring registration as aforesaid, then, unless the registration has been effected on the application of some other person, the company and every director, manager, secretary or other person, who is knowingly a party to the default shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues.

## Duty of

company to  
register  
charges  
existing on  
property  
acquired.

^<sup>10</sup>.

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

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

(2) If default is made in complying with this section the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine of five hundred rupees.

**Register of charges to kept by registrar of companies.**

^1.

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

- (a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are specified in subsection (8) of section 78 ;
- (b) in the case of any other charge-
  - (i) if the charge is a charge created by the company, the date of its creation, and if the charge was a charge existing on property acquired by the company, the date of the acquisition of the property; and
  - (ii) the amount secured by the charge; and
  - (iii) short particulars of the property charged ; and
  - (iv) the persons entitled to the charge:

Provided, however, that the fee prescribed for the registration of any charge under this section shall be in substitution for, and not in addition to, any fee which would otherwise be payable in respect of such registration under the Ninth Schedule.

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

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

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

**Endorsement ^2.**  
of certificate  
of registration  
on  
debentures.

(1) The company shall cause a copy of every certificate of registration given under section 81 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 :

Provided that nothing in this subsection shall be construed as requiring a company to cause a certificate of registration of any charge so given to be endorsed on any debenture or certificate of debenture stock issued by the company before the charge was created. (2) If any person knowingly and wilfully authorizes or permits the delivery of any debenture or certificate of debenture stock which under the provisions of this section is required to have endorsed on it a copy of a certificate of registration without the copy being so endorsed upon it, he shall, without prejudice to any other liability, be guilty of an offence and be liable to a fine not exceeding one thousand rupees.

**Entry of satisfaction.**

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

**Rectification** 84. The court, on being satisfied that the omission to register a charge or register of within the time required by this Ordinance, or that the omission or charges.

misstatement of any particular with respect to any such charge or in a memorandum of satisfaction, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the court just and expedient, order that the time for registration shall be extended, or, as the case may be, that the omission or misstatement shall be rectified.

**Registration of enforcement of security**

^o.

- (1) If any person obtains an order for (he appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall, within seven days from the date of the order or of the appointment under the said powers, give notice of the fact to the Registrar of Companies and the Registrar shall, on payment of the prescribed fee, enter the fact in the register of charges.
- (2) Where any person appointed receiver or manager of the property of a company under the powers contained in any instrument ceases to act as such receiver or manager, he shall, on so ceasing, give the Registrar of Companies notice to that effect, and the Registrar shall enter the notice in the register of charges.
- (3) If any person makes default in complying with the requirements of this section, he shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

**PROVISIONS AS TO COMPANY'S REGISTER**

**OF CHARGES AND AS TO COPIES OF INSTRUMENTS CREATING CHARGES**

**Copies of instruments creating Charges to be kept by company:  
Company's register of charges**

86. Every company shall cause a copy of every instrument creating any charge requiring registration under this Part of this ordinance to be kept at the registered office of the company: Provided that, in the case of a series of uniform debentures a copy of one debenture of the series shall be sufficient.

^v.

- (1) Every limited company shall keep at the registered office of the company a register of charges and enter therein all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company, giving in each case a short description of the property charged, the amount of the charge, and, except in the case of securities to bearer, the names of the persons entitled thereto.
- (2) If any director, manager, or other officer of the company, knowingly and wilfully authorizes or permits the omission of any entry required to be made in pursuance of this section, he shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees.

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

- ^A.
- (1) The copies of instruments creating any charge requiring registration under this Part of this Ordinance with the Registrar of Companies, and the register of charges kept in pursuance of section 87, shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day shall be allowed for inspection) to the inspection of any creditor or member of the company without fee, and the register of charges shall also be open to the inspection of any other person on payment of such fee, not exceeding fifty cents for each inspection, as the company may prescribe.
- (2) If inspection of the said copies or register is refused, any officer of the company refusing inspection, and every director and manager of the company authorizing or knowingly and wilfully permitting the refusal, shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees, and a further fine not exceeding twenty rupees for every day during which the refusal continues.
- (3) If any such refusal occurs in relation to a company registered in Ceylon, the court may by order compel an immediate inspection of the copies or register.

#### APPLICATION OF PART III TO COMPANIES

##### INCORPORATED OUTSIDE CEYLON

Application of 89. The provisions of this Part of this Ordinance shall extend to

~~charges on~~ property in Ceylon which are created, and to charges on

~~property in Ceylon which is acquired, after the appointed date by a~~

~~created, and company (whether a company within the meaning of this Ordinance or~~

~~property not) incorporated outside Ceylon which has an established place of~~

~~subject to business in Ceylon.~~

~~charge~~

acquired by

company

incorporated

outside

Ceylon.

#### TRANSITIONAL PROVISION

Provision as to charges created, and charges on property acquired, by company before appointed date.

(1) It shall be the duty of a company within six months after the appointed date to send to the Registrar of Companies for registration the prescribed particulars of-

- (a) any charge created by the company before the appointed date and remaining unsatisfied at that date, which would have been required to be registered under the provisions of paragraphs (a), (b) and (c) of subsection (2) of section 78 or under the provisions of section 89 if the charge had been created after the appointed date ; and
- (b) any charge to which any property acquired by the company before the appointed date is subject and which would have been required to be registered under the provisions of section 80 or section 89 if the property had been acquired after the appointed date.

(2) It shall also be the duty of a company within six months from the 1st day of June, 1942, to send to the Registrar of Companies for registration the prescribed particulars of any charge created by the company before the 1st day of April, 1939, and remaining unsatisfied on the 1st day of June, 1942, which would have been required to be registered under any provision of paragraphs (a), (b), (c), (d), (e) and (f) of subsection (2) of section 78 if the charge had been created after the 1st day of April, 1939. (3) The Registrar, on payment of the prescribed fee, shall enter the said particulars on the register kept by him in pursuance of this Part of this Ordinance. (4) If a company fails to comply with this section, the company and every director, manager,- secretary or other officer of the company, or other person who is knowingly a party to the default shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues: Provided that the failure of the company shall not prejudice any rights which any person in whose favour the charge was made may have thereunder. (5) For the purposes of this section, the expression "company " includes a company (whether a company within the meaning of this Ordinance or not) incorporated outside Ceylon which has an established place of business in Ceylon.

#### PART IV

MANAGEMENT AND ADMINISTRATION REGISTERED OFFICE AND NAME  
Registered office of company.

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

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

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

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

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

Publication of name by company

(1) Every company-

(a) shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible ;  
 (b) shall have its name engraven in legible characters on its seal;  
 (c) shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of the company, and in bills of exchange, promissory endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.

(2) If a company does not paint or affix its name in manner directed by this Ordinance, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees, and if a company does not keep its name painted or affixed in manner so directed, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine.

(3) If a company fails to comply with paragraph (h) or paragraph (c) of subsection (1), the company shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees.

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

(a) uses or authorizes the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid ; or (b) issues or authorizes the issue of any notice, advertisement, or other official publication of the company, or signs or authorizes to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque, or order for money or goods, wherein its name is not mentioned in manner aforesaid ; or (c) issues or authorizes the issue of any bill of parcels, invoice, receipt, or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees, and shall further be personally liable to the holder of the bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless it is duly paid by the company.

**RESTRICTIONS ON COMMENCEMENT OF BUSINESS**

**Restrictions on commencement of business**

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

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

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

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

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

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

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

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

(7) Nothing in this section shall apply to-

- (a) a private company; or
- (b) a company registered before the appointed date.

**REGISTER OF MEMBERS**

Register of  
members.

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

- (a) the names and addresses, and nationalities of the members, and in the case of a company having a share capital a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member;
- (b) the date at which each person was entered in the register as a member;
- (c) the date at which any person ceased to be a member; Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the Registrar of Companies, the register shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to this shares specified in paragraph (a) of subsection.

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

Index of  
members of  
company.

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

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

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

Provisions as  
to entries in  
register in  
relation to  
share  
warrants,

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

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

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

(3) The company shall be responsible for any loss incurred by any person by reason of the company entering in the register the name of a bearer of a share warrant in respect of the shares therein specified without the warrant being surrendered and cancelled. (4) Until the warrant is

surrendered, the particulars specified in subsection (1) shall be deemed to be the particulars required by this Ordinance to be entered in the register of members, and, on the surrender, the date of the surrender must be entered. (5) Subject to the provisions of this Ordinance, the bearer of a share warrant may, if the articles of the company so provide, be deemed to be a member of the company within

Power of  
company to  
keep branch  
register.

102.

- (1) A company having a share capital may, if so authorized by its articles, cause to be kept in any country other than Ceylon a branch register of members resident in that country (in this Ordinance called a "branch register").
- (2) The company shall give to the Registrar notice of the situation of the office where any branch register is kept and of any change in its situation, and if it is discontinued or discontinued, any such notice shall be given within one month of the opening of the office or of the change or discontinuation, as the case may be.
- (3) If default is made in complying with subsection (2), the company and every officer of the company who is in default shall be liable to a default fine.

## Regulations as to branch register.

103.

- (1) A branch register shall be deemed to be part of the company's register of members (in this section and in section 104 called "the principal register").
- (2) It shall be kept in the same manner in which the principal register is by this Ordinance required to be kept, except that the advertisement before closing the register shall be inserted in some newspaper circulating in the district where the branch register is kept.
- (3) The company shall transmit to registered office in Ceylon a copy of every entry in its branch register as soon as may be after the entry is made, and shall cause to be kept at its registered office, duly entered up from time to time, a duplicate of its branch register. Every such duplicate shall, for all the purposes of this Ordinance, be deemed to be part of the principal register.
- (4) Subject to the provisions of this section with respect to the duplicate register, the shares registered in a branch register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a branch register shall, during the continuance of that registration, be registered in any other register.
- (5) A company may discontinue to keep a branch register, be and thereupon all entries in that register shall transferred to the principal register. (6) Subject to the provisions of this Ordinance, any company may, by its articles, make such provisions as it may think fit respecting the keeping of branch registers. (7) If default is made in complying with subsection (3), the company and every officer of the company who is in default shall be liable to a default fine.

## Stamp duties 104. An instrument of transfer of a share registered in a branch

in case of register, shall be deemed to be a transfer of property situate out of shares Ceylon, and, unless executed in Ceylon, shall be exempt from stamp duty chargeable in Ceylon.

registered in branch registers.

Provisions as 105. If by virtue of the law in force in any country outside Ceylon companies incorporated under that law have power to keep in Ceylon registers kept branch registers of their members resident in Ceylon, the Minister may in any other by Order published in the Gazette direct that sections 97 and 99 of this country. Ordinance shall, subject to any modifications and adaptations specified in the Order, apply to and in relation to any such branch registers kept in Ceylon as they apply to and in relation to the registers of companies within the meaning of this Ordinance.

## ANNUAL RETURN

## Annual return 106.

to be made by company having a share capital.

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

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

Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the Registrar of Companies, the list must state the amount of stock held by each of the existing members instead of the amount of shares and the particulars relating to shares hereinbefore required.

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

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

(4) The return shall be in accordance with the form set out in the Sixth Schedule, or as near thereto as circumstances admit.

Annual return 107.  
to be made  
by company  
not having  
share capital.

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

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

(2) There shall be annexed to the return a statement containing particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Registrar of Companies under this Ordinance.

General provisions as to annual returns.

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

(2) Section 97 shall apply to the annual return as it applies to the register of members.

(3) Except where the company is a private company the annual return shall include a written copy, certified by a director or the manager or secretary of the company to be a true copy, of the balance sheet which has been audited by the company's auditors, including every document required by law to be annexed thereto, together with a copy of the report of the auditors thereon certified as aforesaid, and if any such balance sheet is in a language other than English there shall also be annexed to it a translation thereof in English, certified in the prescribed manner to be a correct translation :

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

(4) If a company fails to comply with this section or either of sections 106 and 107, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine.

(5) For the purposes of subsection (4) the expression "officer", and for the purposes of sections 106 and 107 the in expression "directors" shall include any person directors of the company are accustomed to act.

Certificates to 109. A private company shall send with the annual return required by section 106 a certificate signed by a director or the secretary of the company that the company has not, since the date of the last return, company with or, in the case of a first return, since the date of the incorporation of annual return, issued any invitation to the public to subscribe for any shares or debentures of the company, and, where the annual return discloses the fact that the number of members of the company exceeds fifty, also a certificate so signed that the excess consists wholly of persons who under paragraph (b) of subsection (1) of section 27 are not to be included in reckoning the number of fifty.

#### MEETINGS AND PROCEEDINGS

Annual  
general  
meeting.

110.

- (1) A general meeting of every company shall be held once at the least in every calendar year, and not more than fifteen months after the holding of the last preceding general meeting.
- (2) If default is made in holding a meeting of the company in accordance with the provisions of this section, the company, and every director or manager of the company who is knowingly a party to the default shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees.
- (3) If default is made as aforesaid, the court may on the application of any member of the company, call, or direct the calling of, a general meeting of the company.

Statutory  
meeting and  
statutory  
report

111.

- (1) Every company limited by shares and every company limited by guarantee and 'having a share capital' shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called "the statutory meeting".
- (2) The directors shall, at least seven days before the day on which the meeting is held, forward a report (in this Ordinance referred to as "the statutory report") to every member of the company.
- (3) The statutory report shall be certified by not less than two directors of the company, or, where there are less than two directors, by the sole director and manager, and shall state-

~~allotted~~ total number of shares

distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted ;

(b) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid;

(c) an abstract of the receipts of the company and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the<sup>^</sup> payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company ;

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

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

- (4) The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors, if any, of the company. (5) The directors shall cause a copy of the statutory report, certified as required by this section, to be delivered to the Registrar of Companies for registration forthwith after the sending thereof to the members of the company.
- (6) The directors shall cause a list showing the names, descriptions, and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

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

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

(9) In the event of any default in complying with the provisions of this section every director of the company who is guilty of or who knowingly and wilfully authorizes or permits the default shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees. (10)

This section shall not apply to a private company.

Convening of 112.  
extraordinary  
general  
meeting on  
requisition.

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

(2) The requisition must state the objects of the meeting, and must be signed by the requisitions and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitions. (3) If the directors do not within twenty-

one days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitions, or any of them representing more than one-half of the total voting rights of all of them, may themselves convene a meeting but any meeting so convened shall not be held after the expiration of three months from the said date. (4) A meeting convened

under this section by the requisitions shall be convened in the same manner as nearly as possible, as that in which meetings are to be convened by directors.

(5) Any reasonable expenses incurred by the requisitions by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitions by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default. (6) For

the purposes of this section, the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required by section 115,

Provisions as 113.  
to meetings  
and votes.

- (1) The following provisions shall have effect in so far as the articles of the company do not make other provision in that behalf:-
- (a) a meeting of a company, other than a meeting for the passing of a special resolution, may be called by seven days' notice in writing;
  - (b) notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by Table A, and for the purpose of this paragraph the expression "Table A" means that Table as for the time being in force;
  - (c) two or more members holding not less than one-tenth of the issued share capital or, if the company has not a share capital, not less than five per centum in number of the members of the company may call a meeting;
  - (d) in the case of a private company two members, and in the case of any other company three members, personally present shall be a quorum;
  - (e) any member elected by the members present at a meeting may be chairman thereof;
  - (f) in the case of a company originally having a share capital, every member shall have one vote in respect of each share or each one hundred rupees of stock held by him, and in any other case every member shall have one vote.
- (2) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in manner prescribed by the articles or this Ordinance, the court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the court thinks fit, and where any such order is made may give such ancillary or consequential directions as it thinks expedient, and any meeting called, held and conducted in accordance with any such order shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.

Representation 114  
of companies  
at meetings of  
other  
companies and  
of creditors.

- (1) A corporation, whether a company within the meaning of this Ordinance or not, may-
- (a) if it is a member of another corporation, being a company within the meaning of this Ordinance, by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company;
  - (b) if it is a creditor (including a holder of debentures) of another corporation, being a company within the meaning of this Ordinance, by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Ordinance or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.
- (2) A person authorized as aforesaid shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual shareholder, creditor, or holder of debentures, of that other company.

Provisions as 110.  
to  
extraordinary  
and special  
resolutions.

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

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

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

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

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

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

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

(5) When a poll is demanded in accordance with this section, in computing the majority on the poll reference shall be had to the number of voles to which each member is entitled by virtue of this Ordinance or of the articles of the company. (6) For the purposes of this section, notice of

a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by this Ordinance or the articles.

Registration 117.

copies of  
certain  
resolutions  
and  
agreements.

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

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

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

(4) This section shall apply to-

(a) special resolutions;

(b) extraordinary resolutions;

(c) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless, as the case may be, they had been passed as special resolutions or extraordinary resolutions;

(d) resolutions or agreements which have been agreed to by all the members of some class of shareholders, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, which all resolutions or agreements effectively bind all the members of any class of shareholders though not agreed to by all those members ;

(e) resolutions requiring a company to be wound up voluntarily, passed under paragraph (a) of subsection (1) of section 216.

(5) If a company fails, to comply with subsection (1), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine of twenty rupees.

(6) If a company fails to comply with subsection (2) or subsection (3), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made. (7) For the purposes of the last two foregoing subsections, a liquidator of the company shall be deemed to be an officer of the company.

Resolutions passed at adjourned meetings.

117. 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 118.

proceedings  
of meetings  
and  
directors.

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

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

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

## Inspection of 119.

minute  
books.

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

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

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

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

## Keeping of 120.

books of  
account.

## ACCOUNTS AND AUDIT

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

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

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

(3) If any person being a director of a company fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own wilful act been the cause of any default by the company thereunder, he shall be guilty of an offence and shall on conviction after summary trial by a Magistrate be liable to a fine not exceeding two thousand rupees or to imprisonment of either description for a term not exceeding six months, or to both such fine and imprisonment: Provided that a person shall not be sentenced to imprisonment for an offence under this section unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

Profit and loss account and balance sheet.

(1) The directors of every company shall at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year lay before the company in general meeting a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the period, in the case of the first account, since incorporation of the company and, in any other case, since the preceding account, made up to a date not earlier than the date of the meeting by more than nine months, or, in the case of a company carrying on business or having interests abroad, by more than twelve months: Provided that the Registrar of Companies, if for any special reason he thinks fit so to do, may, in the case of any company, extend the period of eighteen months aforesaid, and in the case of any company and with respect to any year extend the periods of nine and twelve months aforesaid.

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

(3) If any person being a director of a company fails to take all reasonable steps to comply with the provisions of this section, he shall be guilty of an offence and shall on conviction after summary trial by a Magistrate be liable to a fine not exceeding two thousand rupees, or imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment:

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

Contents of 122. balance sheet

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

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

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

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

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

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

Balance 122.

sheet to include particulars as to subsidiary companies.

(1) Where a company (in this section referred to as "the holding company") holds shares either directly or through a nominee in a subsidiary company or in two or more subsidiary companies, there shall be annexed to the balance sheet of the holding company a statement, signed by the persons by whom in pursuance of section 127 the balance sheet is signed, stating how the profits and losses of the subsidiary company, or, where there are two or more subsidiary companies, the aggregate profits and losses of those companies, have, so far as they concern the holding company, been dealt with, or for the purposes of, the accounts of the holding company, and in particular how, and to what extent-

(a) provision has been made for the losses of a subsidiary company either in the accounts of that company or of the holding company, or of both; and

(b) losses of a subsidiary company have been taken into account by the directors of the holding company in arriving at the profits and losses of the holding company as disclosed in its accounts:

Provided that it shall not be necessary to specify in any such statement the actual amount of the profits or losses of any subsidiary company, or the actual amount of any part of any such profits or losses which has been dealt with in any particular manner. (2) If in the case of a subsidiary company the auditors' report on the balance sheet of the company does not state without qualification that the auditors have obtained all the information and explanations they have required and that the balance sheet is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them and as shown by the books of the company, the statement which is to be annexed as aforesaid to the balance sheet of the holding company shall contain particulars of the manner in which the report is qualified.

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

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

Meaning of  
subsidiary  
company.

120.  
(1) Where the assets of a company consist in whole or in part of shares in another company, whether held directly or through a nominee and whether that other company is a company within the meaning of this Ordinance or not, and-

- (a) the amount of the shares so held is at the time when the accounts of the holding company are made up more than fifty per centum of the issued share capital of that other company or such as to entitle the company to more than fifty per centum of the voting power in that other company; or
- (b) the company has power (not being power vested in it by virtue only of the provisions of a debenture trust deed or by virtue of shares issued to it for the purpose in pursuance of those provisions) directly or indirectly to appoint the majority of the directors of that other company, that other company shall be deemed to be a subsidiary company within the meaning of this Ordinance and the expression "subsidiary company" in this Ordinance means a company in the case of which the conditions of this section are satisfied.

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

Right to receive copies of balance sheet and auditors' report.

12A.

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

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

(b) any member of the company, whether he is or is not entitled to have sent to him copies of the company's balance sheets, and any holder of debentures of the company, shall be entitled to be furnished on demand without charge with a copy of the last balance sheet of the company, including every document required by law to be annexed thereto, together with a copy of the auditors' report on the balance sheet. If default is made in complying with paragraph (a) of this subsection, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding two hundred rupees, and if, where" any person makes a demand for a document with which he is by virtue of paragraph (b) of this subsection entitled to be furnished, default is made in complying with the demand within seven days after the making thereof, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, unless it is proved that that person has already made a demand for and been furnished with a copy of the document.

(2) In the case of a company being a private company, any

member shall be entitled to be furnished within seven days after he has made a request in that behalf to the company, with a copy of the balance sheet and auditors' report at a charge not exceeding twenty-five cents for every hundred words. If default is made in furnishing such a copy to any member who demands it and tenders to the company the amount of the proper charge therefor, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine.

Banking and 12A.  
certain other  
companies to  
publish  
periodical  
statement.

(1) Every company, being a limited banking company or an insurance company or a deposit, provident, or benefit society, shall, before it commences business, and also on the first Monday in March and the first Monday in September in every year during which it carries on business, make a statement in the form set out in the Seventh Schedule, or as near thereto as circumstances admit.

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

(3) Every member and every creditor of the company shall be entitled to a copy of the statement, on payment of a sum not exceeding twenty-five cents. (4) If default is made in complying with this section, the company and every director and manager of the company who knowingly and wilfully authorizes or permits the default shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

(5) For the purposes of this Ordinance a company which carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance company.

Appointment  
and  
remuneration  
of auditors

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

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

(3) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a member of the company not less than fourteen days before the annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to the members, either advertisement or in any other mode allowed by the articles, not less than seven days before the annual general meeting:

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

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

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

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

(5) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act. (6) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of an auditor appointed before the first annual general meeting, or of an auditor appointed to fill a casual vacancy, may be fixed by the directors, and that the remuneration of an auditor appointed by the Registrar of Companies may be fixed by the Registrar of Companies. (7)

No person other than a registered auditor shall be eligible for appointment as an auditor under this section. Regulations may be made providing for-

- (a) the procedure for the registration of auditors;
- (b) the qualifications necessary in order to secure such registration ; and
- (c) the fees payable for such registration.

**Disqualification** 131. None of the following persons shall be qualified for appointment as auditor of a company:-

for  
appointment  
as auditor,

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

Auditors' report and auditors right of access to books and right to attend general 132.

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

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

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

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

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

(4) If any person other than a registered auditor makes the report referred to in the preceding provisions of this section, or exercises any power conferred on an auditor by those provisions, he shall be guilty of an offence, and shall be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a term not exceeding one year, or to both such fine and imprisonment.

#### INSPECTION

investigation १३३.  
of affairs of  
company by  
inspectors.

(1) The Registrar of Companies may appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as he may direct-

- (a) in the case of a banking company having a share capital, on the application of members holding not-less than one-third of the shares issued;
- (b) in the case of any other company having a share capital, on the application of members holding not less than one-tenth of the shares issued;
- (c) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members.

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

(3) It shall be the duty of all officers and agents of the company, past and present, to produce to the inspectors all books and documents in their custody or power. (4) An inspector may examine on oath the officers and agents of the company, past and present, in relation to its business, and may administer an oath accordingly. (5) If any officer or agent of the company, past or present, refuses to produce to the inspectors any book or document which it is his duty under this section so to produce, or refuses to answer any question which is put to him by the inspectors with respect to the affairs of the company, the inspectors may certify the refusal under their hand to the court, and the court may thereupon enquire into the case, and after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of the court. An appeal from any order made by the court under the preceding provisions of this subsection shall lie to the Court of Appeal.

(6) On the conclusion of the investigation the inspectors shall report their opinion to the Registrar of Companies and a copy of the report shall be forwarded by the Registrar of Companies to the registered office of the company, and a further copy shall, at the request of the applicants for the investigation, be delivered to them. The report shall be written or printed, as the Registrar of Companies may direct.

Proceedings 134.  
on report by  
inspectors.

(1) If from any report made under section 133 it appears to the Registrar of Companies that any person has been guilty of any offence in relation to the company for which he is criminally liable the Registrar of Companies shall refer the matter to the Attorney-General who, if he considers that the case is one in which a prosecution ought to be instituted and, further, that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him, shall institute proceedings accordingly, and it shall be the duty of all officers and agents of the company, past and present (other than the accused in the proceedings), to give to him all assistance in connexion with the prosecution which they are reasonably able to give. For the purposes of this subsection, the expression "agents" in relation to a company shall be deemed to include the bankers, attorneys-at-law and solicitors of the company and any persons employed by the company as auditors, whether those,; persons are or are not officers of the company.

(2) The expenses of and incidental to an investigation under section 133 of this Ordinance (in this subsection referred to as "the expenses") shall be defrayed as follows:-

- (a) where as a result of the investigation a prosecution is instituted by the Attorney-General, the expenses shall be defrayed out of the Consolidated Fund ;
- (b) in any other case the expenses shall be defrayed by the company unless the Registrar of Companies thinks proper to direct, as he is hereby authorized to do, that they shall either be paid by the applicants or in part by the company and in part by the applicants:

Provided that-

- (i) if the company fails to pay the whole or any part of the sum which it is liable to pay under this subsection, the applicants shall make good the deficiency up to the amount by which the security given by them under section 133 exceeds the amount, if any, which they have under this subsection been directed by the Registrar of Companies to pay;and
- (ii) any balance of the expenses not defrayed either by the company or the applicants shall be defrayed out of the Consolidated Fund.

Power of  
company to  
appoint  
inspectors. 135.

- (1) A company may by special resolution appoint inspectors to investigate its affairs.
- (2) Inspectors so appointed shall have the same powers and duties as inspectors appointed by the Registrar of Companies except that, instead of reporting to the Registrar of Companies they shall report in such manner and to such persons as the company in general meeting may direct.
- (3) If any officer or agent of the company, past or present, refuses to produce to the inspectors any book or document which it is his duty under this section so to produce, or refuses to answer any question which is put to him by the inspectors with respect to the affairs of the company, he shall be liable to be proceeded against in the same manner as if the inspectors had been inspectors appointed by the Registrar of Companies.

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

DIRECTORS AND MANAGERS

**Restrictions १३८.**  
on  
appointment  
or  
advertisement  
of directors

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

(a) signed and delivered to the Registrar of Companies for registration a consent in writing to act as such director; and (b) either-

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

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

to the Registrar for registration an undertaking in writing to take from the company and pay for his qualification shares, if any;or

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

(2) Where a person has signed and delivered as aforesaid an undertaking to take and pay for his qualification shares, he shall, as regards those shares, be in the same position as if he had signed the memorandum for that number of shares. (3) On the application for registration of the memorandum and articles of a company the applicant shall deliver to the Registrar a list of the persons who have consented to be directors of the company, and, if this list contains the name of any person who has not so consented, the applicant shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees. (4) This section shall not apply to-

(a) a company not having a share capital; or (b) a private company; or (c) a company which was a private company before becoming a public company; or (d) a prospectus issued by or on behalf of a company after the expiration of one year from the date on which the company was entitled to commence business.

Qualification 139.  
of director or  
manager.

- (1) Without prejudice to the restrictions imposed by section 138, it shall be the duty of every director who is by the articles of the company required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the articles.
- (2) For the purpose of any provision in the articles requiring a director or manager to hold a specified share qualification, the bearer of a share warrant shall not be deemed to be the holder of the shares specified in the warrant. (3) The office of director of a company shall be vacated if the director does not within two months from the date of his appointment, or within such shorter time as may be fixed by the articles, obtain his qualification, or if after the expiration of the said period or shorter time he ceases at any time to hold his qualification.
- (4) A person vacating office under this section shall be incapable of being reappointed director of the company until he has obtained his qualification. (5) If after the expiration of the said period or shorter time any unqualified person acts as a director of the company, he shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees for every day between the expiration of the said period or shorter time or the day on which he ceased to be qualified, as the case may be, and the last day on which it is proved that he acted as a director.

Provisions as 140.  
to  
uncertificated  
insolvents  
and  
undischarged  
bankrupts  
acting as  
directors.

- (1) If any person being an uncertificated insolvent or an undischarged bankrupt acts as director of, or directly or indirectly takes part in or is concerned in the management of, any company except with the leave of the court by which he was adjudged insolvent or bankrupt, he shall be guilty of an offence and shall on conviction after summary trial by a Magistrate be liable to a fine not exceeding five thousand rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment:

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

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

- (3) In this section the expression "company" includes an unregistered company and- a company incorporated outside Ceylon which has an established place of business within Ceylon.

Validity of  
acts of  
directors.

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

Registerof  
directors. 142.

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

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

(2) The company shall, within the periods respectively mentioned in this subsection, send to the Registrar of Companies a return in the prescribed form containing the particulars specified in the said register and a notification in the prescribed form of any change among its directors or in any of the particulars contained in the register. The period within which the said return is to be sent shall be a period of fourteen days from the appointment of the first directors of the company, and the period within which the said notification of a change is to be sent shall be fourteen days from the happening thereof. (3) The register to be kept under this section shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member of the company without charge and of any Other person on payment of fifty cents, or such less sum as the company may prescribe, for each inspection. (4) If any inspection required under this section is refused or if default is made in complying with subsection (1) or subsection (2), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine. (5) In the case of any such refusal, the court may by order compel an immediate inspection of the register. (6) For the purposes of this section, a person in accordance with whose directions or instructions the directors of a company are accustomed to act shall be deemed to be a director and officer of the company.

Particulars 143.  
with respect  
to directors in  
trade  
catalogues,  
circulars, c.

(1) Every company to which this section applies shall, in all trade catalogues, trade circulars, showcards and business letters on or in which the company's name appears and which are issued or sent by the company to any person outside Ceylon state in legible characters with respect to every director being a corporation, the corporate name, and with respect to every director being an individual, the following particulars:-

- (a) his present name, or the initials thereof, and present surname ;
- (b) any former names and surnames;
- (c) his nationality, if not citizenship of Ceylon;
- (d) his nationality of origin, if his nationality is not the nationality of origin;

Provided that, the Registrar may by order grant, subject to such conditions as may be specified in the order, exemption from the obligations imposed by this subsection.

(2) If a company makes default in complying with this section, every director of the company shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees, and, in the case of a director being a corporation, every director, secretary and officer of the corporation, who is knowingly a party to the default, shall be liable to a like penalty : Provided that no proceedings shall be instituted under this section except by, or with the consent of, the Registrar of

(3) Subject as hereinafter provided, the provisions of subsections (1) and (2) shall apply to-

(a) every company registered under Ordinance or under any written law repealed by this Ordinance\*, until the expiration of a period of ten years from the date on which such company was so registered ; and

(b) every company incorporated outside Ceylon which has an established place of business within Ceylon, until the expiration of a period of ten years from the date on which such place of business was so established:

Provided, however, that the provisions of subsections (1) and (2) shall not apply to any company which is incorporated outside Ceylon and which has, under the law of the country of incorporation, been duly exempted from compliance with any requirement of such law corresponding to the provisions of subsection (1).

(4) For the purposes of this section-

(a) the expression "director" includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;

(b) the expression " initials " includes recognized abbreviation of a Christian name or forename;

(c) in the case of a peer or person usually known by a title different from his surname, the expression " surname " means that title;

(d) references to a former name or surname do not include-

(i) in the case of a peer or a person usually known by a British title different from his surname, the name by which he was known previous to the adoption of or succession to the title; or (ii) in the case of

natural born British subjects, a former name or surname where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years; or

(iii) in the case of a married woman, the name or surname by which she was known previous to the marriage;

(e) the expression " showcards " means cards containing or exhibiting articles dealt with, or samples or representations thereof.

(• See footnote to Section 365.)

Limited  
company may  
have  
directors with  
unlimited  
liability.

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

(2) In a limited company in which the liability of a director or manager is unlimited, the directors or managers of the company, if any, and the member who proposes a person for election or appointment to the office of director or manager, shall add to that proposal a statement that the liability of the person holding that office will be unlimited, and the promoters, directors, managers, and secretary, if any, of the company, or one of them, shall, before the person accepts the office or acts therein, give him notice in writing that his liability will be unlimited. (3) If any director,

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

Special resolution of limited company making liability of directors unlimited.

140.

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

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

Statement as 141.

to  
remuneration  
of directors to  
be furnished  
to  
shareholders.

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

(a) a director of any other company which is in relation to the first-mentioned company a subsidiary company; or (b) by virtue of the nomination, whether direct or indirect, of the company a director of any other company, be included in the said aggregate amount any remuneration or other emoluments received by him for his own use whether as a director of, or otherwise in connexion with the management of the affairs of, that other company;

Provided that-

(i) a demand for a statement under this section shall be of no effect if the company within one month after the date on which the demand is made resolve that the statement shall not be furnished ; and

(ii) it shall be sufficient to state the total aggregate of all sums paid to or other emoluments received by all the directors in each year without specifying the amount received by any individual.

(2) In computing for the purpose of this section the amount of any remuneration or emoluments received by any director, the amount actually received by him shall, if the company has paid on his behalf any sum by way of income tax in respect of the remuneration or emoluments, be increased by the amount of the sum so paid.

(3) If any director fails to comply with the requirements of this section, he shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees.

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

Disclosure by \&v.  
directors of  
interest in  
contracts.

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

(2) In the case of a proposed contract the declaration required by this section to be made by a director shall be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration, or if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he became so interested, and in a case where the director becomes interested in a contract after it is made the said declaration shall be made at the first meeting of the directors held after the director becomes so interested- (3) For the purpose of this section, a general notice given to the directors of a company by a director to the effect that he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm shall be deemed to be a sufficient declaration of interest in relation to any contract so made. (4) Any director who fails to comply with the provisions of this section shall be guilty of an offence and shall be liable to a fine not exceeding one thousand rupees. (5) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting directors of a company from having any interest in contracts with the company.

Provision as 148.  
to payments  
received by  
directors for  
loss of office  
or  
on  
retirement.

- (1) It is hereby declared that it is not lawful in connexion with the transfer of the whole or any part of the undertaking or property of a company for any payment to be made to any director of the company by way of compensation for loss of office, or as consideration for or in connexion with his retirement from office, unless particulars with respect to the proposed payment, including the amount thereof, have been disclosed to the members of the company and the proposal approved by the company.
- (2) Where a payment which is hereby declared to be illegal is made to a director of the company, the amount received shall be deemed to have been received by him in trust for the company.
- (3) Where a payment is to be made as aforesaid to a director of a company in connexion with the transfer to any persons as a result of an offer made to the general body of shareholders, of all or any of the shares in the company, it shall be the duty of that director to take all reasonable steps to secure that particulars with respect to the proposed payment, including the amount thereof, shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders. (4) If any such director fails to take reasonable steps as aforesaid, or if any person who has been properly required by any such director to include the said particulars in or send them with any such notice fails so to do, he shall be guilty of an offence and shall be liable to a fine not exceeding two hundred and fifty rupees, and if the requirements of the last foregoing subsection are not complied with in relation to any such payment as is mentioned in the said subsection, any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any persons who have sold their shares as a result of the offer made.
- (5) If in connexion with any such transfer as aforesaid the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares or any valuable consideration is given to any such director, the excess or the money value of the consideration, as the case may be, shall, for the purposes of this section, be deemed to have been a payment made to him by way of compensation for loss of office or as consideration for or in connexion with his retirement from office.
- (6) Nothing in this section shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any such payments as are mentioned in this section or with respect to any other like payments made or to be made to the directors of a company.

Provisions as 149. If in the case of any company provision is made by the articles or to assign any agreement entered into between any person and the company of office by for empowering a director or manager of the company to assign his directors. office as such to another person, any assignment of office made in pursuance of the said provision shall, notwithstanding anything to the contrary contained in the said provision, be of no effect unless and until it is approved by a special resolution of the company.

#### AVOIDANCE OF PROVISIONS IN ARTICLES OR CONTRACTS RELIEVING OFFICERS FROM LIABILITY

Provisions as 150. Subject as hereinafter provided any provision, whether contained in the articles of a company or any contract with a company or otherwise, for exempting any director, manager or officer of the company, or any person (whether an officer of the company or not) employed by the company as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void:

Provided that-

- (a) in relation to any such provision which is in force at the appointed date, this section shall have effect only on the expiration of a period of six months from that date ; and (b)
- nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force and
- (c) notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid, indemnify any such director, manager, officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connexion with any application under section 360 in which relief is granted to him by the court.

#### ARRANGEMENTS AND RECONSTRUCTIONS

Power to compromise with creditors and members.

101.

- (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the court may, on the application of the company or of any creditor or member of the company, or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the court directs.
- (2) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise arrangement shall, if sanctioned by the court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.
- (3) An order made under subsection (2) shall have no effect until a certified copy of the order has been delivered to the Registrar of Companies for registration, and a copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made, or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.
- (4) If a company makes default in complying with subsection (3), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made.
- (5) In this section the expression " company " means any company liable to be wound up under this Ordinance, and the expression " arrangement" includes a reorganization of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods.

(1) Where an application is made to the court under section 151 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the court that the compromise or arrangement has been proposed for the purposes of or in connexion with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as a " transferor company ") is to be transferred to another company (in this section referred to as " the transferee company "), the court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters:-

- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;
- (b) the allotting or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;
- (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
- (d) the dissolution, without winding up, of any transferor company ;
- (e) the provision to be made for any persons, who within such time and in such manner as the court directs, dissent from the compromise arrangement;
- ~~(f)~~ such incidental, consequential supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

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

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

(4) In this section the expression " property" includes property, rights and powers of every description, and the expression " liabilities " includes duties. (5) Notwithstanding the provisions of subsection (5) of section 151, the expression " company " in this section does not include any company other than a company within the meaning of this Ordinance.

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

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

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

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

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

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

Modes of winding up.

#### (i) PRELIMINARY MODES OF WINDING UP

##### PART V

##### WINDING UP

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

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

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

##### CONTRIBUTORIES

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

- (a) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up;
- (b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member; (c) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Ordinance; (d) in the case of a company limited by shares no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member; (e) in the case of a company limited by guarantee, no contribution shall, subject to the provisions of subsection (3), be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up ;
- (f) nothing in this Ordinance shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;
- (g) a sum due to any member of a company, in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

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

- (a) a past director or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up;
- (b) a past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office,
- (c) subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding up.

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

**Definition of contributory.** 156. The term " contributory" means every person liable to contribute to the assets of a company, in the event of its being wound up, and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

**Nature of liability of contributory.** 157. The liability of a contributory shall create a debt accruing due from him at the time when his liability commenced, but payable at the contributory times when calls are made for enforcing the liability.

#### Contributories 158.

in case of death of members.

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

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

**Contributories 159.** If a contributory becomes insolvent or bankrupt, either before or after he has been placed on the list of contributories-

in case of insolvency or bankruptcy of member.

(1) his assignee in insolvency or his trustee in bankruptcy shall represent him for all the purposes of the winding up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the insolvent or bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any money due from the insolvent or bankrupt in respect of his liability to contribute to the assets of the company ; and

(2) there may be proved against the estate of the insolvent or bankrupt the estimated value of his liability to future calls as well as calls already made.

Provisions to 160.  
married women.

(1) The husband of a female contributory married before the date of the commencement of the Married Women's Property Ordinance, to whom the provisions of the Matrimonial Rights and Inheritance Ordinance applies, shall, during the continuance of the marriage, be liable, as respect any liability attaching to any shares acquired by her before that date, to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be a contributory accordingly.

(2) Subject as aforesaid, nothing in this Ordinance shall affect the provisions of the Married Women's Property Ordinance.

#### (ii) WINDING UP BY THE COURT JURISDICTION

Jurisdiction to 161.  
wind up companies registered in Ceylon.

(1) The District Court of the district in which the registered office of a company is situate shall have jurisdiction to wind up that company. (2) For the purposes of this section, the expression “\* registered office” means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

#### CASES IN WHICH COMPANY MAY BE WOUND UP BY COURT

Circumstances<sup>162</sup> A company may be wound up by the court if-  
in which  
company may  
be woundup  
by court.

- (1) the company has by special resolution resolved that the company be wound up by the court;
- (2) default is made in delivering the statutory report to the Registrar or in holding the statutory meeting;
- (3) the company does not commence its business within a year from its incorporation, or suspends its business for a whole year; (4) the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven; (5) the company is unable to pay its debts; (6) the court is of opinion that it is just and equitable that the company should be wound up.

Definition of<sup>163</sup> A company shall be deemed to be unable to pay its debts-  
inability to  
pay debts.

- (1) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred 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 thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or
- (2) if 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 (3) if it is proved to the satisfaction of the court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.

**PETITION FOR WINDING UP AND EFFECTS  
THEREOF**

Provisions as 174  
to  
applications  
for winding  
up.

(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 contributory by ~~including of those parties together proportionately; creditor or creditors), contributory~~

Provided that-

(a) a contributory shall not be entitled to present a winding-up petition unless-

- (i) either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven; or
- (ii) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder; and

(b) a winding-up petition shall not, if the ground of the petition is default in delivering the statutory report to the Registrar or in holding the statutory meeting, be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held; and

(c) the court shall not give a hearing to a winding-up petition presented by a contingent 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.

(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 authorized in that behalf under the other 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 contributors. (3) Where

under the provisions of this Part of this Ordinance any person as being the husband of a female contributory is himself a contributory, and a share has during the whole or any part of the six months mentioned in proviso (a) (ii) to subsection (1) been held by or registered in the name of the wife, or by or in the name of a trustee for the wife or for the husband, the share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the husband.

Powers of  
court on  
hearing  
petition. 170.

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

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

**Power to stay** 166. At any time after the presentation of a winding-up petition, and or restrain before a winding-up order has been made, the company, or any proceedings creditor or contributory, may against company.

- (a) where any action or proceeding against the company is pending in any court in Ceylon, apply to the court in which the action or proceeding is pending for a stay of proceedings therein; and
- (b) where any other action or proceeding is pending against the company, apply to the court having jurisdiction to wind up the company to restrain further proceedings in the 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** 167. In winding up by the court, any disposition of the property of the dispositions of 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** 168. Where any company is being wound up by the court, any attachments, attachment, sequestration, distress, or execution put in force against

- c. the estate or effects of the company after the commencement of the winding up shall be void to all intents.

#### COMMENCEMENT OF WINDING UP

**Commencement** 169. of winding up by the court.

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

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

#### CONSEQUENCES OF WINDING-UP ORDER

**Copy of order** 170. On the making of a winding-up order, a copy of the order must forthwith be forwarded by the company, or otherwise as may be forwarded to prescribed, to the Registrar of Companies, who\* shall make a minute Registrar thereof in his books relating to the company.

**Actions stayed on winding-up** 171. When a winding-up order has been made, or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court, and subject to such terms as the court may impose.

**Effect of winding-up order** 172. 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.

#### OFFICIAL RECEIVER IN WINDING UP

**Official receiver.** 173. For the purposes of this Ordinance so far as it relates to the winding up of companies by the court, the term "official receiver" means the official receiver, if any, attached to the court for insolvency purposes, or, if there is no such official receiver so attached, then such person as the Minister may appoint as official receiver to that court.

**Appointment** 174. If in the case of the winding up of any company by the court it

of official receiver by court in certain cases. appears to the court desirable, with a view to securing the more convenient and economical conduct of the winding up, that some officer, other than the person who would by virtue of section 173 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 Ordinance.

Statement of 110.  
company's  
affairs to be  
submitted to  
official  
receiver.

- (1) Where the court has made a winding-up order or appointed a provisional liquidator, there shall, unless the court thinks fit to order otherwise and so orders, be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts, and liabilities, the names, residences, and occupations of its creditors, the securities held by them respectively, the dates when the securities respectively given, and such further or other information as may be, prescribed or as the official receiver may require.
- (2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the "director" and by the person who is at that date the secretary or other chief officer of the company, or by such of the persons hereinafter in this subsection mentioned as the official receiver, subject to the direction of the court, may require to submit and verify the statement, that is to say, persons-
- (a) who are or have been directors or officers of the company ;
  - (b) who have taken part in the formation of the company at any time within one year before the relevant date; (c) who are in the employment of the company, or have been in the employment of the company within the said year, and are in the opinion of the official receiver capable of giving the information required ; (d) who are or have been within the said year officers of or in the employment of a company, which is, or within the said year was, an officer of the company to which the statement relates.
- (3) The statement shall be submitted within fourteen days from the relevant date, or within such extended time as the official receiver or the court may for special reasons appoint.
- (4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official receiver or provisional liquidator, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official receiver may consider reasonable, subject to an appeal to the court.
- (5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be guilty of an offence and shall be liable to a fine not exceeding one hundred rupees for every day during which the default continues. (6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof, or extract therefrom.
- (7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court and shall, on the application of the liquidator or of the official receiver, be punishable accordingly.
- (8) In this section the expression "the relevant date" means in a case where a provisional liquidator is appointed, the date of his appointment, and in a case where no such appointment is made, the date of the winding-up order.

Report by  
official  
receiver.

176.

(1) In a case where a winding-up order is made, the official receiver shall, as soon as practicable after receipt of the statement to be submitted under section 175, or, in a case where the court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the court-

- (a) as to the amount of capital issued, subscribed and paid up, and the estimated amount of assets and liabilities; and (b) if the company has failed, as to the causes of the failure; and
- (c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

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

(3) If the official receiver states in any such further report as aforesaid that in his opinion a fraud has been committed as aforesaid, the court shall have the further powers provided in sections 207 and 208.

#### LIQUIDATORS

Power of  
court to  
appoint  
liquidators.

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

Appointments  
and powers  
of provisional  
liquidator.

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

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

Appointment, 179. The following provisions with respect to liquidators shall have effect on a winding-up order being made :-

style, c. of  
liquidators.

(1) 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; (2) the official receiver shall

summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the court for appointing a liquidator in the place of the official receiver; (3) the court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matter aforesaid, the court shall decide the difference and make such order thereon as the court may think fit;

(4) in a case where a liquidator is not appointed by the court, the official receiver shall be the liquidator of the company; (5) the official receiver shall by virtue of his office be the liquidator during any vacancy;

(6) a liquidator shall be described, where a person other than the official receiver is liquidator, by the style of "the liquidator", and, where the official receiver is liquidator, by the style of "the official receiver and liquidator" of the particular company in respect of which he is appointed, and not by his individual name.

**Provisions 180. Where in the winding up of a company by the court a person where person other than the official receiver is appointed liquidator, that person-**

**other than  
official**

**receiver is  
appointed  
liquidator.**

(1) shall not be capable of acting as liquidator until he has notified his appointment to the Registrar of Companies and given security in the prescribed manner to the satisfaction of the Registrar; (2) shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties under this Ordinance.

**General provisions 181.**

**as to liquidators.**

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

(5) Subject to the provisions of section 266, the acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

**Custody of company's property.**

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

**Vesting of property company in liquidator**

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

**184.**

**Powers of liquidator.**

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

- (a) to bring or defend any action or other legal proceeding in the name and on behalf of the company;
- (b) to carry on the business of the company, so far as may be necessary for the beneficial winding up thereof;
- (c) to appoint an attorney-at-law to assist him in the performance of his duties:  
Provided that where the liquidator is an attorney-at-law he shall not appoint his partner unless the latter agrees to act without remuneration;
- (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, contingent, or future, certain or 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 in contingent, ascertained, or sounding only damages subsisting or supposed to subsist between the company and a contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

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

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

Exercise and control of liquidator's powers,

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

(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 in value of the creditors or contributories as the case may be.

(3) The liquidator may apply to the court in manner prescribed for directions in relation to any particular matter arising under the winding up. (4) Subject to the provisions of this Ordinance, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors. (5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court, and the court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

Books to be kept by liquidator. 186. Every liquidator of a company which is being wound up by the court shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the court, personally or by his agent inspect any such books.

Payments of

liquidator into bank.

(1) Every liquidator of a company which is being wound up by the court shall, in such manner and at such times as the court directs, pay the money received by him to the Companies Liquidation Account at the bank at which that account is kept:

Provided that, if the committee of inspection satisfy the court that for the purpose of carrying on the business of the company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the court shall, on the application of the committee of inspection, authorize the liquidator to make his payments into and out of such other bank as the committee may select, and thereupon those payments shall be made in the prescribed manner.

(2) If any such liquidator at any time retains for more than ten days a sum exceeding five hundred rupees or such other amount as the court in any particular case authorizes him to retain, then, unless he explains the retention to the satisfaction of the court, he shall pay interest on the amount so retained in excess at the rate of twenty per centum per annum, and shall be liable to disallowance of all or such part of his remuneration as the court may think just, and to be removed from his office by the court, and shall be liable to pay any expenses occasioned by reason of his default. (3) 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.

Audit of  
liquidator's  
accounts.

188.

- (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 of Companies an account of his receipts and payments as liquidator.
- (2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form. (3) The Registrar shall cause the account to be audited and for the purpose of the audit the liquidator shall furnish the Registrar with such vouchers and information as the Registrar may require, and the Registrar may at any time require the production of and inspect any books or accounts kept by the liquidator.
- (4) When the account has been audited, one copy thereof shall be filed and kept by the Registrar, and the other copy shall be delivered to the court for filing, and each copy shall be open to the inspection of any creditor, or of any person interested. (5) The Registrar shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and contributory.

Control of  
Registrar of  
Companies  
over  
liquidators.

189.

- (1) The Registrar of Companies shall take cognizance of the conduct of liquidators of companies which are being wound up by the court, and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules, or otherwise with respect to the performance of his duties, or if any complaint is made to the Registrar by any creditor or contributory in regard thereto, the Registrar shall inquire into the matter, and take such action thereon as he may think expedient.
- (2) The Registrar may at any time require any liquidator of a company which is being wound up by the court to answer any inquiry in relation to any winding up in which he is engaged, and may, if the Registrar thinks fit, apply to the court to examine him or any other person on oath concerning the winding up.
- (3) The Registrar may also direct a local investigation to be made of the books and vouchers of the liquidator.

Release of  
liquidators.

190.

- (1) When the liquidator of a company which is being wound up by the court has realized all the property of the company, or so much thereof as can, in his opinion, be realized without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributors among themselves, and made a final return, if any, to the contributors, or has resigned, or has been removed from his office the court shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the court, shall take into consideration the report, and any objection which may be urged by any creditor or contributory, or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly.
- (2) Where the release of a liquidator is withheld, the court may, on the application of any creditor or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.
- (3) An order of 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, his release shall operate as a removal of

Meetings of creditors and contributories to determine whether committee of inspection shall be appointed.

(1) When a winding-up order has been made by the court, it shall be the business of the separate meetings of creditors and contributories summoned for the purpose of determining whether or not an application should be made to the court for appointing a liquidator in place of the official receiver, to determine further whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator and who are to be members of the committee if appointed.

(2) The court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matters aforesaid the court shall decide the difference and make such order thereon as the court may think fit.

Constitution and proceedings of committee of inspection.

(1) A committee of inspection appointed in pursuance of this Ordinance shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of difference, may be determined by the court.

(2) The committee shall meet at such times as they from time to time appoint, and, failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary. (3) The committee may act by a majority of they members present at a meeting, but shall not act unless a majority of the committee are present. (4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes insolvent or bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories, of which seven days' notice has been given, stating the object of the meeting. (7) On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, reappoint the same or appoint another creditor or contributory to fill the vacancy.

(8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

Powers of 193. Where in the case of a winding up there is no committee of court where inspection, the court may, on the application of the liquidator, do any no committee act or thing or give any direction or permission which is by this of inspection. Ordinance authorized or required to be done or given by the committee.

#### GENERAL POWERS OF COURT IN CASE OF WINDING UP BY COURT

Power to stay194.  
winding up.

(1) The court may at any time after gap order for winding up, on the application either of the liquidator, or the official receiver, or any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

(2) On any application under this section the court may, before making an order, require the official receiver to furnish to the court a report with respect to any facts or matters which are in his opinion relevant to the application.

Settlement of 190.  
list of  
contributories  
and  
application of  
assets,

(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 register of members in all cases where rectification is required in pursuance of this Ordinance, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities :

Provided that, where it appears to the court that it will not be necessary to make calls on or adjust the rights of 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.

Delivery of  
property to  
liquidator.

196. 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 hands to which the company is prima facie entitled.

Payment of  
debts due by  
contributory  
to company  
and extent to  
which set-off  
allowed.

197.

(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 manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Ordinance.

(2) The court in making such an order may-

(a) in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and

(b) in the case of a limited company, make to any director or manager whose liability is unlimited or to his estate the like allowance.

(3) In the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

Power of  
court to make  
calls

198.

(1) The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.

(2) In making a call the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

Payment into 199.  
bank of  
moneys due  
to company.

(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 enforced in the same manner as if it had directed payment to the liquidator.

(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.

Power to  
order public  
examination  
of promoters,  
directors. c.

- Y.Y.
- (1) Where an order has been made for winding up a company by the court, and the official receiver has made a further report under this Ordinance stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the court may, after consideration of the report, direct that that person, director or officer shall attend before the court on a day appointed by the court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company or as to his conduct and dealings as director or officer thereof.
- (2) The official receiver shall take part in the examination, and for that purpose may employ 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 court may put such questions to the person examined as the court thinks fit.
- (5) The person examined shall be examined on oath, and shall answer all such questions as the court may put or allow to be put to him. (6) A person ordered to be examined under this section shall at his own cost, before his examination, be furnished with a copy of the official receiver's report, and may at his own cost "employ an attorney-at- law, who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him; Provided that, if any such person applies to the court to be exculpated from any charges made or suggested against him, it shall be the duty of the official receiver to appear on the hearing of the application and call the attention of the court to any matters which appear to the official receiver to be relevant, and if the court, after hearing any evidence given or witnesses called by the official receiver, grants the application, the court may allow the applicant such costs as in its discretion it may think fit. (7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times. (8) The court may, if it thinks fit, adjourn the examination from time to time.

<b>Power to restrain fraudulent persons from managing companies.</b>	<p style="text-align: center;">Y.A.</p> <p>(1) Where an order has been made for winding up a company by the court, and the official receiver has made a further report under this Ordinance stating that, in his opinion, a fraud has been committed by a person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the court may, on the application of the official receiver, order that that person, director or officer shall not, without the leave of the court, be a director of or in any way, whether directly or indirectly, be concerned in or take part in the management of a company for such period, not exceeding five years, from the date of the report as may be specified in the order.</p> <p>(2) The official receiver shall, where he intends to make an application under the last foregoing subsection, give not less than ten days' notice of his intention to the person charged with the fraud, and on the hearing of the application that person may appear and himself give evidence or call witnesses.</p> <p>(3) It shall be the duty of the official receiver to appear on the hearing of an application by him for an order under this section and on an application for leave under this section and to call the attention of the court to any matters which appear to him to be relevant, and on any such application the official receiver may himself give evidence or call witnesses.</p> <p>(4) If any person acts in contravention of an order made under this section, he shall be guilty of an offence and shall be liable, on conviction after summary trial by a Magistrate to a fine not exceeding five thousand rupees, or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.</p> <p>(5) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made.</p>
	<p><b>Power to arrest absconding contributory.</b> The court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit Ceylon, or otherwise to abscond, or to remove or conceal contributory any of his property for the purpose of evading payment of calls, or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested, and his books and papers and movable personal property to be seized, and him and them to be safely kept until such time as the court may order.</p>
	<p><b>Power of court.</b> Any powers by this Ordinance conferred on the court shall be in addition to and 'not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.</p>
	<p><b>Delegation to liquidator.</b> Provision may be made by general rules for enabling or requiring liquidator of all or any of the powers and duties conferred and imposed on the certain court by this Ordinance in respect of the following matters :-</p> <p>(1) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;</p> <p>(2) the settling of lists of contributories and the rectifying of the register of members where required, and the collecting and applying of the assets; (3) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;</p> <p>(4) the making of calls;</p> <p>(5) the fixing of a time within which debts and claims must be proved, to be exercised or performed by the liquidator as an officer of the court, and subject to the control of the court:</p> <p>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.</p>

Dissolution of ୧୧୨.  
company.

- (1) When the affairs of a company have been completely wound up, the court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.
- (2) The order shall within fourteen days from the date thereof be reported by the liquidator to the Registrar of Companies who shall make in his books a minute of the dissolution of the company.
- (3) If the liquidator makes default in complying with the requirements of this section, he shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees for every day during which he is in default.

#### ENFORCEMENT OF AND APPEAL FROM

##### ORDERS

Manner of enforcing orders of court 213. All orders made by a court under this Ordinance may be enforced in the same manner in which decrees of such court made in any suit pending therein may be enforced.

Enforcement of winding-up by another court 214. Where any order made by one court is required to be enforced of winding-up by another court, a certified copy of the order shall be produced to the order in another court required to enforce the same, and the production of a certified copy shall be sufficient evidence of the order, and thereupon the last-mentioned court shall take the requisite steps in the matter for enforcing the order in the same, manner as if it had been made by that court.

Appeals. 215. An appeal from any order or decision made or given in the winding up of a company by the court under this Ordinance shall lie to the Supreme Court in the same manner and subject to the same conditions as an appeal from any order or decision of the court made or given in the exercise of its ordinary civil jurisdiction.

#### (iii) VOLUNTARY WINDING UP RESOLUTIONS

##### FOR, AND COMMENCEMENT OF VOLUNTARY WINDING UP

Circumstances in which company may be wound up voluntarily, 216.

(1) A company may be wound up voluntarily-

- (a) when the period, if any, fixed for the duration of the company by the articles expires or the event, if any, occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;
- (b) if the company resolves by special resolution that the company be wound up voluntarily;
- (c) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

(2) In this Ordinance the expression "a resolution for voluntary winding up" means a resolution passed under any of the provisions of subsection (1).

Notice of resolution to wind up voluntarily. ୧୧୯.

- (1) When a company has passed a resolution for voluntary winding up, it shall, within seven days after the passing of the resolution, give notice of the resolution by advertisement in the Gazette.
- (2) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine, and for the purposes of this subsection the liquidator of the company shall be deemed to be an officer of the company.

Commencement of voluntary winding up. 218. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for winding up.

#### CONSEQUENCES OF VOLUNTARY WINDING UP

Effect of voluntary winding up on  
business and status of company.

219. In case of a voluntary winding up, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof.

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

Avoidance of transfers, c., after commencement of voluntary winding up.

220. Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding up, shall be void.

#### DECLARATION OF SOLVENCY

Statutory declaration of solvency in case of proposal to wind up voluntarily.

221.

(1) Where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors may, at a meeting of the directors held before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out, make a statutory declaration to the effect that they have made a full inquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within a period, not exceeding twelve months, from the commencement of the winding up.

(2) A declaration made as aforesaid shall have no effect for the purposes of this Ordinance unless it is delivered to the Registrar of Companies for registration before the date mentioned in subsection (1).

(3) A winding up in the case of which a declaration has been made and delivered in accordance with this section is in this Ordinance referred to as "a members' voluntary winding up", and a winding up in the case of which a declaration has not been made and delivered as aforesaid is in this Ordinance referred to as "a creditors' voluntary winding up".

#### PROVISIONS APPLICABLE TO A MEMBERS'

##### VOLUNTARY WINDING UP

~~Provisions~~ The provisions contained in the five sections of this Ordinance applicable to next following shall apply in relation to a members' voluntary winding up.

Power of company to appoint and fix remuneration of liquidators.

222.

(1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.

(2) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in the

general meeting, or the liquidator, sanctions continuance thereof.

Power to fill vacancy in office of liquidator.

223.

(1) If a vacancy occurs by death, resignation, or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators. (3) The meeting shall be held in manner provided by this Ordinance or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

Final meeting ୧୨୭.  
and  
dissolution.

(1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) The meeting shall be called by advertisement in the Gazette, specifying the time, place, and object thereof, and published one month at least before the meeting. (3) Within one week after the meeting, the liquidator shall send to the Registrar of Companies a copy of the account, and shall make a return to him of the holding of the meeting and of its date and if the copy is not sent or the return is not made in accordance with this subsection the liquidator shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees for every day during which the default continues:

Provided that, if a quorum is not present at the meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present therat, 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 hereinbefore mentioned shall forthwith register them, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved : Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit. (5) It shall be the duty of the

person on whose application an order of the court under this section is made, within seven days after the making of the order, to deliver to the Registrar a certified copy of the order for registration, and if that person fails so to do he shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

#### PROVISIONS APPLICABLE TO A CREDITORS'

##### VOLUNTARY WINDING UP

Provisions 228. The provisions contained in the eight sections of this Ordinance applicable tonext following shall apply in relation to a voluntary winding up.  
a creditors'  
winding up.

Meeting of  
creditors.

119.

(1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the said meeting of creditors to be sent by post to the 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 advertised once in the Gazette and once at least in two local newspapers circulating in the district where the registered office or principal place of business of the company is situate.

(3) The directors of the company shall-

(a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of creditors to be held as aforesaid; and

(b) appoint one of their number to preside at the said meeting.

(4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat. (5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of subsection (1) shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company. (6) If default is made-

(a) by the company in complying with subsections (1) and (2);

(b) by the directors of the company in complying with subsection (3);

(c) by any director of the company in complying with subsection (4), the company, directors or director, as the case may be,

shall be guilty of an offence and shall be liable to a fine not exceeding one 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 shall be liable to the like penalty.

**Appointment** 230. The creditors and the company at their respective meetings of liquidator mentioned in section 229 may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator:

Provided that in the case of different persons being nominated any director, member, or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors.

Appointment २३१.  
of committee  
of inspection.

(1) The creditors at the meeting to be held in pursuance of section 229 or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number:

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection, and, if the creditors so resolve the persons mentioned in the resolution shall not, unless the court otherwise directs, be qualified to act as members of the committee, and on any application to the court under this provision the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(2) Subject to the provisions of this section and to general rules, the provisions of section 192 except subsection (1) of section, shall that committee of apply with respect to a this section as inspection appointed under committee of they apply with respect to a winding up by inspection appointed in a the court.

Fixing of २३२.  
liquidators'  
remuneration  
and cesser of  
directors'  
powers.

(1) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.  
(2) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction the continuance thereof.

Power to Fill 233. If a vacancy occurs, by death, resignation or otherwise, in the  
vacancy in office of a liquidator, other than a liquidator appointed by, or by the  
direction of, the court, the creditors may fill the vacancy.

Application of 234. The provisions of section 225 shall apply in the case of a  
section 225 to creditors' voluntary winding up as in the case of a members voluntary  
a creditors' winding up, with the modification that the powers of the liquidator  
voluntary winding up. under the said section shall not be exercised except with the sanction  
either of the court or of the committee of inspection.

Duty of  
liquidator to  
call meetings  
of company  
and of  
creditors at  
end of each  
year.

(1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.  
(2) If the liquidator fails to comply with this section, he shall be guilty of an offence and shall be liable to a fine not exceeding one hundred rupees.

Final meeting ۲۳۶.  
and  
dissolution.

(1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors, for the purpose of laying the account before the meetings, and giving any explanation thereof.

(2) Each such meeting shall be called by advertisement in the Gazette, specifying the time, place, and object thereof, and published one month at least before the meeting. (3)

Within one week after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the Registrar of Companies a copy of the account, and shall make a return to him of the holding of the meetings and of their dates, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees for every day during which the default continues:

Provided that, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this 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 and in respect of each such meeting either of the returns hereinbefore mentioned shall forthwith register them, and on the expiration of three months from the registration thereof the company shall be deemed to be dissolved : Provided that

the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit. (5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order to deliver to the Registrar a certified copy of the order for registration, and if that person fails so to do he shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

#### PROVISIONS APPLICABLE TO EVERY

##### VOLUNTARY WINDING UP

~~Provisions~~ The provisions contained in the eight sections of this Ordinance applicable tonext following shall apply to every voluntary winding up whether a every members' or a creditors' winding up.

voluntary  
winding up.

Distribution o f238. Subject to the provisions of this Ordinance as to preferential property of payments, the property of a company shall, on its winding up, be

company. applied in satisfaction of its liabilities panpassu, and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

Powers and  
duties of  
liquidator in  
voluntary  
winding up.

- (1) The liquidator may-
- (a) in the case of a members' voluntary winding up, with the sanction of an extraordinary resolution of the company, and, in the case of a creditors' voluntary winding up, with the sanction of either the court or the committee of inspection, exercise any of the powers given by paragraphs (d), (e) and (f) of subsection (1) of section 184 to a liquidator in a winding up by the court;
  - (b) without sanction, exercise any of the other powers by this Ordinance given to the liquidator in a winding up by the court; (c) exercise the power of the court under this Ordinance of settling a list of contributories, and the list of contributories shall be prima facie evidence of the liability of the persons named therein to be contributories; (d) exercise the power of the court of making calls;
  - (e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution or for any other purpose he may think fit.

(2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves. (3) When several liquidators are appointed, any power given by this Ordinance may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination by any number not less than two.

Power of  
court to  
appoint and  
remove  
liquidator in  
voluntary  
winding up.

- (1) If from any cause whatever there is no liquidator acting, the court may appoint a liquidator.
- (2) The court may, on cause shown, remove a liquidator and appoint another liquidator,

Notice by ,  
liquidator of  
his  
appointment.

- (1) The liquidator shall, within twenty-one days after his appointment, deliver to the Registrar of Companies for registration a notice of his appointment in the prescribed form.
- (2) If the liquidator fails to comply with the requirements of this section he shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Arrangement  
when binding  
on creditors

- (1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors.
- (2) Any creditor or contributory may, within three weeks from completion of the arrangement, appeal to the court against it, and the court may thereupon, as it thinks just, amend, vary, or confirm the arrangement.

Power to  
apply to court  
to have  
questions  
determined or  
powers  
exercised.

- (1) The liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls, or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.
- (2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

~~244.~~ 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.

~~245.~~ The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the court, but in the creditors and case of an application by a contributory, the court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

#### (iv) WINDING UP SUBJECT TO SUPERVISION

##### OF COURT

~~246.~~ When a company has passed a resolution for voluntary winding up subject to continue but subject to such supervision of the court, and with such supervision, 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. 247. 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.

Application of 248. A winding up subject to the supervision of the court shall for the sections 167 purposes of section 167 and 168, be deemed to be winding up by the court.

and 168 to winding up court.  
subject to supervision.

Power of court to appoint or remove liquidator. 189.

- (1) Where an order is made for a winding up subject to supervision, the court may by that or any subsequent appoint an additional
- (2) A liquidator appointed by the court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position, as if he had been duly appointed in accordance with the provisions of this Ordinance with respect to appointment of liquidators in a voluntary winding up.
- (3) The court may remove any liquidator so appointed by the court or any liquidator continued under the supervision order and fill any vacancy occasioned by the removal, or by death or resignation.

Effect of supervision order. 190.

- (1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the court, exercise all his powers, without the sanction or intervention of the court, in the same manner as if the company were being wound up altogether voluntarily:

Provided that the powers specified in paragraphs (d), (e) and (f) of subsection (1) of section 184 shall not be exercised by the liquidator except with the sanction of the court or, in a case where before the order the winding up was a creditors' voluntary winding up, with the sanction of either the court or the committee of inspection.

(2) A winding up subject to the supervision of the court is not a winding up by the court for the purpose of the provisions of this Ordinance which are set out in the Eighth Schedule 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 purpose of section 192 except subsection (1) of that section, except in so far as the operation of that section is excluded in a voluntary winding up by general rules.

#### (v) PROVISIONS APPLICABLE to EVERY MODE OF WINDING UP PROOF AND RANKING OF CLAIMS

(4) The foregoing debts shall-

- (a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and
- (b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(5) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.

(6) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding-up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on or the proceeds of the sale thereof: Provided that in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made. (7) In

this section- "relevant date "means-

- (a) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding-up order; and
- (b) in any other case, the date of the commencement of the winding up; and 11 rates " or " taxes " means any rate charge, tax, or assessment imposed or made by the Government or by any Municipality or by any Urban Council established under the Urban Councils Ordinance, or by any Town Council, Village Council or other local authority.

#### EFFECT OF WINDING UP ON ANTECEDENT AND OTHER TRANSACTIONS

Fraudulent preference. 102.

(1) Any conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property which would, if made or done by or against an individual be deemed in his insolvency a fraudulent preference, shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly.

(2) For the purposes of this section, the commencement of the winding up shall be deemed to correspond with the act of insolvency in the case of an individual. (3) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

Effect of floating charge.

255. Where a company is being wound up, a floating charge on the undertaking or property of the company created within six months of the commencement of the winding up, shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per centum per annum.

Disclaimer of 256.

onerous property.

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, if 'there is no person claiming under the company who is willing to accept an order upon such terms, the court shall have power to vest the estate and interest of the company in the property in any person liable either personally or in a representative character, and either alone or jointly with the company to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company.

(7) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.

Restriction of 101.  
rights of  
creditor as to  
execution or  
attachment in  
case of  
company.

(1) Where a creditor has issued execution against the goods or lands of a company or has attached any debt due to the company, and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the company unless he has completed the execution or attachment before the commencement of the winding up:

Provided that

(a) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice shall for the purposes of the foregoing provision substituted for the date of the commencement of the winding up ; and

(b) a person who purchases in good faith under a sale by order of the court any goods of a company on which an execution has been levied shall in all cases acquire a good title to them against the liquidator.

(2) For the purposes of this section, an execution against goods shall be taken to be completed by seizure and sale, and an attachment of a debt shall be deemed to be completed by receipt of the debt, and an execution against land shall be deemed to be completed by seizure and, in the case of an equitable interest, by the appointment of a receiver. (3) In this section the expression " goods " includes

all  
movable property.

Duties of  
Fiscal as to  
goods taken  
in execution

१०८.

- (1) Where any goods of a company are taken in execution, and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, 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) Where under an execution in respect of a judgment for a sum exceeding two hundred rupees the goods of a company are sold or money is paid in order to avoid 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 the voluntary winding up of the company and an order is made or a resolution is passed, as the case may be, for the winding up of the company, the Fiscal shall pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor.
- (3) In this section the expression " goods" includes all movable property and the expression " Fiscal" includes any officer charged with the execution of a writ or other process.

OFFENCES ANTECEDENT TO OR IN COURSE  
OF WINDING UPOffences by  
officers of  
companies in  
liquidation.

१०९.

- (1) If any person, being a past or present director, manager or other officer of a company which at the time of the commission of the alleged offence is being wound up, whether by or under the supervision of the court or voluntarily, or is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up-
- (a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property, movable and 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 way of the business of the company; or
  - (b) does not deliver up to the liquidator, or as he directs, all such part of the movable and immovable property of the company as is in his custody or under his control, and which he is required by law to deliver up ; or (c) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up; or
  - (d) within twelve months next before the commencement of the winding up or at any time thereafter conceals any part of the property of the company to the value of one hundred rupees or upwards, or conceals any debts due to or from the company; or
  - (e) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently removes any part of the property of the company to the value of one hundred rupees or upwards; or (f) makes any material omission in any statement relating to the affairs of the company; or
  - (g) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of a month to inform the liquidator thereof; or

(3) For the purposes of this section, the expression "director" shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

**Penalty for** any director, manager or other officer, or contributory of any falsification of company being wound up destroys, mutilates, alters, or falsifies any books, papers, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or document belonging to the company with intent to defraud or deceive any person, he shall be guilty of an offence and shall be liable to imprisonment of either description -for a term not exceeding two years.

**Frauds by officers of companies which have gone into liquidation.**

261. If any person, being at the time of the commission of the alleged offence a director, manager or other officer of a company which is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up-

- (a) has by false pretences or by means of any other fraud induced any person to give credit to the company;
- (b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company;
- (c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against the company, he shall be guilty of an offence and shall be liable to imprisonment of either description for a term not exceeding two years.

**Liability** ۲۶۲.  
where proper accounts not kept.

(1) If where a company is wound up it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, every director, manager or other officer of the company who was knowingly a party to or connived at the default of the company shall, unless he shows that he acted honestly or that in the circumstances in which the business of the company was carried on the default was excusable, be guilty of an offence and shall be liable to imprisonment of either description for a term not exceeding one year.

(2) For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of any company if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of the annual stock takings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

**Responsibility** ۲۶۳.  
of directors  
for fraudulent trading.

(1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the court, on the application of the official receiver, or the liquidator or any creditor or contributory of the company, may, if it thinks proper so to do, declare that any of the directors, whether past or present, of the company who were knowingly parties to the carrying on of the business in manner aforesaid shall be personally responsible, without any limitation of liability for all or any of the debts or other liabilities of the company as the court may direct.

(2) Where the court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the liability of any such director under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any company or person on his behalf, or any person claiming as assignee from or through the director, company or person, and may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under this subsection. For the purpose of this subsection, the expression "assignee" includes any person to whom or in whose favour, by the directions of the director, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include as assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in subsection (1), every director of the company who was knowingly a party to the carrying on of the business in manner aforesaid, shall be guilty of an offence and shall be liable to imprisonment of either description for a term not exceeding one year. (4) The court may, in the case of any

person in respect of whom a declaration has been made under subsection (1) or who has been convicted of an offence under subsection (3) order that that person shall not, without the leave of the court, be a director of or in any way, whether directly or indirectly, be concerned in or take part in the management of a company for such period, not exceeding five years, from the date of the declaration or of the conviction, as the case may be, as may be specified in the order, and if any person acts in contravention of an order made under this subsection he shall be guilty of an offence and shall be liable to a fine not exceeding five thousand rupees or to imprisonment of either description for a term not exceeding two years or to both such fine and imprisonment. In this subsection the expression "the court" in relation to the making of an order, means the court by which the declaration was made or the court before which the person was convicted, as the case may be, and in relation to the granting of leave means any court having jurisdiction to wind up the company.

(5) For the purpose of this section, the expression "director" shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

(6) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made, and the declaration shall, for the purposes of the Insolvency Ordinance be deemed to be a judgment for the recovery of a debt or money demand referred to in section 12 of that Ordinance.

(7) It shall be the duty of the official receiver or of the liquidator to appear on the hearing of an application for leave under subsection (4), and on the hearing of an application under that subsection or under subsection (1), the official receiver or the liquidator, as the case may be, may himself give evidence or call witnesses.

Power of      १६४.

court to  
assess  
damages  
against  
delinquent  
directors,&c.

(1) If in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, or liquidator, or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or has been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of the official receiver, or of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator, or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance, or breach of trust as the court thinks just.

(2) The provisions of this section shall have effect notwithstanding that the offence is one for which the offender may be criminally liable. (3) Where an order for payment of money is made under this section, the order shall, for the purposes of the Insolvency Ordinance be deemed to be a judgment for the recovery of a debt or money demand referred to in section 12 of that Ordinance.

**Disqualification २६१.**

for  
appointment as  
liquidator.

(1) A body corporate shall not be qualified for appointment as liquidator of a company, whether in a winding up by or under supervision of the court or in a voluntary winding up, and any appointment made in contravention of this provision shall be void.

(2) Nothing in this section shall disqualify a body corporate from acting as liquidator of a company if acting under an appointment made before the appointed date, but subject as aforesaid any body corporate which acts as liquidator of a company shall be guilty of an offence and shall be liable to a fine not exceeding one thousand rupees.

**Enforcement २६२.**

of duty of  
liquidator to  
make  
returns,&c.

(1) If any liquidator, who has made any default in Filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the court may, on an application made to the court by any contributory or creditor of the company or by the Registrar of Companies, make an order directing the liquidator to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the 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 aforesaid.

**Notification २६४.**

that a  
company is in  
liquidation.

(1) Where a company is being wound up, whether by or under the supervision of the court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

(2) If default is made in complying with this section, the company and every director, manager, secretary or other officer of the company, and every liquidator of the company and every receiver or manager, who knowingly and wilfully authorizes or permits the default, shall be guilty of an offence and shall be liable to a fine of two hundred rupees.

**Exemption of 269. In the case of a winding up by the court or of a creditors' certain voluntary winding up of a company-**

documents  
from stamp  
duty on  
winding up of  
companies.

(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 or writing relating solely to the property of any company which is being so wound up, or to any proceeding under any such winding up, shall be exempt from stamp duty.

**Books of 270. Where a company is being wound up, all books and papers of company to be evidence. the company and of the liquidators shall, as between the contributories of the company, be prima facie evidence of the truth of all matters purporting to be therein recorded.**

Disposal of  
books and  
papers of  
company.

(1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows, that is to say:-

- (a) in the case of a winding up by or subject to the supervision of, the court in such way as the court directs; (b) in the case of a members\* voluntary winding up, in such way as the company by extraordinary resolution directs, and, in the case of a creditors' voluntary winding up, in such way as the committee of inspection or, if there is no such committee, as the creditors of the company, may direct.

(2) After five years from the dissolution of the company no responsibility shall rest on the company, the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

(3) Provision may be made by general rules for enabling the Registrar of Companies to prevent, for such period (not exceeding five years from the dissolution of the company) as he thinks proper, 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 of Companies and to appeal to the court from any direction which may be given by the Registrar of Companies in the matter. (4) If any person acts in contravention of any general rules made for the purposes of this section or of any direction of the Registrar of Companies thereunder, he shall be guilty of an offence and shall be liable to a fine not exceeding one thousand rupees.

Information  
as to pending  
liquidations.

(1) If where a company is being wound up the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the Registrar of Companies a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom. (3) If a liquidator fails to comply with this section, he shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees for each day during which the default continues and any person untruthfully stating himself as aforesaid to be a creditor or contributory shall be guilty of a contempt of court, and shall, on the application of the liquidator or of the official receiver, be punishable accordingly.

**Unclaimed assets to be paid to Companies Liquidation Account, ۲۷۳.**

(1) If, where a company is being wound up, it appears either from any statement sent to the Registrar under section 272 or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt, the liquidator shall forthwith pay the said money to the Companies Liquidation account and shall be entitled to the prescribed certificate of receipt for the money so paid, and that certificate shall be an effectual discharge to him in respect thereof.

(2) For the purpose of ascertaining and getting in any money payable into the Companies Liquidation Account in pursuance of this section, the Registrar of Companies may order any liquidator or other person to submit to him an account verified by affidavit of any such money and may direct and enforce an audit of that account in such manner as may be prescribed. The Registrar of Companies may from time to time appoint a person to collect and get in any such money and for the purposes of this section any court having jurisdiction in insolvency shall have and, at the instance of the person so appointed or of the Registrar of Companies may exercise all the powers conferred by the Insolvency Ordinance with respect to the discovery and realization of the property of an insolvent, and the provisions of that Ordinance with respect thereto shall apply accordingly to proceedings under this section, with such modifications as may be necessary.

(3) Any person claiming to be entitled to any money paid into the Companies Liquidation Account in pursuance of this section may apply to the Registrar of Companies for payment thereof, and the Registrar of Companies may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due.

(4) Any person dissatisfied with the decision of the Registrar of Companies in respect of a claim made in pursuance of this section may appeal to the court in such manner as may be prescribed. The decision of the court shall be final and shall not be subject to any further appeal.

**Resolutions ۲۷۴. Where after the appointed date 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.**

**Meetings to ascertain wishes of creditors or contributories ۲۷۵.****SUPPLEMENTARY POWERS OF COURT**

(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 Ordinance or the articles.

**PROVISIONS AS TO DISSOLUTION**

Power of court to declare dissolution of company void.

(1) Where a company has been dissolved, the court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within seven days after the making of the order, or such further time as the court may allow, to deliver to the Registrar of Companies for registration a certified copy of the order, and if that person fails so to do he shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Registrar may strike defunct company off register.

(1) Where the Registrar of Companies has reasonable cause to believe that a company is not carrying on business or in operation, he may send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the Registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Gazette with a view to striking the name of the company off the register.

(3) If the Registrar either receives an answer to the effect that the company is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Gazette, and send to the company by post, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months, the Registrar shall publish in the Gazette and send to the company or the liquidator, of any, a like notice as if provided in the last preceding subsection.

(5) At the expiration of the time mentioned in the notice the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Gazette, and on the publication in the Gazette of this notice the company shall be dissolved : Provided that-

- (a) the liability, if any, of every director, managing officer, and member of the company shall continue and may be enforced as if the company had not been dissolved ; and
- (b) nothing in this subsection shall affect the power of the court to wind up a company the name of which has been struck off the register.

(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the court on an application made by the company or member or creditor before the expiration of twenty years from the publication in the Gazette of the notice aforesaid may, if satisfied that the company was at the lime of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and upon a certified copy of the order being delivered to the Registrar for registration the company shall be deemed to have continued in existence as if its name had not been struck off; and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director or officer of the company, or, if there is no director or officer of the company whose name and address are known to the Registrar of Companies, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

**Property of dissolved company to vest in the State.** 278. Where a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (including leasehold property but not including property held by the company on trust for any other person) shall, subject and without prejudice to any order which may at any time be made by the court under sections 276 and 277, vest in and be at the disposal of the State.

**Companies liquidation** 279. CENTRAL ACCOUNTS  
 (1) An account, to be called the Companies Liquidation Account, shall be kept by the Registrar of Companies with such bank as may from time to time be approved by the Minister in charge of the subject of Finance. (2) All payments out of money standing to the credit of the Registrar of Companies in the Companies Liquidation Account shall be made in the prescribed manner.

**Investment of 280. surplus funds on general account.** (1) Whenever the cash balance standing to the credit of the 'Companies Liquidation Account' is in excess of the amount which in the opinion of the Registrar of Companies is required for the time being to answer demands in respect of companies' estates, the Registrar of Companies shall notify the excess to the Deputy Secretary to the Treasury and shall pay over to him, to such account as he may direct, the whole or any part of that excess which he may require, and the Deputy Secretary to the Treasury may invest the sums paid over, or any part thereof, in Government securities, to be placed to the credit of the said account.

(2) When any part of the money so invested is, in the opinion of the Registrar of Companies, required to answer any demands in respect of companies' estates, the Registrar of Companies shall notify to the Deputy Secretary to the Treasury the amount so required, and the Deputy Secretary to the Treasury shall thereupon repay to the Registrar of Companies such sum as may be required to the credit of the Companies Liquidation Account, and for that purpose may direct the sale of such part of the said securities as may be necessary.

(3) The dividends, on investments under this section shall be paid into the Companies-Liquidation Account.

Separate accounts of particular estates.

- ۲۸۱.
- (1) An account shall be kept by the Registrar of Companies of the receipts and payments in the winding up of each company, and, when the cash balance standing to the credit of the account of any company is in excess of the amount which, in the opinion of the committee of inspection, is required for the time being to answer demands in respect of that company's estate, the Registrar of Companies shall, on the request of the committee, invest the amount not so required in Government securities, to be placed to the credit of the said account for the benefit of the company.
  - (2) When any part of the money so invested is, in the opinion of the committee of inspection, required to answer any demands in respect of the estate of the company, the Registrar of Companies shall, on the request of the committee, raise such sum as may be required by the sale of such part of the said securities as may be necessary.
  - (3) The dividends on investments under this section shall be paid to the credit of the company.
  - (4) When the balance at the credit of any company's account in the hands of the Registrar of Companies exceeds twenty thousand rupees, and the liquidator gives notice to the Registrar of Companies that the excess is not required for the purposes of the liquidation, the company shall be entitled to interest on the excess at the rate of two per centum per annum.

#### RULES AND FEES

General rules 282.  
and fees for  
winding up.

- (1) General rules made under Article 136 of the Constitution may provide for the carrying into effect of the objects of this Ordinance, so far as relates to the winding up of companies.
- (2) There shall be paid in respect of proceedings under this Ordinance in relation to the winding up of companies such fees as the Minister may, by regulation, prescribe.

#### PART VI

##### RECEIVERS AND MANAGERS

Disqualification 283.  
for  
appointment  
as receiver.

- (1) A body corporate shall not be qualified for appointment as receiver of the property of a company. (2) Nothing in this section shall disqualify a body corporate from acting as receiver as aforesaid if acting under an appointment made before the appointed date, but subject as aforesaid any body corporate which acts as receiver as aforesaid shall be guilty of an offence and shall be liable to a fine not exceeding one thousand rupees.

Power to appoint official receiver as receiver for debenture holders or creditors. Notification that receiver or manager appointed,

۲۸۰.

284. Where an application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the court, the official receiver may be so appointed.

- (1) Where a receiver or manager of the property of a company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company or the receiver or manager or the liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver or manager has been appointed.
- (2) If default is made in complying with the requirements of this section, the company and every director, manager, secretary or other officer of the company, and every liquidator of the company, and every receiver or manager, who knowingly and wilfully authorizes or permits the default, shall be guilty of an offence and shall be liable to a fine of two hundred rupees.

Registration of documents copies of documents, notices, &c.  
[. 8, 19 of 1942]

290. It shall be the duty of the Registrar to register –
- (a) every document which is by any provision of this ordinance required or authorized to be registered or recorded by, or filled with, the Registrar ; and
  - (b) every document or copy of a document , and every return or notice , which is by any such provision required or authorized to be sent, forwarded, given , delivered or produced to the Registrar or notified in any way to the Registrar ;

and where no special provision is made in this Ordinance for the payment of a fee in respect of any registration so effected , the fees mentioned in the Table set out in the Ninth Schedule shall be paid to the Registrar in respect of such registration.

Translations of documents.  
[. 8, 19 of 1942]

291. Where any document or any copy of any document which is required by section 290 to be registered by the Registrar is in a language other than Sinhala, there shall be annexed to such document or copy a translation thereof in Sinhala certified in the prescribed manner to be a correct translation.

Provided, however, that this section shall not apply to documents required by Part I of this Ordinance to be delivered to the Registrar.

¶¶¶.

Fees.

- (1) There shall be paid to the Registrar in respect of the several matters mentioned in the Table set out in the Ninth Schedule the several fees therein specified.
- (2) All fees paid to the Registrar in pursuance of this Ordinance shall be paid into the Consolidated Fund.

Inspection, production evidence of documents kept by Registrar.

¶¶¶.

(1) Any person may inspect the documents kept by the Registrar of Companies on payment of the prescribed fees, not exceeding fifty cents for each inspection , and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document , to be certified by the Registrar , on payment of the prescribed notwithstanding two rupees for a certificate of incorporation and not exceeding two rupees for a certificate of incorporation and not exceeding twenty five cents for each folio of a certified copy or extract :

Provided that, where a company has been dissolved under this Ordinance, the Registrar may at any time after the expiration of two years from the date of the dissolution, direct that any documents in his custody relating to that company may be disposed of in such manner as may be prescribed.

(2) A copy of or extract from any document kept and registered at the office for the registration of companies shall, if certified to be a true copy under the hand of the Registrar (whose official position it shall not be necessary to prove), be admissible in evidence in all legal proceedings as of equal validity with the original document.

Enforcement of duty of company to make returns to Registrar.

(1) If a company, having made default in complying with any provision of this Ordinance which requires it to file with, deliver or send to the Registrar of Companies any return, account or other document, or to give notice to him of any matter, fails to make good the default within fourteen days after the service of a notice on the company requiring it to do so, the court may, on an application made to the court by any member or creditor of the company or by the Registrar of Companies, make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of the company responsible for the default.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default as aforesaid.

**PART VIII**

APPLICATION OF ORDINANCE TO COMPANIES FORMED OR REGISTERED UNDER FORMER WRITTEN LAW

Application of 295. In the application or this Ordinance to existing companies, it shall

Ordinance to apply in the same manner –

companies

formed

former written

law.

(1) in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Ordinance as a company limited by shares;

(2) in the case of a company limited by guarantee, as if the company had been formed and registered under this Ordinance as a company limited by guarantee; and (3) in

the case of a company other than a limited company, as if the company had been formed and registered under this Ordinance as an unlimited company: Provided that-

(a) nothing in Table A in the First Schedule shall apply to a company formed and registered under any written law repealed by Ordinance No. 51 of 1938, unless adopted by special resolution of the company; and (b) reference, express or implied, to

the date of

registration shall be construed as a reference to the date at which the company was registered under any written law repealed by Ordinance No. 51 of 1938.

**Application of 296.** This Ordinance shall apply to every but not formed under any

Ordinance to written law repealed by Ordinance No. 51 of 1938\* in the same

company manner as it is in Part IX of this Ordinance declared to apply to

registered companies registered but not formed under this Ordinance :

under former

written law.

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under any written law repealed by Ordinance No. 51 of 1938.\*

**PART IX**

COMPANIES NOT FORMED UNDER THIS ORDINANCE AUTHORIZED TO REGISTER UNDER THIS ORDINANCE

Companies ۱۹۴.

Capable

registered

(1) With the exceptions and subject to the provisions contained in this section, any company formed, whether before or after the appointed date, in pursuance of any Act of Parliament of the United Kingdom or of Letters Patent, or being otherwise duly constituted according to law, and consisting of seven or more members may at any time register under this Ordinance as an unlimited company, or as a company limited by shares, or as a company limited by guarantee; and the registration shall not be invalid by reason that it has taken place with a view to the company being wound up :

Provided that-

- (i) a company registered in Ceylon under any written law repealed by Ordinance No. 51 of 1938\* shall not register in pursuance of this section;
- (ii) a company having the liability of its members limited by Act of Parliament of the United Kingdom or Letters Patent, and not being a joint stock company as hereinafter defined, shall not register in pursuance of this section;
- (iii) a company having the liability of its members limited by Act of Parliament of the United Kingdom or Letters Patent shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee ;
- (iv) a company that is not a joint stock company in ~~as hereinafter defined shall not register~~ pursuance of this section as a company limited by shares;
- (v) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed by the regulations of the company) at a general meeting summoned for the purpose ;
- (vi) where a company not having the liability of its members limited by Act of Parliament of the United Kingdom or Letters Patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person or by proxy at the meeting;
- (vii) where a company is about to register a, a company limited by guarantee, the assent to its being so registered shall be accompanied by a member ~~undertakes to contribute to the assets~~ of the company, in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceased to be a member, and of the costs and expenses of winding up, and for the adjustment of the rights of the contributors among themselves, such amount as may be required, not exceeding a specified amount.

(2) In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.

Definition of joint stock company.

**298. For the purposes of this Part of this Ordinance, as far as relates to registration of companies as companies limited by shares, a joint stock company means a company having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons, and such a company when registered with limited liability under this Ordinance shall be deemed to be a company limited by shares.**

**Requirements 299.** Before the registration in pursuance of this Part of this Ordinance for registration of a joint stock company, there shall be delivered to the Registrar the following documents:- by joint stock companies.

(1) a list showing the names, addresses, and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number;

(2) a copy of any Act of Parliament of the United Kingdom, Royal Charter, Letters Patent, deed of settlement, contract of copartnery, cost book regulations, or other instrument constituting or regulating the company; and

(3) if the company is intended to be registered as a limited company, a statement specifying the following particulars:-

(a) the nominal share capital of the company and the number of shares into which it is divided, or the amount of stock of which it consists; (b) the

number of shares taken and the amount paid on each share;

(c) the name of the company, with the addition of the word "limited" as the last word thereof; and

(d) in the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee.

**Requirements 300.** Before the registration in pursuance of this Part of this Ordinance for registration of any company not being a joint stock company, there shall be delivered to the Registrar-

by other than joint stock companies.

(1) a list showing the names, addresses, and occupations of the directors or other managers (if any) of the company; and

(2) a copy of any Act of Parliament of the United Kingdom, Letters Patent, deed of settlement, contract of copartnery, cost book regulations, or other instrument constituting or regulating the company; and

(3) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

**Authentication 301.** The lists of members and directors and any other particulars

of statements relating to the company required to be delivered to the Registrar shall be verified by a statutory declaration of any two or more directors or of existing other principal officers of the company.

**Registrar may 302.** The Registrar may require such evidence as he thinks necessary

require evidence as to nature of company. for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint stock company as hereinbefore defined.

**Exemption of 303.** No fees shall be charged in respect of the registration in pursuance of this Part of this Ordinance of a company if it is not registered as a limited company, or if before its registration as a limited from payment company the liability of the shareholders was limited by some Act of fees. Parliament of the United Kingdom or by Letters Patent.

**Addition of 304.** When a company registers in pursuance of this Part of this limited " to Ordinance with limited liability, the word " limited " shall form, and be registered as, part of its name.

**Certificate of 305.** On compliance with the requirements of this Part of this registration of Ordinance with respect to registration, and on payment of such fees, if existing are payable under the Ninth Schedule, the Registrar shall certifying his hand that the " company applying for registration is incorporated as a company under this Ordinance, and in the case of a limited company that it is limited, and thereupon the company shall be so incorporated.

**306. All property, movable and immovable, including all interests and rights, and arising out of, property, movable and immovable, and registration, including obligations and actionable claims, belonging to or vested in a company at the date of its registration in pursuance of this Part of this Ordinance, shall on registration pass to and vest in the company as incorporated under this Ordinance for all the estate and interest of the company therein.**

<p><b>Saving for existing liabilities.</b></p> <p><b>Continuation of existing actions.</b></p>	<p><b>307. Registration of a company in pursuance of this Part of this</b></p> <p>Ordinance shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by it, with or on behalf of, the company before registration.</p> <p><b>308. All actions and other legal proceedings which at the time of the registration or a company in pursuance of this Part of this Ordinance are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place; Provided that execution shall not issue</b></p> <p>against the effects of any individual member of the company on any judgment, decree, or order obtained in any such action or proceeding, but, in the event of the property and effects of the company being insufficient to satisfy the judgment, decree, or order, an order may be obtained for winding up the company.</p> <p style="text-align: center;">¶ 9.</p>
<p><b>Effect of registration ordinance</b></p>	<p>(1) When a company is registered in pursuance of this Part of this Ordinance, the following provisions of this section shall have effect.</p> <p>(2) All provisions contained in any Act of Parliament of the United Kingdom or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Ordinance, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles.</p> <p>(3) All the provisions of this Ordinance shall apply to the company, and the members, contributories, and creditors thereof, in the same manner in all respects as if it had been formed under this Ordinance, subject as follows :-</p> <ul style="list-style-type: none"> <li>(a) Table A shall not apply unless adopted by special resolution ;</li> <li>(b) the provisions of this Ordinance relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered</li> <li>(c) subject to the provisions of this section the company shall not have power to alter any provision contained in any Act of Parliament of the United Kingdom relating to the company;</li> <li>(d) subject to the provisions of this section the company shall not have power to alter any provision contained in any Letters Patent relating to the company;</li> <li>(e) the company shall not have power to alter any provision contained in a Royal Charter or Letters Patent with respect to the objects of the company;</li> <li>(f) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid ;</li> <li>(g) in the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid, and, in the event of the death, bankruptcy, or insolvency, of any female contributory, the provisions of this Ordinance with respect to the legal representatives and heirs of deceased contributories, to trustees of bankrupt or the assignees of insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply.</li> </ul>

- (4) The provisions of this Ordinance with respect to-
- (a) the registration of an unlimited company as limited;
  - (b) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up;
  - (c) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up, shall apply notwithstanding any provisions contained in any Act of Parliament of the United Kingdom, Royal Charter, or other instrument constituting or regulating the company.
- (5) Nothing in this section shall authorize the company to alter any such provisions contained in any instrument constituting or regulating the company as would if the company had originally been formed under this Ordinance, have been required to be contained in the memorandum and are not authorized to be altered by this Ordinance.
- (6) Nothing in this Ordinance shall derogate from any power of altering its constitution or regulations which may, by virtue of any Act of Parliament of the United Kingdom or other instrument constituting or regulating the company, be vested in the company.
- (7) In this section the expression "instrument" includes deed of settlement, contract of copartnery, cost book regulations and Letters Patent.

Power to<sup>11.</sup>  
substitute  
memorandum  
and articles  
for deed of  
settlement.

- (1) Subject to the provisions of this section, a company registered in pursuance of this Part of this Ordinance may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.
- (2) The provisions of this Ordinance with respect to confirmation by the court and registration of an alteration of the objects of a company shall so far as applicable apply to an alteration under this section with the following modifications:-
- (a) there shall be substituted for the printed copy of the altered memorandum required to be delivered to the Registrar of Companies a printed copy of the substituted memorandum and articles; and
  - (b) on the registration of the alteration being submitted by the Registrar, the memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Ordinance with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company.
- (3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Ordinance. (4) In this section the expression "deed of settlement" includes any contract of copartnery or other instrument constituting or regulating the company, not being an Act of Parliament of the United Kingdom, a Royal Charter, or Letters Patent.

~~Below~~ The provisions of this Ordinance with respect to staying and court to stay restraining actions and proceedings against a company at any time or restrain after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of a company registered in pursuance of this Part of this Ordinance, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

Actions 312. Where an order has been made for winding up a company stayed on registered in pursuance of this Part of this Ordinance, no action or winding-up proceeding shall be commenced or proceeded with against the order. company or any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

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**PART X****WINDING UP OF UNREGISTERED COMPANIES**

**Meaning** For the purposes of this Part of this Ordinance, the expression "unregistered company" shall include any partnership, whether limited company or not, any association and any company with the following exceptions:-

- (1) a company registered under this Ordinance or under any written law repealed by this Ordinance;
- (2) a partnership, association or company which consists of less than eight members and is not a foreign partnership, association or company.

Winding up of unregistered companies.

(1) Subject to the provisions of this Part of this Ordinance, any unregistered company may be wound up under this Ordinance, and all the provisions of this Ordinance with respect to winding up shall apply to an unregistered company, with the following exceptions and additions-

- (a) the principal place of business in Ceylon of an unregistered company shall, for all the purposes of the winding up, be deemed to be the registered office of the company;
  - (b) no unregistered company shall be wound up under this Ordinance voluntarily or subject to supervision; (c) the circumstances in which an unregistered company may be wound up are as follows:-
- (i) if the company is dissolved, or has ceased to carry on business, or carrying on business only for the purpose of winding up its affairs;
  - (ii) if the company is unable to pay its debts;
  - (iii) if the court is of opinion that it is just and equitable that the company should be wound up;

(d) an unregistered company shall, for the purposes of this Ordinance, be deemed to be unable to pay its debts-

(i) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary or some director, manager, or principal officer of the company, or by otherwise serving in such manner as the court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor;

(ii) if any action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business, or by delivering it to the secretary, or some director, manager, or principal officer of the company, or by otherwise serving the same in such manner as the court may approve or direct, the company has not within ten days after service of the notice paid, secured, or compounded for the debt or demand, or procured the action or proceeding to be stayed, or indemnified reasonable the defendant to his or satisfaction against the action costs, proceedings, and expenses to be incurred by him by reason of the same;

(iii) if execution or other process issued on a Judgment, decree, or order obtained in any court in favour of a creditor against the company, or any member thereof as such, or any person authorized to be sued as nominal defendant on behalf of the company, is returned unsatisfied;

(iv) if it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts.

(2) Where a company incorporated outside Ceylon which has been carrying on business in Ceylon ceases to carry on business in Ceylon, it may be wound up as an unregistered company under this Part of this Ordinance, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated. (3)

Nothing in this Part of this Ordinance shall affect the operation of any written law which provides for any partnership, association, or company, being wound up, or being wound up as a company or as an unregistered company, under any written law repealed by this Ordinance, except that references in any such first-mentioned written law to any such repealed written law shall be read as references to the corresponding provision (if any) of this Ordinance.

<b>Contributories<sup>¶10.</sup></b> in winding up of unregistered company	<p>(1) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the costs and expenses of winding up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid.</p> <p>(2) In the event of the death, bankruptcy, or insolvency, of any contributory, or marriage of any female contributory, the provisions of this Ordinance with respect to the legal representatives and the heirs of deceased contributories, to the trustees of bankrupt or the assignees of insolvent contributories and to the liabilities of husbands and wives respectively, shall apply.</p>
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~~Section 316~~ The provisions of this Ordinance with respect to staying and restraining actions and proceedings against a company at any time or restrain after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

**Actions** 317. Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

**Provisions of Part X** 318. The provisions of this Part of this Ordinance with respect to unregistered companies shall be in addition to and not in restriction of any provisions hereinbefore in this Ordinance contained with respect to winding up companies by the court, and the court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Ordinance : Provided that an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Ordinance, and then only to the extent provided by this Part of this Ordinance.

## PART XI

**COMPANIES INCORPORATED OUTSIDE CEYLON CARRYING ON BUSINESS WITHIN CEYLON**  
**Companies to** 319. This Part of this Ordinance shall apply to all companies which Part X incorporated outside Ceylon which, after the appointed date, establish a place of business within Ceylon, and to all companies incorporated outside Ceylon which have, before the appointed date, established a place of business within Ceylon and continue to have an established place of business within Ceylon at the appointed date.

Documents, <sup>¶11.</sup>  
 c, to be  
 delivered to  
 Registrar by  
 companies  
 carrying on  
 business in  
 Ceylon.

Return to be delivered to Registrar where documents,&c., altered.

322. If in the case of any company to which this Part of this Ordinance applies any alteration is made in-

- (1) the charter, statutes, or memorandum and articles of the company or any such instrument as aforesaid ; or
- (2) the directors of the company or the particulars contained in the list of the directors; or
- (3) the names or addresses of the persons authorized to accept service on behalf of the company; or
- (4) the address of-

- (a) the registered or principal office of the company; or
- (b) the principal place of business of the company within' Ceylon, the company shall, within the prescribed time, deliver to the Registrar for registration a return containing the prescribed particulars of the alteration.

Balance sheet of company carrying on business in Ceylon

۲۲۳.

(1) Every company to which this Pan of this Ordinance applies shall-

- (a) if it is required, by the law of the country of incorporation, to prepare a balance sheet and lay such balance sheet before the company in general meeting in every calendar year, deliver to the Registrar for registration a certified copy of such balance sheet within a period of four months from the date of the meeting before which such balance sheet was laid ;
- (b) if it is not required by the law of the country of incorporation so to lay a balance sheet before such meeting, make out a balance sheet in every calendar year in such form and containing such particulars and including such documents as under the provisions of this Ordinance it would, if it had been a company within the meaning of this Ordinance, have been required to make out and lay before the company in general meeting and deliver a certified copy of that balance sheet to the Registrar for registration.

(2) If any such balance sheet is not written in the Sinhala language, there shall be annexed to it a "certified translation thereof.

(3) Where a copy of any balance sheet is delivered to the Registrar-

- (a) under paragraph (a) of subsection (1), by any company which is not required by the law of the country of incorporation to file or register such balance sheet with the authority charged with the administration of the law relating to companies in that country, or
- (b) under paragraph (6) of subsection (1), such balance sheet shall not be published, and no copy of any such balance sheet shall be issued except for the use of a Minister.

Obligation to ۲۲۴. Every company to which this Part of this Ordinance applies shall-state name of company, whether limited, and country where incorporated.

(1) in every prospectus inviting subscriptions for its shares or debentures in Ceylon state the country in which the company is incorporated; and (2) conspicuously exhibit on every place where it carries on business in Ceylon the name of the company and the country in which the company is incorporated ; and (3) cause the name of the company and of the country in which the company is incorporated to be stated in legible characters in all billheads and letter paper, and in all notices, advertisements, and other official publications of the company; and (4) if the liability of the members of the company is limited, cause notice of that fact to be stated in legible characters in every such prospectus as aforesaid and in all bill-heads, letter paper, notices, advertisements and other official publications of the company in Ceylon, and to be affixed on

**Section 325.** Any process or notice required to be served, on a company to which Part XI of this Ordinance applies shall be sufficiently served if which Part XI addressed to any person whose name has been delivered to the applies.

Registrar under this Part of this Ordinance and left at or sent by post to the address which has been so delivered :

Provided that-

(1) Where any such company makes default in delivering to the Registrar the name and address of a person resident in Ceylon who is authorized to accept on behalf of the company service of process or notices; or

(2) If at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on behalf of the company, or for any reason cannot be served, a document may be served on the company by leaving it at or sending it by post to any place of business established by the company in Ceylon.

**Section 326.** Any company to which this Part of this Ordinance applies

ceases to have a place of business in Ceylon, it shall forthwith give notice of the fact to the Registrar of Companies, and as from the date when ceases notice of the fact to the Registrar of Companies, and as from the date to have placeon which notice is so given the obligation of the company to deliver of business inany document to the Registrar shall cease.

Ceylon.

**Penalties .** 327. If any company to which this Part of this Ordinance applies fails to comply with any of the foregoing provisions of this Part of this Ordinance the company, and every officer or agent of the company, shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees, or, in the case of a continuing offence fifty rupees for every day during which the default continues.

**Enforcement** 328.

of duty to comply with provisions of this Part

(1) If any company to which the provisions of this Part of this Ordinance apply, having made default in complying with any such provision, fails to make good the default within fourteen days after the service of a notice on the company requiring it to do so, the court may, on an application made to the court by the Registrar of Companies or by any creditor of the company or by any other person who may appear to the court to be interested, make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of the company responsible for the default.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default as aforesaid.

**Interpretation** 329. For the purposes of this Part of this Ordinance- the expression "

of Part XI certified " means certified in the prescribed manner to be a true copy or a correct translation ; the expression " director " in relation to a company includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act; the expression " place of business " includes a share transfer or share registration office; the expression " prospectus " has the same meaning as when used in relation to a company incorporated under this Ordinance.

## PART XII

### RESTRICTIONS ON SALE OF SHARES AND OFFERS OF SHARES FOR SALE

Provisions ۳۳۰.

with respect to prospectuses of foreign companies inviting subscriptions for shares or offering shares for sale.

(1) It shall not be lawful for any person-

(a) to issue, circulate or distribute in Ceylon any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Ceylon whether the company has or has not established, or when formed will or will not establish, a place of business in Ceylon, unless-

(i) before the issue, circulation or distribution of the prospectus in Ceylon a copy thereof, certified by the chairman and two other directors of the company as having been approved by resolution of the managing body, has been delivered for registration to the Registrar of Companies;

(ii) the prospectus states on the face of it that the copy has been so delivered;

(iii) the prospectus is dated ;

(iv) the prospectus otherwise complies with this Part of this Ordinance; or

(b) to issue to any person in Ceylon a form of application for shares in or debentures of such a company or intended company as aforesaid, unless the form is issued with a prospectus which complies -with this part of this Ordinance :

Provided that this provision shall not apply if it is shown that the form of application was issued in connexion with a bona fide invitation to a person to enter into underwriting agreement with respect to the shares or debentures.

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

(3) Where any document by which any shares in or debentures of a company incorporated outside Ceylon are offered for sale to the public would, if the company concerned had been a company within the meaning of this Ordinance, have been deemed by virtue of section 39 to be a prospectus issued by the company, that document shall be deemed to be, for the purposes of this section, a prospectus issued by the company.

(4) An offer of shares or debentures for subscription or sale to any person whose ordinary business or part of whose ordinary business it is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this section.

(5) Section 38 shall extend to every prospectus to which this section applies.

(6) Any person who is knowingly responsible for the issue, circulation or distribution of any prospectus, or for the issue of a form of application for shares or debentures, in contravention of the provisions of this section shall be guilty of an offence and shall be liable to a fine not exceeding five thousand rupees.

(7) In this section and in section 331 the expressions "prospectus", "shares", and "debentures" have the same meanings as when used in relation to a company incorporated under this Ordinance.

Requirements<sup>۱۳۱</sup>.  
as to  
prospectus

(1) In order to Comply with this Part of this Ordinance a prospectus in addition to complying with the provisions of sub-paragraphs (ii) and (iii) of paragraph (a) of subsection (1) of section 330 must-

(a) contain particulars with respect to the following matters :-

- (i) the objects of the company;
- (ii) the instrument constituting or defining the constitution of the company;
- (iii) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected;
- (iv) an address in Ceylon where the said instrument, enactments or provisions, or copies thereof, and if the same are in a foreign language a translation thereof certified in the prescribed manner, can be inspected ;
- (v) the date on which and the country in which the company was incorporated;
- (vi) whether the company has established a place of business in Ceylon, and, if so, the address of its principal office in Ceylon; Provided that the provisions of sub paragraphs (i), (ii), (iii) and (iv) of this paragraph shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business;

(b) subject to the provisions of this section, state the matters specified in Part I of the Fourth Schedule (other than those specified paragraph 1 of the said Part I) and set out the reports specified in Part II of that Schedule subject always to the provisions contained in Part III of the said Schedule : Provided that-

(i) where any prospectus is published as a newspaper advertisement, it shall be a sufficient compliance with the requirement that the prospectus must specify the objects of the company if the advertisement specifies the primary object with which the company was formed , and

(ii) in paragraph 3 of Part I of the said Fourth Schedule a reference to the constitution of the company shall be substituted for the reference to the articles; and (iii) paragraph 1 of Part III of that Schedule shall have effect as if the reference to the memorandum were omitted therefrom.

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

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

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

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

(4) Nothing in this section shall limit or diminish any liability which any person may incur under any written or other law, apart from this section.

**Restrictions ۱۳۲.**  
on offering of  
shares for  
subscription  
or sale.

(1) It shall not be lawful for any person to go from house to house offering shares for subscription or purchase to the public or any member of the public, In this subsection the expression " house " sale shall not include an office used for business purposes.

(2) Subject as hereinafter provided in this subsection, it shall not be lawful to make an offer in writing to any member of the public (not being a person whose ordinary business or part of whose ordinary business it is to buy or sell shares, whether as principal or agent) of any shares for purchase, unless the offer is accompanied by a statement in writing (which must be signed by the person making the offer and dated) containing such particulars as are required by this section to be included therein and otherwise complying with the requirements of this section, or, in the case of shares in a company incorporated outside Ceylon, either by such a statement as aforesaid, or by such a prospectus as complies with this Part of this Ordinance :

Provided that the provisions of this subsection shall not apply-

- (a) where the shares to which the offer relates are shares which are quoted on, or in respect of which permission to deal has been granted by, any recognized stock exchange in Ceylon and the offer so states and specifies the stock exchange ; or

- (b) where the shares to which the offer relates are shares which a company has allotted or agreed to allot with a view to their being offered for sale to the public ; or

- (c) where the offer was made only to persons with whom the person making the offer has been in the habit of doing regular business in purchase or sale of shares.

(3) The written statement aforesaid shall not contain any matter other than the particulars required by this section to be included therein, and shall not be in characters less large or less legible than any characters used in the offer or in any document sent therewith.

(4) The said statement shall contain particulars with respect to the following matters:-

- (a) whether the person making the offer is acting as principal or agent, and if as agent the name of his principal and an address in Ceylon where that principal can be served with process;
- (b) the date on which and the country in which the company was incorporated and the address of its registered or principal office in Ceylon; (c) the authorized share capital of the company and the amount thereof which has been issued, the classes into which it is divided and the rights of each class of shareholders in respect of capital, dividends and voting; (d) the dividends, if any, paid by the company on each class of shares during each of the three financial years immediately preceding the offer, and if no dividend has been paid in respect of shares of any particular class during any of those years, a statement to that effect;
- (e) the total amount of any debentures issued by the company and outstanding at the date of the statement, together with the rate of interest payable thereon;
- (f) the names and addresses of the directors of the company ;
- (g) whether or not the shares offered are fully paid up, and, if not, to what extent they are paid up ; (h) whether or not the shares are quoted on, or permission to deal therein has been granted by, any recognized stock exchange in Ceylon or elsewhere, and, if so, which, and, if not, a statement that they are not so quoted or that no such permission has been granted;
- (i) where the offer relates to units, particulars of the names and addresses of the persons in whom the shares represented by the units are vested, the date of and the parties to any document defining the terms on which those shares are held, and an address in Ceylon where that document or a copy thereof can be inspected. In this subsection the expression " company " means the company by which the shares to which the statement relates were or are to be issued.

(5) If any person acts, or incites, causes or procures any person to act, in contravention of this section, he shall be guilty of an offence and shall be liable to a fine not exceeding five thousand rupees or to imprisonment of either description for a term not exceeding one year, or to both such fine and imprisonment.

(6) Where a person convicted, of an offence under this section is a company (whether a company within the meaning of this Ordinance or not), every director and every officer concerned in the management of the company shall be guilty of the like offence unless he proves that the act constituting the offence took place without his knowledge or consent. (7) In this section, unless the context otherwise requires, the expression " shares " means the shares of a company, whether a company within the meaning of this Ordinance or not, and includes debentures and units, and the expression " unit " means any right or interest (by whatever name called) in a share, and for the purposes of this section a person shall not in relation to a company be regarded as not being a member of the public by reason only that he is a holder of shares in the company or a purchaser of goods from the company.

(8) Where any person is convicted of having made an offer in contravention of the provisions of this section, the court before which he is convicted may order that any contract made as a result of the offer shall be void, and, where it makes any such order, may give such consequential directions, as it thinks proper for the repayment of any money or the retransfer of any shares. Any person who shall be dissatisfied with an order made under this subsection (whether with or without consequential directions) may appeal to the Court of Appeal in like manner as if the order was a final order pronounced in a criminal cause or matter, and sections 320 to 330 (inclusive) of the Code of Criminal Procedure Act shall apply to such appeal.

### PART XIII

**PROVISIONS RELATING TO BANKS**

Definition of banking company- 333. A " banking company " means a company which carries on as its principal business the accepting of deposits of money on current account or otherwise, subject to withdrawal by cheque, draft or order, notwithstanding that it engages in addition in any one or more of the following forms of business, namely :-

- (1) the borrowing, raising or taking up of money ; the lending or advancing of money either upon or without security; the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hoondees, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips and other instruments, and securities whether transferable or negotiable or not; the granting and issuing of letters of credit, travellers cheques and circular notes; the buying, selling and dealing in bullion and specie; the buying and selling of foreign exchange including foreign bank notes, the acquiring, holding, issuing on commission, shares, underwriting and dealing in stock funds, debentures, debenture stock, bonds, obligations, securities and investments of all kinds; the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others ; the negotiating of loans and advances; the receiving of all kinds of bonds, scrips or valuables on deposit, or for safe custody or otherwise and the carrying on of the business of safe deposit; the collecting and transmitting of money and securities;
- (2) acting as agents for Governments or local authorities or for any other person or persons; the carrying on of agency business of any description other than the business of a managing agent of any company which is not a banking "company, including the power to act as attorneys and to give discharges and receipts;
- (3) contracting for public and private loans and negotiating and issuing the same;
- (4) the promoting, effecting, insuring guaranteeing, underwriting, participating in managing and carrying out of any issue, public or private, of State, Municipal or other loans or of shares, stock, debentures, or debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue;
- (5) carrying on and transacting every kind of guarantee and indemnity business;
- (6) promoting or financing or assisting in promoting or financing any business undertaking or industry, either existing or new, and developing or forming the same either through the instrumentality of syndicates or otherwise;
- (7) acquisition by purchase, lease, exchange, hire or otherwise of any property immovable or movable and any rights or privileges which the company may think necessary or convenient to acquire or the acquisition of which in the opinion of the company is likely to facilitate the realization of any securities held by the company or to prevent or diminish any apprehended loss or liability;
- (8) managing, selling and realizing all property movable and immovable which may come into the possession of the company in satisfaction or part satisfaction of any of its claims;
- (9) acquiring and holding and generally dealing with any property and any right, title or interest in any property movable or immovable which may form part of the security for any loans or advance or which may be connected with any such security;
- (10) undertaking and executing trusts ;

- (11) undertaking the administration of estates as executor, trustee or otherwise;
- (12) taking or otherwise acquiring and holding shares in any other company having objects similar to those of the company ;
- (16) establishing and supporting or aiding in establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the company or the defendants or connexions of such persons; granting pensions and allowances and making payments towards insurance; subscribing to or guaranteeing moneys for charitable or benevolent objects or for any exhibition or for any public, general or useful object;
- (14) the acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purposes of the company;
- (15) selling, improving, managing, developing, exchanging, leasing, mortgaging, disposing of or turning into account or otherwise dealing with all or any part of the property and rights of the company ;
- (16) acquiring and undertaking the whole or any part of the business of any person or company, when such business is of a nature enumerated or described in this section ;
- (17) doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company.

**Prohibition of ۱۳۴.**  
banking with  
more than ten  
members,

- (1) No company, association, or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking unless it is registered as a company under this Ordinance, or under some other enactment.
- (2) No company, association or partnership consisting of more than ten persons, which is formed outside Ceylon, shall carry on the business of banking in Ceylon unless-
  - (a) it is formed in pursuance of some Act of Parliament of the United Kingdom, Royal Charter or Letters Patent or is duly incorporated as a banking company outside Ceylon, and
  - (b) has an established place of business in Ceylon.
- (3) Where any company, association or partnership consisting of more than ten persons is formed in contravention of the provisions of subsection (1) or carries on the business of banking in contravention of the provisions of subsection (2), each of such persons-
  - (a) shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees or to imprisonment of either description for a term not exceeding three months or to both such fine and imprisonment; and (b) shall, without prejudice to the provisions of paragraph (a), be severally liable for the payment of the whole debts of the company, association or partnership of which he is or was a member, and may be sued accordingly without the joinder in the suit of any other member of the company, association or partnership.

On ۲۳۰.  
registration of  
banking  
company with  
limited  
liability, notice  
to be given to  
customers.

- (1) Where a banking company or an association or partnership engaged in the business of banking proposes to register as a limited company, it shall, at least thirty days before so registering, give notice of its intention so to register to every person who has a banking account with the company, association or partnership, either by delivery of the notice to him, or by posting it to him, at, or delivering it at, his last known address.
- (2) If the company, association or partnership omits to give the notice required by this section, then, as between the company, association or partnership and the person for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects the account down to the time at which notice is given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

Limitation of ۲۳۱.  
activities of  
companies

- (1) No company formed after the appointed date for the purpose of carrying on business as a banking company or which uses as part of the name under which it proposes to carry on business the word " bank ", " banker " or " banking " shall be registered under this Ordinance, unless the memorandum limits the objects of the company to the carrying on of the business of accepting deposits of money on current account or otherwise subject to withdrawal by cheque, draft or otherwise along with some or all of the forms of business specified in section 333.
- (2) No banking company incorporated in Ceylon, and no banking company incorporated outside Ceylon which has established a place of business within Ceylon, shall after the expiry of two years from the appointed date carry on any form of business other than those specified in section 333 :  
Provided that the Minister may, by notification in the Gazette, specify in addition to the businesses set forth in paragraphs (1) to (17) of section 333 other forms of business which it may be lawful under this section for a banking company to engage in.

~~Banking~~ No banking company shall after the expiry of two years from the company not appointed date employ or be managed by a managing agent other

to employ  
managing  
agent other  
than a  
banking  
company.

~~Banking~~ Notwithstanding anything contained in section 93, no banking commencement company incorporated under this Ordinance shall commence of business by business, unless shares have been allotted to an amount sufficient to banking yield a sum of at least one hundred and fifty thousand rupees as company. Working capital, and unless a declaration duly verified by an affidavit signed by the directors and the manager that such a sum has been received by way of paid-up capital has been filed with the Registrar.

Prohibition of 339. No banking company shall create any charge upon any unpaid charge on capital of the company, and any such charge shall be invalid.  
unpaid capital

Reserve      ₹४०.  
fund.

(1) Every banking company shall, after the appointed date maintain a reserve fund.

(2) Every banking company shall out of the declared profits of each year and before any dividend is declared transfer to the reserve fund-

(a) a sum equivalent to not less than twenty per centum of such profits until the amount of the said reserve fund is equal to fifty per centum of the paid-up capital; and

(b) thereafter, in every year in which the liabilities exceed the paid-up capital, a sum equivalent to not less than ten per centum of such profits until the amount of the said reserve fund is equal to the paid-up capital.

(3) A banking company shall invest the amount standing to the credit of its reserve fund in securities mentioned in section 20 of the Trusts Ordinance or in any approved security or keep such amount deposited in a special account to be opened by the company for the purpose in any bank mentioned in the Tenth Schedule :

Provided that the provision of this subsection shall not apply to a banking company incorporated before the appointed date till after the expiry of two years from such date.

(4) In this section "approved security" means any security approved by the Minister by notification in the Gazette.

~~(5)~~ Subject as hereinafter provided, the provisions of this section shall apply to every banking company incorporated in Ceylon and to every banking company incorporated outside Ceylon which has an established place of business within Ceylon:

Provided, however, that such provisions shall not apply to any banking company mentioned in the Eleventh Schedule.

Amendment 341. The Minister may by notification in the Gazette amend or vary the of Tenth and Eleventh Schedules.

**Restriction on 342.**

nature of  
subsidiary  
company,

(1) A banking company shall not form any subsidiary company which is not a banking company. (2) Save as provided in subsection (1), a banking company shall not hold shares in any company whether as pledgee, mortgagee or absolute owner of an amount exceeding forty per centum of the issued share capital of that company:

Provided that nothing in this subsection shall apply to shares held by a banking company before the 1st day of April, 1939.

**Section 340.** If default is made in complying with any of the requirements of

section 336, section 337, section 338, section 339, section 340 or section 342, every director or other officer of the company who is knowingly and wilfully a party to the default shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues.

Power of      ₹४४.

court to say  
proceedings.

(1) The court may on the application of a banking company which is temporarily unable to meet its obligations make an order staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it shall think fit and proper and may from time to time extend the period.

(2) No such application shall be maintainable unless accompanied by a report of the Director of Bank Supervision of the Central Bank of Ceylon : Provided, however, the court may, for sufficient reasons, grant interim relief, even if the application is not accompanied by such report. (3) The provisions of this

section shall apply to every banking company incorporated in Ceylon and every banking company incorporated outside Ceylon which has an established place of business within Ceylon.

**" Business of**345. For the purposes of this Pan, " the business of banking " means banking " the business of accepting deposits of money on current account or otherwise, subject to withdrawal by cheque, draft or order, whether or not such business is carried on along with any one or more of the forms of business specified in section 333.

**PART XIV**  
**MISCELLANEOUS**  
**APPOINTMENTS OF OFFICERS, c**

**Appointment 346.**  
of officers,  
&c.

[7,54 of 1946.]

(1) There may be appointed-[3]

- (a) a [3] person, by name or by office, to be or to act as the Registrar of Companies;
- (b) a [3]person, by name or by office, to be or to act as an Assistant Registrar of Companies; and
- (c) such other officers and servants as may from time to time be required for the purposes of this Ordinance.

(2) Any person appointed under subsection (1) to be or to act as an Assistant Registrar 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 the Ordinance.

Copies of  
damaged or  
illegible  
document.

[7, 54 of 1946]

347. If any document filed with, or in the custody of, the Registrar of

Companies is damaged or is in danger of becoming illegible, the Registrar may, if he thinks fit, direct a copy thereof to be made, verified, and certified in any such manner as he may determine, and thereupon such copy shall be substituted for, and shall for all purposes of this Ordinance be deemed to be, the document so damaged or in danger of becoming illegible.

**PROHIBITION OF PARTNERSHIPS WITH MORE  
THAN TWENTY MEMBERS**

**Prohibition of**348.

partnerships  
with more  
than twenty  
members,

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

(2) No company, association or partnership consisting of more than twenty persons, which is formed outside Ceylon, shall carry on in Ceylon any business (other than the business of banking) that has for its object the acquisition of gain by the company, association or partnership or by the individual members thereof unless-

- (a) it is formed in pursuance of some Act of Parliament of the United Kingdom, Royal Charter or Letters Patent or is duly incorporated as a company outside Ceylon, and
- (b) has an established place of business within Ceylon.

(3) 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 such persons-

- (a) shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees or to imprisonment of either description for a term not exceeding three months or to both such fine and imprisonment; and (b) shall, without prejudice to the provisions of paragraph (a), be severally liable for the payment of the whole debts of the company, association or partnership of which he is or was a member, and may be sued accordingly without (he joinder in the suit of any other member of the company, association or partnership.

**MISCELLANEOUS OFFENCES**

Service of document. A document may be served on a company by leaving it at or on company, sending it by post to the registered office of the company. Documents to 358. Any document purporting to be made or furnished for

the

be received in purposes of this Ordinance 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 of all matters therein.

259. Where a limited company is plaintiff in any action or other legal

proceeding, any judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

Power of ۲۶۰.

court to grant relief in certain

(1) If in any proceeding for negligence, default, breach of duty, or breach of trust against a person to whom this section applies it appears to the court hearing the case that that person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted "honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that court may relieve him, either wholly or partly, from his liability on such terms as the court may think fit.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the court for relief, and the court on any such application shall have the same power to relieve him as under this section it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought. (3) The persons to whom this section applies are the following:-

- (a) directors of a company ;
- (b) managers of a company ;
- (c) officers of a company;
- (d) persons employed by a company as auditors, whether they are or are not officers of the company.

Regulations. ۲۶۱.

(1) The Minister may make regulations generally for the purpose of carrying out or giving effect to the provisions of this Ordinance.

(2) In particular and without prejudice to the generality of the powers conferred by subsection (1), the Minister may make regulations for or in respect of any matter stated or required in this Ordinance to be prescribed.

(3) No regulation shall have effect unless it has been approved by Parliament. Notification of such approval shall be published in the Gazette. (4) Every regulation shall, upon publication of the approval of that regulation as provided for in subsection (3), be as valid and effectual as if it were herein enacted. (5) All regulations made under this Ordinance shall be printed by the Government Printer and shall be available for sale to the public.

Power to alter ۲۶۲.  
tables and  
forms.

(1) The Minister may by regulation alter Table A, the form in the Seventh Schedule and the table of fees in the Ninth Schedule so that the amount of fees payable to the Registrar under the said Ninth Schedule is not thereby increased, and may alter or add to Tables B, C, D and E in the First Schedule, and the forms in the Second and Sixth Schedules:

Provided that no alteration made by the Minister in Table A shall affect any company registered before the alteration, or repeat, as respects that company, of any portion of that Table.

#### INTERPRETATION

Interpretation. ۲۶۳.

(1) In this Ordinance, unless the context otherwise requires-

"annual return" means the return required to be made, in the case of a company having a share capital, under section 106, and, in the case of a company not having a share capital, under section 107;

"appointed date" means the 1st day of April, 1939;

"articles" means the articles of association of a company, as originally framed or as altered by special resolution, including so far as they apply to the company, the regulations contained in 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 this Ordinance;

"banking company" means a banking company as defined in section 333;

"book and paper" and "book or paper" include accounts, deeds, writings, and documents;

"company" means a company formed and registered under this Ordinance or an existing company;

"existing company" means a company formed and registered under the Joint Stock Companies Ordinance, 1861\*, or the Joint Stock Banking Ordinance, 1897; (Repealed by Ordinance No. 51 of 1938.)

"the court" used in relation to a company means the District Court having jurisdiction to wind up the company;

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

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

"district" means a judicial district as defined in the Judicature Act;

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

"general rules" means the general rules referred to in section 282, and includes forms;

"legal representative" means an executor or administrator, or in the case of an estate below the value of two thousand five hundred rupees the next of kin who have adiated the inheritance;

"managing agents" means a person, firm or company entitled to the management of the whole affairs of a company by virtue of an agreement with the company, and under the control and direction of the directors except to the extent, if any, otherwise provided for in the agreement, and includes any person, firm or company occupying such position by whatever name called;

Explanation.

-If a person occupying the position of a managing agent calls himself a manager he shall nevertheless be regarded as managing agent and not as manager for the purposes of this Ordinance;

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

" prescribed" means as respects the provisions of this Ordinance relating to the winding up of companies, prescribed by general rules, and as respects the other provisions of this Ordinance, prescribed by regulation;

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

" regulation " means a regulation made by the Minister under this Ordinance ;

" the Registrar of Companies ", or, when used in relation to registration of companies,

" the Registrar ", means the Registrar or other officer performing under this Ordinance the duty of registration of companies; " share " means share in the share capital of a

company,  
and includes stock except where a distinction between stock and shares is expressed or implied; " Table A " means Table A in the First Schedule. (2) A person shall not be deemed to be within the meaning of any provision in this Ordinance a person in accordance with whose directions or instructions the directors of a company are accustomed to act, by reason only that the directors of the company act on advice given by him in a professional capacity.

#### TRANSITIONAL PROVISIONS AND SAVINGS

Transitional provisions

(1) Without prejudice to the provisions of sections 6\* and 16\* of the Interpretation Ordinance-

(a) nothing in the repeal of any former written law relating to companies shall affect any order, rule, regulation, appointment, scale of fees, conveyance, mortgage, deed or agreement made, resolution passed, direction 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, mortgage, deed, agreement, resolution, direction, proceeding, instrument or thing shall, if in force at the appointed date, continue in force, and so far as it could have been made, passed, given, taken, issued or done under this Ordinance shall have effect as if made, passed, given, taken, issued or done under this Ordinance ;

(b) any document referring to any former written law relating to companies shall be construed as referring to the corresponding provision of this Ordinance;

(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 this Ordinance ;

(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 Ordinance;

(e) all funds and accounts constituted under this Ordinance shall be deemed to be in continuation of the corresponding funds and accounts constituted under the former written law relating to companies.

(2) In this section the expression " former written law relating to companies " means any written law repealed by Ordinance No. 51 of 1938.\*

Savings. 365. Nothing in this Ordinance shall affect-

- (1) the incorporation of any company registered under any written law repealed by Ordinance No. 51 of 1938;\*
- (2) Part C of the Schedule to the Joint Stock Companies Ordinance, 1861,f or any part thereof, so far as the same applies to any company in existence on the appointed date ;
- (3) 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.

(The following enactments have been repealed by Ordinance No.51 of 1938 : 1. 1 heJointStockCompaniesOrdinance,No.4of1861, and all Ordinances amending that Ordinance;2. Ordinance No.4of 1888; 3. The JointStockCompaniesOrdinance,No.6of1888;4.The Joint Stock Companies Ordinance, No3of1893;5.TheJointStock Banking Ordinance, No.2of1897.TRepealedbyOrdinanceNo.51 of 1938.)

~~366. Subject as hereinafter provided, the provisions of this Ordinance pertaining to winding up shall not apply to any company which the proceedings winding up has commenced before the appointed date, but every such for winding up. company shall be wound up in the same manner and with the same incidents as if this Ordinance 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:~~

Provided, however, that where any such company is being so wound up, the court may, on application made by the Registrar of Companies or by any creditor of the company and if 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 Ordinance with respect to winding up shall apply to the winding up of such company, and may give such incidental or supplemental directions as may appear to the court to be necessary for the purposes of the application of such provision; and where the court makes any such order, any provision of this Ordinance apply, specified in the order shall, subject to any such directions, accordingly.

#### Schedules