Companies Act
(CHAPTER 50)

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COMPANIES ACT

(CHAPTER 50)

(Original Enactment: Act 42 of 1967)

REVISED EDITION 2006

(31st October 2006)

An Act relating to companies.

[29th December 1967]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Companies Act.

Division into Parts

2. This Act is divided into Parts, Divisions and Subdivisions as follows:

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Repeals

3.—(1) The written laws mentioned in the First Schedule to the extent to which they are therein expressed to be repealed or amended are hereby repealed or amended accordingly.

Transitory provisions

(2) Unless the contrary intention appears in this Act —

(*a*) all persons, things and circumstances appointed or created under any of the repealed or amended written laws or existing or continuing under any of such written laws immediately before 29th December 1967 shall under and subject to this Act continue to have the same status, operation and effect as they respectively would have had if such written laws had not been so repealed or amended; and

(*b*) in particular and without affecting the generality of paragraph (*a*), such repeal shall not disturb the continuity of status, operation or effect of any Order in Council, order, rule, regulation, scale of fees, appointment, conveyance, mortgage, deed, agreement, resolution, direction, instrument, document, memorandum, articles, incorporation, nomination, affidavit, call, forfeiture, minute, assignment, register, registration, transfer, list, licence, certificate, security, notice, compromise, arrangement, right, priority, liability, duty, obligation, proceeding, matter or thing made, done, effected, given, issued, passed, taken, validated, entered into, executed, lodged, accrued, incurred, existing, pending or acquired under any of such written laws before that date.

[S 258/67]

(3) Nothing in this Act shall affect the Table in any repealed written law corresponding to Table A in the Fourth Schedule or any part thereof (either as originally enacted or as altered in pursuance of any statutory power) or the corresponding Table in any former written law relating to companies (either as originally enacted or as so altered) so far as the same applies to any company existing on 29th December 1967.

[S 258/67]

(4) The provisions of this Act with respect to winding up other than the provisions of Subdivision (5) of Division 4 of Part X shall not apply to any company or society of which the winding up has commenced before 29th December 1967, but every such company or society shall be wound up in the same manner and with the same incidents as if this Act had not been passed and for the purposes of the winding up the written laws under which the winding up commenced shall be deemed to remain in full force.

[Aust., s. 4]

Interpretation

4.—(1) In this Act, unless the contrary intention appears —

"accounting records", in relation to a corporation, includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts of the corporation are made up;

"Accounting Standards" means the accounting standards made or formulated by the Accounting Standards Council under Part III of the Accounting Standards Act 2007 and applicable to companies and to foreign companies in respect of their operations in Singapore for the purposes of this Act;

[39/2007 wef 01/11/2007]

"accounts" means profit and loss accounts and balance-sheets and includes notes (other than auditors' reports or directors' reports) attached or intended to be read with any of those profit and loss accounts or balance-sheets;

"Act" includes any regulations;

"annual general meeting", in relation to a company, means a meeting of the company required to be held by section 175;

"annual return" means —

(*a*) in relation to a company having a share capital, the return required to be made by section 197(1); and

(*b*) in relation to a company not having a share capital, the return required to be made by section 197(5),

and includes any document accompanying the return;

"approved liquidator" means —

(*a*) a person who falls within a class of persons declared as approved liquidators under section 9(1); or

(*b*) a person who has been approved under section 9(2) as a liquidator and whose approval has not been revoked;

"articles" means articles of association;

"audit requirements" means the requirements of sections 201(4) and (4A) and 207;

"Authority" means the Accounting and Corporate Regulatory Authority established under the Accounting and Corporate Regulatory Authority Act (Cap. 2A);

"banking corporation" means a licensed bank under any written law relating to banking;

"books" includes any account, deed, writing or document and any other record of information, however compiled, recorded or stored, whether in written or printed form or on microfilm or by electronic process or otherwise;

"borrowing corporation" means a corporation that is or will be under a liability (whether or not such liability is present or future) to repay any money received or to be received by it in response to an invitation to the public to subscribe for or purchase debentures of the corporation;

"branch register" means —

(*a*) in relation to a company —

(i) a branch register of members of the company kept in pursuance of section 196; or

(ii) a branch register of holders of debentures kept in pursuance of section 93,

as the case may require; and

(*b*) in relation to a foreign company, a branch register of members of the company kept in pursuance of section 379;

"business day" means any day other than a Saturday, Sunday or public holiday;

"certified", in relation to a copy of a document, means certified in the prescribed manner to be a true copy of the document and, in relation to a translation of a document, means certified in the prescribed manner to be a correct translation of the document

into the English language;

"charge" includes a mortgage and any agreement to give or execute a charge or mortgage whether upon demand or otherwise;

"company" means a company incorporated pursuant to this Act or pursuant to any corresponding previous written law;

"company having a share capital" includes an unlimited company with a share capital;

"company limited by guarantee" means a company formed on the principle of having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up;

"company limited by shares" means a company formed on the principle of having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them;

"contributory", in relation to a company, means a person liable to contribute to the assets of the company in the event of its being wound up, and includes the holder of fully paid shares in the company and, prior to the final determination of the persons who are contributories, includes any person alleged to be a contributory;

"corporation" means any body corporate formed or incorporated or existing in Singapore or outside Singapore and includes any foreign company but does not include —

(*a*) any body corporate that is incorporated in Singapore and is by notification of the Minister in the *Gazette* declared to be a public authority or an instrumentality or agency of the Government or to be a body corporate which is not incorporated for commercial purposes;

(*b*) any corporation sole;

(*c*) any co-operative society;

(*d*) any registered trade union; or

(*e*) any limited liability partnership;

"Court" means the High Court or a judge thereof;

"corresponding previous written law" means any written law relating to companies which has been at any time in force in Singapore and which corresponds with any provision in this Act;

"creditors' voluntary winding up" means a winding up under Division 3 of Part X, other than a members' voluntary winding up;

"debenture" includes debenture stock, bonds, notes and any other securities of a corporation whether constituting a charge on the assets of the corporation or not, but does not include —

(*a*) a cheque, letter of credit, order for the payment of money or bill of exchange;

(*b*) subject to the regulations, a promissory note having a face value of not less than $100,000 and having a maturity period of not more than 12 months;

(*c*) for the purposes of the application of this definition to a provision of this Act in respect of which any regulations made thereunder provide that the word "debenture" does not include a prescribed document or a document included in a prescribed class of documents, that document or a document included in that class of documents, as the case may be;

"default penalty" means a default penalty within the meaning of section 408;

"director" includes any person occupying the position of director of a corporation by whatever name called and includes a person in accordance with whose directions or instructions the directors of a corporation are accustomed to act and an alternate or substitute director;

"document" includes summons, order and other legal process, and notice and register;

"electronic communication" means communication transmitted (whether from one person to another, from one device to another, from a person to a device or from a device to a person) —

(*a*) by means of a telecommunication system; or

(*b*) by other means but while in an electronic form,

such that it can (where particular conditions are met) be received in legible form or be made legible following receipt in non-legible form;

"emoluments", in relation to a director or auditor of a company, includes any fees, percentages and other payments made (including the money value of any allowances or perquisites) or consideration given, directly or indirectly, to the director or auditor by that company or by a holding company or a subsidiary of that company, whether made or given to him in his capacity as a director or auditor or otherwise in connection with the affairs of that company or of the holding company or the subsidiary;

"equity share" means any share which is not a preference share;

"exempt private company" means —

(*a*) a private company in the shares of which no beneficial interest is held directly or indirectly by any corporation and which has not more than 20 members; or

(*b*) any private company, being a private company that is wholly owned by the Government, which the Minister, in the national interest, declares by notification in the *Gazette* to be an exempt private company;

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

"filed" means filed under this Act or any corresponding previous written law;

"financial year", in relation to any corporation, means the period in respect of which any profit and loss account of the corporation laid before it in general meeting is made up, whether that period is a year or not;

"foreign company" means —

(*a*) a company, corporation, society, association or other body incorporated outside

Singapore; or

(*b*) an unincorporated society, association or other body which under the law of its place of origin may sue or be sued, or hold property in the name of the secretary or other officer of the body or association duly appointed for that purpose and which does not have its head office or principal place of business in Singapore;

"guarantor corporation", in relation to a borrowing corporation, means a corporation that has guaranteed or has agreed to guarantee the repayment of any money received or to be received by the borrowing corporation in response to an invitation to the public to subscribe for or purchase debentures of the borrowing corporation;

"liquidator" includes the Official Receiver when acting as the liquidator of a corporation;

"limited company" means a company limited by shares or by guarantee or, prior to the expiry of the period of 2 years as specified in section 17(6), a company limited both by shares and guarantee;

"limited liability partnership" has the same meaning as in section 2(1) of the Limited Liability Partnerships Act 2005 (Act 5 of 2005);

"listed corporation" means a corporation that has been admitted to the official list of a securities exchange in Singapore and has not been removed from that official list;

"lodged" means lodged under this Act or any corresponding previous written law;

"manager", in relation to a company, means the principal executive officer of the company for the time being by whatever name called and whether or not he is a director;

"marketable securities" means debentures, funds, stocks, shares or bonds of any government or of any local authority or of any corporation or society and includes any right or option in respect of shares in any corporation and units in a collective investment scheme within the meaning of section 2 of the Securities and Futures Act (Cap. 289);

"members' voluntary winding up" means a winding up under Division 3 of Part X, where a declaration has been made and lodged in pursuance of section 293;

"memorandum" means memorandum of association;

"minimum subscription", in relation to any shares offered to the public for subscription, means the amount stated in the prospectus relating to the offer as the minimum amount which in the opinion of the directors must be raised by the issue of the shares so offered;

"office copy", in relation to any Court order or other Court document, means a copy authenticated under the hand or seal of the Registrar or other proper officer of the Court;

"officer", in relation to a corporation, includes —

(*a*) any director or secretary of the corporation or a person employed in an executive capacity by the corporation;

(*b*) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; and

(*c*) any liquidator of a company appointed in a voluntary winding up,

but does not include —

(*d*) any receiver who is not also a manager;

(*e*) any receiver and manager appointed by the Court;

(*f*) any liquidator appointed by the Court or by the creditors; or

(*g*) a judicial manager appointed by the Court under Part VIIIA;

"Official Receiver" means the Official Assignee appointed under the Bankruptcy Act (Cap. 20) and includes the deputy of any such Official Assignee and any person appointed as Assistant Official Assignee;

"preference share", in relation to sections 5, 64 and 180, means a share, by whatever name called, which does not entitle the holder thereof to the right to vote at a general meeting (except in the circumstances specified in section 180(2)(*a*), (*b*) and (*c*)) or to any right to participate beyond a specified amount in any distribution whether by way of dividend, or on redemption, in a winding up, or otherwise;

"prescribed" means prescribed under this Act or by the rules;

"prescribed person" means a person, or a person within a class of persons, prescribed by the Minister;

"principal register", in relation to a company, means the register of members of the company kept in pursuance of section 190;

"printed" includes typewritten or lithographed or reproduced by any mechanical means;

"private company" means —

(*a*) any company which immediately prior to 29th December 1967 was a private company under the provisions of the repealed written laws;

(*b*) any company incorporated as a private company by virtue of section 18; or

(*c*) any company converted into a private company pursuant to section 31(1),

being a company which has not ceased to be a private company under section 31 or 32;

"profit and loss account" includes income and expenditure account, revenue account or any other account showing the results of the business of a corporation for a period;

"prospectus" means any prospectus, notice, circular, material, advertisement, publication or other document —

(*a*) inviting applications or offers from the public to subscribe for or purchase; or

(*b*) offering to the public for subscription or purchase,

any shares in or debentures of, or any units of shares in or debentures of, a corporation or proposed corporation, and includes any document deemed to be a prospectus under section 257 of the Securities and Futures Act (Cap. 289), but does not include —

(i) a profile statement; or

(ii) any material, advertisement or publication which is authorised by section 251 (other than subsection (5)) of that Act;

"public accountant" means a person who is registered or deemed to be registered under the Accountants Act (Cap. 2) as a public accountant;

"public company" means a company other than a private company;

"registered" means registered under this Act or any corresponding previous enactment;

"Registrar" means the Registrar of Companies appointed under this Act and includes any Deputy or Assistant Registrar of Companies;

"regulations" means regulations made under this Act;

"related corporation", in relation to a corporation, means a corporation that is deemed to be related to the first-mentioned corporation by virtue of section 6;

"repealed written laws" means the written laws repealed by this Act;

"resolution for voluntary winding up" means the resolution referred to in section 290;

"Rules" means Rules of Court;

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

"solicitor" means an advocate and solicitor of the Supreme Court;

"statutory meeting" means the meeting referred to in section 174;

"statutory report" means the report referred to in section 174;

"Table A" means Table A in the Fourth Schedule;

"telecommunication system" has the same meaning as in the Telecommunications Act (Cap. 323);

"treasury share" means a share which —

(*a*) was (or is treated as having been) purchased by a company in circumstances in which section 76H applies; and

(*b*) has been held by the company continuously since the treasury share was so purchased;

"unit", in relation to a share, debenture or other interest, means any right or interest, whether legal or equitable, in the share, debenture or other interest, by whatever name called and includes any option to acquire any such right or interest in the share, debenture or other interest;

"unlimited company" means a company formed on the principle of having no limit placed on the liability of its members;

"voting share", in relation to a body corporate, means an issued share in the body corporate, not being —

(*a*) a share to which, in no circumstances, is there attached a right to vote; or

(*b*) a share to which there is attached a right to vote only in one or more of the

following circumstances:

(i) during a period in which a dividend (or part of a dividend) in respect of the share is in arrear;

(ii) upon a proposal to reduce the share capital of the body corporate;

(iii) upon a proposal that affects rights attached to the share;

(iv) upon a proposal to wind up the body corporate;

(v) upon a proposal for the disposal of the whole of the property, business and undertakings of the body corporate;

(vi) during the winding up of the body corporate.

[S 258/67; 62/70; 10/74; 15/84; 13/87; 22/93; 36/2000; 42/2001; 12/2002; 8/2003; 3/2004; 4/2004; 5/2004; 5/2005; 21/2005]

Directors

(2) For the purposes of this Act, a person shall not be regarded as a person in accordance with whose directions or instructions the directors of a company are accustomed to act by reason only that the directors act on advice given by him in a professional capacity.

When statement untrue

(3) For the purposes of this Act, a statement included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included.

[42/2001]

When statement included in statement in lieu of prospectus

(4) For the purposes of this Act, a statement shall be deemed to be included in a statement in lieu of prospectus if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

[42/2001]

Invitation to lend money deemed invitation to purchase debentures

(5) For the purposes of this Act, any invitation to the public to deposit money with or lend money to a corporation (other than a corporation that is a prescribed entity referred to in section 239(4) of the Securities and Futures Act (Cap. 289) shall be deemed to be an invitation to subscribe for or purchase debentures of the corporation.

[42/2001]

(5A) For the purposes of this Act, any document that is issued or intended or required to be issued by a corporation acknowledging or evidencing or constituting an acknowledgment of the indebtedness of the corporation in respect of any money that is or may be deposited with or lent to the corporation in response to such an invitation shall be deemed to be a debenture.

[42/2001]

(6) [*Deleted by Act 42 of 2001*]

(7) Unless the contrary intention appears, any reference in this Act to a person being or becoming bankrupt or to a person assigning his estate for the benefit of his creditors or making an arrangement with his creditors under any written law relating to bankruptcy or to a person being an undischarged bankrupt or to any status, condition, act, matter or thing under or in

relation to the law of bankruptcy shall be construed as including a reference to a person being or becoming bankrupt or insolvent or to a person making any such assignment or arrangement or to a person being an undischarged bankrupt or insolvent or to the corresponding status, condition, act, matter or thing (as the case requires) under any written law relating to bankruptcy or insolvency.

As to what constitutes affairs of a corporation

(8) A reference in section 8A, 8C, 8D, 216, Part IX, section 254(1)(*f*), 286, 287 or 402 to the affairs of a corporation shall, unless the contrary intention appears, be construed as including a reference to —

(*a*) the promotion, formation, membership, control, business, trading, transactions and dealings (whether alone or jointly with another person or other persons and including transactions and dealings as agent, bailee or trustee), property (whether held alone or jointly with another person or other persons and including property held as agent, bailee or trustee), liabilities (including liabilities owed jointly with another person or other persons and liabilities as trustee), profits and other income, receipts, losses, outgoings and expenditure of the corporation;

(*b*) in the case of a corporation (not being a trustee corporation) that is a trustee (but without limiting the generality of paragraph (*a*)), matters concerned with the ascertainment of the identity of the persons who are beneficiaries under the trust, their rights under the trust and any payments that they have received, or are entitled to receive, under the terms of the trust;

(*c*) the internal management and proceeding of the corporation;

(*d*) any act or thing done (including any contract made and any transaction entered into) by or on behalf of the corporation, or to or in relation to the corporation or its business or property, at a time when —

(i) a receiver, or a receiver and manager, is in possession of, or has control over, property of the corporation;

(ii) the corporation is under judicial management;

(iii) a compromise or an arrangement made between the corporation and another person or other persons is being administered; or

(iv) the corporation is being wound up,

and, without limiting the generality of the foregoing, any conduct of such a receiver or such a receiver and manager, or such a judicial manager, of any person administering such a compromise or arrangement or of any liquidator or provisional liquidator of the corporation;

(*e*) the ownership of shares in, debentures of, and interests issued by, the corporation;

(*f*) the power of persons to exercise, or to control the exercise of, the rights to vote attached to shares in the corporation or to dispose of, or to exercise control over the disposal of, such shares;

(*g*) matters concerned with the ascertainment of the persons who are or have been financially interested in the success or failure, or apparent success or failure, of the

corporation or are or have been able to control or materially to influence the policy of the corporation;

(*h*) the circumstances under which a person acquired or disposed of, or became entitled to acquire or dispose of, shares in, debentures of, or interests issued by, the corporation;

(*i*) where the corporation has issued interests, any matters concerning the financial or business undertaking, scheme, common enterprise or investment contract to which the interests relate; and

(*j*) matters relating to or arising out of the audit of, or working papers or reports of an auditor concerning, any matters referred to in any of the preceding paragraphs.

[13/87]

(9) For the purposes of this Act, wherever a reference to the affairs of a company or a foreign company appears it shall be construed as including a reference to the affairs of a corporation as defined in subsection (8).

(10) A reference in this Act to the directors of a company shall, in the case of a company which has only one director, be construed as a reference to that director.

[5/2004]

(11) A reference in this Act to the doing of any act by 2 or more directors of a company shall, in the case of a company which has only one director, be construed as the doing of that act by that director.

[5/2004]

[UK, 1985, s. 162A; UK, Treasury Shares, reg. 3; Aust., 1961, s. 5]

Definition of subsidiary and holding company

5.—(1) For the purposes of this Act, a corporation shall, subject to subsection (3), be deemed to be a subsidiary of another corporation, if —

(*a*) that other corporation —

(i) controls the composition of the board of directors of the first-mentioned corporation;

(ii) controls more than half of the voting power of the first-mentioned corporation; or

(iii) holds more than half of the issued share capital of the first-mentioned corporation (excluding any part thereof which consists of preference shares and treasury shares); or

(*b*) the first-mentioned corporation is a subsidiary of any corporation which is that other corporation's subsidiary.

[21/2005]

(2) For the purposes of subsection (1), the composition of a corporation's board of directors shall be deemed to be controlled by another corporation if that other corporation by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove all or a majority of the directors, and for the purposes of this provision that other corporation shall be deemed to have power to make such an appointment if —

(*a*) a person cannot be appointed as a director without the exercise in his favour by that

other corporation of such a power; or

(*b*) a person's appointment as a director follows necessarily from his being a director or other officer of that other corporation.

(3) In determining whether one corporation is a subsidiary of another corporation —

(*a*) any shares held or power exercisable by that other corporation in a fiduciary capacity shall be treated as not held or exercisable by it;

(*b*) subject to paragraphs (*c*) and (*d*), any shares held or power exercisable —

(i) by any person as a nominee for that other corporation (except where that other corporation is concerned only in a fiduciary capacity); or

(ii) by, or by a nominee for, a subsidiary of that other corporation, not being a subsidiary which is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other corporation;

(*c*) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned corporation or of a trust deed for securing any issue of such debentures shall be disregarded; and

(*d*) any shares held or power exercisable by, or by a nominee for, that other corporation or its subsidiary (not being held or exercisable as mentioned in paragraph (*c*)) shall be treated as not held or exercisable by that other corporation if the ordinary business of that other corporation or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(4) A reference in this Act to the holding company of a company or other corporation shall be read as a reference to a corporation of which that last-mentioned company or corporation is a subsidiary.

(5) For the purposes of this Act, the Depository, as defined in section 130A, shall not be regarded as a holding company of a corporation by reason only of the shares it holds in that corporation as a bare trustee.

[22/93]

[UK, 1948, s. 154; Aust., 1961, s. 6]

Definition of ultimate holding company

5A. For the purposes of this Act, a corporation is the ultimate holding company of another corporation if —

(*a*) the other corporation is a subsidiary of the first-mentioned corporation; and

(*b*) the first-mentioned corporation is not itself a subsidiary of any corporation.

[13/87]

Definition of wholly owned subsidiary

5B. For the purposes of this Act, a corporation is a wholly owned subsidiary of another corporation if none of the members of the first-mentioned corporation is a person other than —

(*a*) that other corporation;

(*b*) a nominee of that other corporation;

(*c*) a subsidiary of that other corporation being a subsidiary none of the members of which is a person other than that other corporation or a nominee of that other corporation; or

(*d*) a nominee of such subsidiary.

[13/87]

When corporations deemed to be related to each other

6. Where a corporation —

(*a*) is the holding company of another corporation;

(*b*) is a subsidiary of another corporation; or

(*c*) is a subsidiary of the holding company of another corporation,

that first-mentioned corporation and that other corporation shall for the purposes of this Act be deemed to be related to each other.
[Aust., 1961, s. 6 (5)]

Interests in shares

7.—(1) The following subsections have effect for the purposes of Division 4 of Part IV and sections 163, 164 and 165.

[62/70; 49/73; 10/74]

(2) Where the property subject to a trust consists of or includes shares and a person knows or has reasonable grounds for believing that he has an interest under the trust and the property subject to the trust consists of or includes those shares, he shall be deemed to have an interest in those shares.

(3) A unit in a collective investment scheme within the meaning of section 2 of the Securities and Futures Act (Cap. 289) —

(*a*) that is issued or offered to the public for subscription or purchase, or for which the public is invited to subscribe for or purchase, and that has been so subscribed or purchased; or

(*b*) that is issued for the purpose of an offer to the public by and is held by the manager concerned within the meaning of section 283 of that Act,

does not constitute an interest in a share.

[42/2001]

(4) Where a body corporate has, or is by the provisions of this section deemed to have, an interest in a share and —

(*a*) the body corporate is, or its directors are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of a person; or

(*b*) a person has a controlling interest in the body corporate,

that person shall be deemed to have an interest in that share.

[38/98]

(4A) Where a body corporate has, or is by the provisions of this section (apart from this subsection) deemed to have, an interest in a share and —

(*a*) a person is;

(*b*) the associates of a person are; or

(*c*) a person and his associates are,

entitled to exercise or control the exercise of not less than 20% of the votes attached to the voting shares in the body corporate, that person shall be deemed to have an interest in that share.

[38/98]

(5) For the purposes of subsection (4A), a person is an associate of another person if the first-mentioned person is —

(*a*) a corporation that, by virtue of section 6, is deemed to be related to that other person;

(*b*) a person in accordance with whose directions, instructions or wishes that other person is accustomed or is under an obligation whether formal or informal to act in relation to the share referred to in subsection (4);

(*c*) a person who is accustomed or is under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of that other person in relation to that share;

(*d*) a body corporate that is, or the directors of which are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of that other person in relation to that share; or

(*e*) a body corporate in accordance with the directions, instructions or wishes of which, or of the directors of which, that other person is under an obligation whether formal or informal to act in relation to that share.

[62/70; 38/98]

(6) Where a person —

(*a*) has entered into a contract to purchase a share;

(*b*) has a right, otherwise than by reason of having an interest under a trust, to have a share transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;

(*c*) has the right to acquire a share, or an interest in a share, under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not; or

(*d*) is entitled (otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a corporation or of a class of its members) to exercise or control the exercise of a right attached to a share, not being a share of which he is the registered holder,

that person shall be deemed to have an interest in that share.

[62/70]

(7) A person shall not be deemed not to have an interest in a share by reason only that he has the interest in the share jointly with another person.

[62/70]

(8) It is immaterial, for the purposes of determining whether a person has an interest in a share, that the interest cannot be related to a particular share.

[62/70]

(9) There shall be disregarded —

(*a*) an interest in a share if the interest is that of a person who holds the share as bare trustee;

(*b*) an interest in a share of a person whose ordinary business includes the lending of money if he holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;

(*c*) an interest of a person in a share, being an interest held by him by reason of his holding a prescribed office;

(*ca*) an interest of a company in its own shares being purchased or otherwise acquired in accordance with sections 76B to 76G (including treasury shares); and

(*d*) a prescribed interest in a share, being an interest of such person, or of the persons included in such class of persons, as is prescribed.

[62/70; 38/98; 21/2005]

(10) An interest in a share shall not be disregarded by reason only of —

(*a*) its remoteness;

(*b*) the manner in which it arose; or

(*c*) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.

[62/70]

[UK, Treasury Shares, Sch., para. 17]

Solvency statement and offence for making false statement

7A.—(1) In this Act, unless the context otherwise requires, "solvency statement", in relation to a proposed redemption of preference shares by a company out of its capital under section 70, a proposed giving of financial assistance by a company under section 76(9A) or (9B) or a proposed reduction by a company of its share capital under section 78B or 78C, means a statement by the directors of the company —

(*a*) that they have formed the opinion that, as regards the company's situation at the date of the statement, there is no ground on which the company could then be found to be unable to pay its debts;

(*b*) that they have formed the opinion —

(i) if it is intended to commence winding up of the company within the period of 12 months immediately following the date of the statement, that the company will be able to pay its debts in full within the period of 12 months beginning with the commencement of the winding up; or

(ii) if it is not intended so to commence winding up, that the company will be able to pay its debts as they fall due during the period of 12 months

immediately following the date of the statement; and

(*c*) that they have formed the opinion that the value of the company's assets is not less than the value of its liabilities (including contingent liabilities) and will not, after the proposed redemption, giving of financial assistance or reduction (as the case may be), become less than the value of its liabilities (including contingent liabilities),

being a statement which complies with subsection (2).

[21/2005]

(2) The solvency statement —

(*a*) if the company is exempt from audit requirements under section 205B or 205C, shall be in the form of a statutory declaration; or

(*b*) if the company is not such a company, shall be in the form of a statutory declaration or shall be accompanied by a report from its auditor that he has inquired into the affairs of the company and is of the opinion that the statement is not unreasonable given all the circumstances.

[21/2005]

(3) In forming an opinion for the purposes of subsection (1)(*a*) and (*b*), the directors of the company must take into account all liabilities of the company (including contingent liabilities).

[21/2005]

(4) In determining, for the purposes of subsection (1)(*c*), whether the value of the company's assets is or will become less than the value of its liabilities (including contingent liabilities) the directors of the company —

(*a*) must have regard to —

(i) the most recent financial statements of the company that comply with section 201(1A), (3) and (3A), as the case may be; and

(ii) all other circumstances that the directors know or ought to know affect, or may affect, the value of the company's assets and the value of its liabilities (including contingent liabilities); and

(*b*) may rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances.

[21/2005]

(5) In determining, for the purposes of subsection (4), the value of a contingent liability, the directors of a company may take into account —

(*a*) the likelihood of the contingency occurring; and

(*b*) any claim the company is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.

[21/2005]

(6) A director of a company who makes a solvency statement without having reasonable grounds for the opinions expressed in it shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 3 years or to both.

[21/2005]

[UK, Bill, 2002, Clause 63; Companies, s. 76F (4) to (6)]

PART II

ADMINISTRATION OF THIS ACT

Administration of Act and appointment of Registrar of Companies, etc.

8.—(1) The Authority shall be responsible for the administration of this Act, subject to the general or special directions of the Minister.

[3/2004]

(1A) The Minister may, after consultation with the Authority —

(*a*) appoint an officer of the Authority to be the Registrar of Companies; and

(*b*) from among the officers of the Authority, public officers and the officers of any other statutory board, appoint such number of Deputy Registrars and Assistant Registrars of Companies as he considers necessary,

for the proper administration of this Act.

[3/2004]

(1B) The Authority may give to the Registrar such directions, not inconsistent with the provisions of this Act, as to the exercise of his powers, functions or duties under this Act, and the Registrar shall give effect to such directions.

[3/2004]

(2) Subject to the general direction and control of the Registrar and to such restrictions and limitations as may be prescribed, anything by this Act appointed or authorised or required to be done or signed by the Registrar may be done or signed by any such Deputy or Assistant Registrar and shall be as valid and effectual as if done or signed by the Registrar.

(3) No person dealing with any Deputy or Assistant Registrar shall be concerned to see or inquire whether any restrictions or limitations have been prescribed, and every act or omission of a Deputy or Assistant Registrar so far as it affects any such person shall be as valid and effectual as if done or omitted by the Registrar.

Certain signatures to be judicially noticed

(4) All courts, judges and persons acting judicially shall take judicial notice of the seal and signature of the Registrar and of any Deputy or Assistant Registrar.

Fees

(5) There shall be paid to the Registrar —

(*a*) the fees specified in the Second Schedule; and

(*b*) such other fees as are prescribed.

(6) The Minister may by notification in the *Gazette* add to, vary or amend the fees specified in the Second Schedule.

[15/84]

(6A) All fees collected by the Registrar under this Act shall be paid into the funds of the Authority.

[3/2004]

(7) The Minister may by notification in the *Gazette* add to, vary or amend the Eighth

Schedule in relation to the contents of the annual return of a company having a share capital.

[13/87; 12/2002]

[Aust., 1961, s. 7]

Inspection of books of corporation

8A.—(1) Where the Minister is satisfied that there is good reason for so doing, he may at any time —

(*a*) give directions to a corporation requiring that corporation at such place and time as may be specified in the directions to produce such books relating to the affairs of a corporation as may be so specified; or

(*b*) authorise any person (referred to in this section and section 8B as an authorised person), on producing (if required to do so) evidence of his authority to require that corporation to produce to him any books relating to the affairs of a corporation which the authorised person may specify.

[13/87]

(2) Where by virtue of subsection (1) the Minister or an authorised person has power to require the production of any books from a corporation relating to the affairs of a corporation, the Minister or that authorised person shall have the like power to require production of those books from any person who appears to the Minister or authorised person to be in possession of them; but where any such person claims a lien on any books produced by him, the production shall be without prejudice to the lien.

[13/87]

(3) Any power conferred by this section to require a corporation or other person to produce books relating to the affairs of a corporation shall include power —

(*a*) if the books are produced —

(i) to make copies of, or take extracts from, them; and

(ii) to require that person who is a present or past officer of, or who is or was at any time employed by the corporation to provide an explanation of any of them; and

(*b*) if the books are not produced, to require the person required to produce them to state to the best of his knowledge and belief, where they are.

[13/87]

(4) A statement made by a person in compliance with a requirement imposed by this section may be used in evidence against him.

[13/87]

(5) A power conferred by this section to make a requirement of a person extends, if the person is a body corporate, including a body corporate that is in the course of being wound up, or was a body corporate, being a body corporate that has been dissolved, to making that requirement of any person who is or has been an officer of the body corporate.

[13/87]

(6) If a requirement to produce books relating to the affairs of a corporation or provide an explanation or make a statement which is imposed by virtue of this section is not complied with, the corporation or other person on whom the requirement was imposed shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 or to imprisonment

for a term not exceeding 6 months or to both.

[13/87]

(7) Where a person is charged with an offence under subsection (6) in respect of a requirement to produce any books relating to the affairs of a corporation, it shall be a defence to prove that they were not in his possession or under his control or that it was not reasonably practicable for him to comply with the requirement.

[13/87]

(8) A person, who in purported compliance with a requirement imposed by the section to provide an explanation or a statement which he knows to be false or misleading in a material particular or recklessly provides or makes an explanation or a statement which is false or misleading in a material particular, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $20,000 or to imprisonment for a term not exceeding 2 years or to both.

[13/87]

Power of Magistrate to issue warrant to seize books

8B.—(1) If a Magistrate is satisfied, on information on oath or affirmation laid by an authorised person, that there are reasonable grounds for suspecting that there are on any premises any books of which production has been required by virtue of section 8A and which have not been produced in compliance with that requirement, the Magistrate may issue a warrant authorising any police officer, together with any other persons named in the warrant, to enter the premises specified in the information (using such force as is reasonably necessary for the purpose) and to search the premises and take possession of any books appearing to be such books or papers as are referred to in this subsection, or to take, in relation to any books so appearing, any other steps which may appear necessary for preserving them and preventing interference with them and to deliver any books, possession of which is so taken, to an authorised person.

[13/87]

(2) Every warrant issued under this section shall continue in force until the end of the period of one month after the date on which it was issued.

[13/87]

(3) Where under this section a person takes possession of, or secures against interference, any books, and a person has a lien on the books, the taking of possession of the books or the securing of the books against interference does not prejudice the lien.

[13/87]

(4) Where, under this section, a person takes possession of, or secures against interference, any books, that person or any authorised person to whose possession the books were delivered —

(*a*) may make copies of, or take extracts from, the books;

(*b*) may require any person who was party to the compilation of the books to make a statement providing any explanation that that person is able to provide as to any matter relating to the compilation of the books or as to any matter to which the books relate;

(*c*) may retain possession of the books for such period as is necessary to enable the books to be inspected, and copies of, or extracts from, the books to be made or taken, by or on behalf of the Minister; and

(*d*) during that period shall permit a person who would be entitled to inspect any one or more of those books if they were not in the possession of the first-mentioned person to inspect at all reasonable times such of those books as that person would be so entitled to inspect.

[13/87]

(5) A person who obstructs the exercise of a right of entry or search conferred by virtue of a warrant issued under this section, or who obstructs the exercise of a right so conferred to take possession of any books, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 or to imprisonment for a term not exceeding 6 months or to both.

[13/87]

(6) The powers conferred by this section are in addition to, and not in derogation of, any other power conferred by law.

[13/87]

Copies of or extracts from books to be admitted in evidence

8C.—(1) Subject to this section, in any legal proceedings, whether proceedings under this Act or otherwise, a copy of or extract from a book relating to the affairs of a corporation is admissible in evidence as if it were the original book or the relevant part of the original book.

[13/87]

(2) A copy of or extract from a book is not admissible in evidence under subsection (1) unless it is proved that the copy or extract is a true copy of the book or of the relevant part of the book.

[13/87]

(3) For the purposes of subsection (2), evidence that a copy of or extract from a book is a true copy of the book or of a part of the book may be given by a person who has compared the copy or extract with the book or the relevant part of the book and may be given either orally or by an affidavit sworn, or by a declaration made, before a person authorised to take affidavits or statutory declarations.

[13/87]

Destruction, mutilation, etc., of company documents

8D.—(1) An officer of a corporation to which section 8A(1) applies, who destroys, mutilates or falsifies, or is privy to the destruction, mutilation or falsification of a document affecting or relating to the property or affairs of the corporation, or makes or is privy to the making of a false entry in such a document, shall, unless he proves that he had no intention to conceal the affairs of the corporation or to defeat the law, be guilty of an offence.

[13/87]

(2) A person to whom subsection (1) applies who fraudulently either parts with, alters or makes an omission in any such document, or who is privy to fraudulent parting with, fraudulent altering or fraudulent making of an omission in, any such document, shall be guilty of an offence.

[13/87]

(3) A person guilty of an offence under this section shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.

[13/87]

(4) In this section, "officer of a corporation" includes a person who —

(*a*) was at any time an officer of the corporation; or

(*b*) has, or had, a financial or other interest in the affairs of the corporation.

[13/87]

Saving for advocates and solicitors

8E. Nothing in sections 8A and 8B shall compel the production by an advocate and solicitor of a document containing a privileged communication made by or to him in that capacity or authorise the taking of possession of any such document which is in his possession but if the advocate and solicitor refuses to produce the document he shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom or by or on behalf of whom the communication was made.

[13/87]

Investigation of certain matters

8F. Without prejudice to the powers conferred upon the Minister under section 8A, where the Minister has reason to suspect that a person has committed an offence under this Act, he may make such investigation as he thinks expedient for the due administration of this Act.

[13/87]

Savings for banks, insurance companies and certain financial institutions

8G. Nothing in section 8A shall authorise the Minister to call for the production of books of a banking corporation or of any company carrying on insurance business or of any financial institution that is subject to control by the Monetary Authority of Singapore under sections 27 and 28 of the Monetary Authority of Singapore Act (Cap. 186) and nothing in section 8F shall authorise the Minister to conduct an investigation into any such corporation, company or financial institution.

[13/87]

Security of information

8H.—(1) No information or document relating to the affairs of a corporation which has been obtained under section 8A or 8B shall, without the previous consent in writing of that corporation, be published or disclosed, except to the Minister, the Registrar of Companies and their officers or to an inspector appointed under Part IX, unless the publication or disclosure is required —

(*a*) with a view to the institution of or otherwise for the purposes of, any criminal proceedings pursuant to, or arising out of this Act or any criminal proceedings for an offence entailing misconduct in connection with the management of the corporation's affairs or misapplication or wrongful retention of its property;

(*b*) for the purpose of complying with any requirement or exercising any power imposed or conferred by this Act in connection with reports made by inspectors appointed under Part IX;

(*c*) with a view to the institution by the Minister of proceedings for the winding up of companies under this Act of the corporation; or

(*d*) for the purpose of proceedings under section 8A or 8B.

[13/87]

(2) A person who publishes or discloses any information or document in contravention of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.

[13/87]

Approved liquidators

9.—(1) The Minister may, by order published in the *Gazette*, declare that persons within a specified class of persons shall be approved liquidators for the purposes of this Act.

[5/2004]

(2) Any person who does not fall within a class of persons declared under subsection (1) may apply to the Minister to be approved as a liquidator for the purposes of this Act, and the Minister, if satisfied as to the experience and capacity of the applicant, may, on payment of the fee set out in the Second Schedule, approve such person as a liquidator for the purposes of this Act.

[5/2004]

(3) Any approval granted by the Minister under subsection (2) may be made subject to such limitations or conditions as he thinks fit and may be revoked at any time by him by the service of a written notice of revocation on the approved person.

[5/2004]

(4) Every approval under subsection (2) including a renewal of approval of a liquidator shall remain in force until 31st March in the third year following the year in which the approval was granted unless sooner revoked by the Minister.

[5/2004]

(5) The Minister may delegate his power under subsection (2) to any person charged with the responsibility for the registration or control of accountants in Singapore.

[5/2004]

(6) Any person who is dissatisfied with the decision of any person to whom the Minister has delegated his power under subsection (2) may appeal to the Minister who may in his discretion confirm, reverse or vary such decision.

[5/2004]

Company auditors

10.—(1) A person shall not knowingly consent to be appointed, and shall not knowingly act, as auditor for any company and shall not prepare, for or on behalf of a company, any report required by this Act to be prepared by an auditor of the company —

(*a*) if he is not a public accountant;

(*b*) if he is indebted to the company or to a corporation that is deemed to be related to that company by virtue of section 6 in an amount exceeding $2,500;

(*c*) if he is —

(i) an officer of the company;

(ii) a partner, employer or employee of an officer of the company; or

(iii) a partner or employee of an employee of an officer of the company; or

(*d*) if he is responsible for or if he is the partner, employer or employee of a person responsible for the keeping of the register of members or the register of holders of

debentures of the company.

[5/2004]

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000.

[15/84]

(3) For the purposes of subsection (1), a person shall be deemed to be an officer of a company if he is an officer of a corporation that is deemed to be related to the company by virtue of section 6 or except where the Minister, if he thinks fit in the circumstances of the case, directs otherwise, if he has, at any time within the preceding period of 12 months been an officer or promoter of the company or of such a corporation.

(4) For the purposes of this section, a person shall not be deemed to be an officer by reason only of his having been appointed as auditor of a corporation.

(5) An accounting firm shall not knowingly consent to be appointed, and shall not knowingly act, as auditor for any company and shall not prepare, for or on behalf of a company, any report required by this Act to be prepared by an auditor of the company if any partner of the firm (whether or not he is a public accountant) is a person described in subsection (1)(*b*), (*c*) or (*d*).

[5/2004]

(6) If an accounting firm contravenes subsection (5), every partner of the firm shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000.

[5/2004]

(7) An accounting corporation shall not knowingly consent to be appointed, and shall not knowingly act, as auditor for any company and shall not prepare, for or on behalf of a company, any report required by this Act to be prepared by an auditor of the company if —

(*a*) any director of the corporation (whether or not he is a public accountant); or

(*b*) any employee of the corporation, who is a public accountant and practising as such in that corporation,

is a person described in subsection (1)(*b*), (*c*) or (*d*).

[5/2004]

(8) If an accounting corporation contravenes subsection (7) —

(*a*) the corporation; and

(*b*) the director or employee who caused the contravention,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000.

[5/2004]

(9) No company or person shall appoint any individual as auditor of a company unless the individual has prior to such appointment consented in writing to act as auditor of that company.

[5/2004]

(10) No company or person shall appoint any accounting firm or accounting corporation as auditor of a company unless the firm or corporation has prior to such appointment consented, in writing under the hand of at least one partner of the firm or director of the corporation, as the case may be, to act as auditor of that company.

[5/2004]

(11) Where an accounting firm is appointed as the auditor of a company in the name of the

firm, such appointment shall take effect and operate as if the partners of the firm at the time of the appointment, who are public accountants at that time, have been appointed as auditors of the company.

[5/2004]

(12) Where an accounting corporation is appointed as the auditor of a company in the name of the corporation, such appointment shall take effect and operate as if the directors and employees of the corporation who are practising as public accountants in that corporation have been appointed as auditors of the company.

[5/2004]

(13) Subsection (12) shall apply to a director or an employee practising as a public accountant in an accounting corporation, even if his appointment as director or employment with the corporation commenced after the date on which the corporation was appointed as auditor of the company.

[5/2004]

(14) In this section —

"accounting corporation" means a company approved or deemed to be approved as an accounting corporation under the Accountants Act (Cap. 2);

"accounting firm" means a firm approved or deemed to be approved as an accounting firm under the Accountants Act (Cap. 2).

[5/2004]

[Aust., 1961, s. 9]

Disqualification of liquidators

11.—(1) Subject to this section, a person shall not, except with the leave of the Court, consent to be appointed, and shall not act as liquidator of a company —

(*a*) if he is not an approved liquidator;

(*b*) if he is indebted to the company or to a corporation that is deemed to be related to the company by virtue of section 6 in an amount exceeding $2,500;

(*c*) if he is —

(i) an officer of the company;

(ii) a partner, employer or employee of an officer of the company; or

(iii) a partner or employee of an employee of an officer of the company;

(*d*) if he is an undischarged bankrupt;

(*e*) if he has assigned his estate for the benefit of his creditors or has made an arrangement with his creditors pursuant to any law relating to bankruptcy; or

(*f*) if he has been convicted of an offence involving fraud or dishonesty punishable on conviction by imprisonment for 3 months or more.

(2) Subsection (1)(*a*) and (*c*) shall not apply —

(*a*) to a members' voluntary winding up; or

(*b*) to a creditors' voluntary winding up, if by a resolution carried by a majority of the creditors in number and value present in person or by proxy and voting at a meeting

of which 7 days' notice has been given to every creditor stating the object of the meeting, it is determined that that paragraph shall not so apply.

(3) For the purposes of subsection (1), a person shall be deemed to be an officer of a company if he is an officer of a corporation that is deemed to be related to the company by virtue of section 6 or has, at any time within the preceding period of 24 months, been an officer or promoter of the company or of such a corporation.

(4) A person shall not be appointed as liquidator of a company unless he has prior to such appointment consented in writing to act as such liquidator.

(5) Nothing in this section shall affect any appointment of a liquidator made before 29th December 1967.

[S 258/67]

(6) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000.

[15/84]

[Aust., 1961, s. 10]

Registers

12.—(1) The Registrar shall, subject to this Act, keep such registers as he considers necessary in such form as he thinks fit.

Inspection of register

(2) Any person may, on payment of the prescribed fee —

(*a*) inspect any document, or if there is a microfilm of any such document, that microfilm, filed or lodged with the Registrar; or

(*b*) require a certificate of the incorporation of any company or any other certificate issued under this Act or a copy of or extract from any document kept by the Registrar to be given or certified by the Registrar.

[15/84]

(2A) Subsection (2) shall not apply to such exempt private company that is wholly owned by the Government as the Minister may, by notification in the *Gazette*, specify where he considers that it would not be in the public interest for —

(*a*) any document relating to any such company maintained by the Registrar in whatever form to be inspected by any member of the public; and

(*b*) any certificate or copy of or extract from any document relating to any such company to be given or certified to any member of the public.

[22/93]

(2B) Notwithstanding the cancellation of any notification referred to in subsection (2A) in respect of a company, subsection (2) shall not apply to any document or certificate relating to that company that is filed or lodged with the Registrar, or issued under the Act, before the date of such cancellation, whether or not that company remains an exempt private company wholly owned by the Government, and whether or not it has been wound up.

[12/2002]

Evidentiary value of copies certified by Registrar

(3) A copy of or extract from any document, including a copy produced by way of microfilm or electronic medium filed or lodged at the office of the Registrar certified to be a true copy or extract under the hand and seal of the Registrar shall in any proceedings be admissible in evidence as of equal validity with the original document.

[15/84; 22/93]

Evidence of statutory requirements

(4) In any legal proceedings, a certificate under the hand and seal of the Registrar that a requirement of this Act specified in the certificate —

(*a*) had or had not been complied with at a date or within a period specified in the certificate; or

(*b*) had been complied with upon a date specified in the certificate but not before that date,

shall be received as prima facie evidence of the matters specified in the certificate.

Registrar may refuse to register or receive document

(5) If the Registrar is of the opinion that any document submitted to him —

(*a*) contains any matter contrary to law;

(*b*) by reason of any omission or misdescription has not been duly completed;

(*c*) does not comply with the requirements of this Act; or

(*d*) contains any error, alteration or erasure,

he may refuse to register or receive the document and request that the document be appropriately amended or completed and resubmitted or that a fresh document be submitted in its place.

Appeal

(6) Any party aggrieved by the refusal of the Registrar to register any corporation or to register or receive any document or by any other act or decision of the Registrar may appeal to the Court which may confirm the refusal, act or decision or give such directions in the matter as seem proper or otherwise determine the matter but this subsection shall not apply to any act or decision of the Registrar —

(*a*) in respect of which any provision in the nature of an appeal or review is expressly provided in this Act; or

(*b*) which is declared by this Act to be conclusive or final or is embodied in any document declared by this Act to be conclusive evidence of any act, matter or thing.

[22/93]

Destruction, etc., of old records

(7) The Registrar may, if in his opinion it is no longer necessary or desirable to retain any document which has been microfilmed or converted to electronic form, destroy or give it to the National Archives of Singapore.

[15/84; 22/93]

[Aust., 1961, s. 12]

Filing service

12A.—(1) Where the Registry of Companies provides a service whereby documents under this Act may be filed or lodged with or submitted to the Registrar electronically, neither the Government nor any of its employees nor any authorised agents shall be liable for any loss or damage, suffered by any person by reason of any errors or omissions, of whatever nature or however caused, appearing in any document obtained by any person under the service if such errors or omissions are made in good faith and in the ordinary course of the discharge of the duties of these employees or authorised agents or have occurred or arisen as a result of any defect or breakdown in the service or in any of the equipment used for the service.

[13/87; 22/93; 12/2002]

(1A) The Minister may by regulations permit or require any document —

(*a*) to be filed or lodged with or submitted to the Registrar under this Act; or

(*b*) to be issued by the Registrar under this Act,

to be filed, lodged, submitted or issued using the service referred to in subsection (1).

[12/2002]

(1B) The regulations under subsection (1A) may —

(*a*) permit or require such document to be filed, lodged or submitted by a prescribed person on behalf of the person concerned under specified circumstances; and

(*b*) contain such transitional and other supplementary and incidental provisions as appear to the Minister to be appropriate.

[12/2002]

Evidentiary value of copies of electronically filed documents certified by Registrar

(2) A copy of or extract from any document electronically filed or lodged with or submitted to the Registrar under subsection (1) supplied or issued by the Registrar and certified to be a true copy or extract thereof under the hand and seal of the Registrar shall in any proceedings be admissible in evidence as of equal validity with the original document.

[13/87; 12/2002]

(3) Any information supplied by the Registrar that is certified by the Registrar under his hand and seal to be a true extract from any document filed or lodged with or submitted to the Registrar using the service referred to in subsection (1) shall in any proceedings be admissible in evidence and be presumed, unless evidence to the contrary is adduced, to be a true extract from such document.

[12/2002]

(4) Subsections (2) and (3) have effect notwithstanding the provisions of any other written law.

[12/2002]

(5) In this section, "document" means any application, form, report, certification, notice, confirmation, declaration or other document to be filed or lodged with or submitted to the Registrar or, as the case may be, any certificate, notice or other document to be issued by the Registrar.

[12/2002]

Rectification of register

12B.—(1) Where it appears to the Court, as a result of evidence adduced before it by an applicant company, that any particular recorded in a register is erroneous or defective, the Court may, by order, direct the Registrar to rectify the register on such terms and conditions as seem to the Court just and expedient, as are specified in the order and the Registrar shall, upon receipt of the order, rectify the register accordingly.

[13/87]

(2) An order of the Court made under subsection (1) may require that a fresh document, showing the rectification, shall be filed by the applicant company with the Registrar together with a copy of the Court order, and a copy of the Court application.

[13/87; 12/2002]

(3) Notwithstanding subsections (1) and (2), an officer of a company may notify the Registrar in the prescribed form of any typographical or clerical error contained in any document relating to the company lodged with the Registrar.

[36/2000]

(4) The Registrar may, upon receipt of any notification referred to in subsection (3), rectify the registers accordingly.

[36/2000]

Enforcement of duty to make returns

13.—(1) If a corporation or person, having made default in complying with —

(*a*) any provision of this Act or of any other law which requires the filing or lodging in any manner with the Registrar or the Official Receiver of any return, account or other document or the giving of notice to him of any matter; or

(*b*) any request of the Registrar or the Official Receiver to amend or complete and resubmit any document or to submit a fresh document,

fails to make good the default within 14 days after the service on the corporation or person of a notice requiring it to be done, the Court may, on an application by any member or creditor of the corporation or by the Registrar or the Official Receiver, make an order directing the corporation and any officer thereof or such person to make good the default within such time as is specified in the order.

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

(3) Nothing in this section shall limit the operation of any written law imposing penalties on a corporation or its officers or such person in respect of any such default.

[Aust., 1961, s. 12 (8) to (10)]

Relodging of lost registered documents

14.—(1) If in the case of any corporation incorporated or registered under this Act or any corresponding previous written law the memorandum or articles or any other document relating to the corporation filed or lodged with the Registrar has been lost or destroyed, the corporation may apply to the Registrar for leave to lodge a copy of the document as originally filed or lodged.

(2) On such application being made the Registrar may direct notice thereof to be given to such persons and in such manner as he thinks fit.

(3) The Registrar upon being satisfied —

(*a*) that the original document has been lost or destroyed;

(*b*) of the date of the filing or lodging thereof with the Registrar; and

(*c*) that a copy of such document produced to the Registrar is a correct copy,

may certify upon that copy that he is so satisfied and direct that that copy be lodged in the manner required by law in respect of the original.

(4) Upon the lodgment, that copy for all purposes shall, from such date as is mentioned in the certificate as the date of the filing or lodging of the original with the Registrar, have the same force and effect as the original.

(5) The Court may, by order upon application by any person aggrieved and after notice to any other person whom the Court directs, confirm, vary or rescind the certificate and the order may be lodged with the Registrar and shall be registered by him, but no payments, contracts, dealings, acts and things made, had or done in good faith before the registration of such order and upon the faith of and in reliance upon the certificate shall be invalidated or affected by such variation or rescission.

(6) No fee shall be payable upon the lodging of a document under this section.
[Aust., 1961, s. 13]

Size, durability and legibility of documents delivered to Registrar

15.—(1) For the purposes of securing that the documents delivered to the Registrar under the provisions of this Act are of a standard size, durable and easily legible, the Minister may by regulations prescribe such requirements (whether as to size, weight, quality or colour of paper, size, type or colour of lettering, or otherwise) as he may consider appropriate; and different requirements may be so prescribed for different documents or classes of documents.
[15/84]

(2) If under any such provision there is delivered to the Registrar a document (whether an original document or a copy) which in the opinion of the Registrar does not comply with such requirements prescribed under this section as are applicable to it, the Registrar may serve on any person by whom under that provision the document was required to be delivered (or, if there are 2 or more such persons, may serve on any of them) a notice stating his opinion to that effect and indicating the requirements so prescribed with which in his opinion the document does not comply.
[15/84]

(3) Where the Registrar serves a notice under subsection (2) with respect to a document delivered under any such provision, then, for the purposes of any written law which enables a penalty to be imposed in respect of any omission to deliver to the Registrar a document required to be delivered under that provision (and, in particular, for the purposes of any such law whereby such a penalty may be imposed by reference to each day during which the omission continues) —

(*a*) any duty imposed by that provision to deliver such a document to the Registrar shall be treated as not having been discharged by the delivery of that document; but

(*b*) no account shall be taken of any days falling within the period mentioned in subsection (4).
[15/84]

(4) The period referred to in subsection (3)(*b*) is the period beginning on the day on which the document was delivered to the Registrar as mentioned in subsection (2) and ending on the fourteenth day after the date of service of the notice under subsection (2) by virtue of which subsection (3) applies.

[15/84]

(5) In this section, any reference to delivering a document shall be construed as including a reference to sending, forwarding, producing or (in the case of a notice) giving it.

[15/84]

Instant Information Service — exclusion of liability for errors or omissions

16. Where the Registry of Companies provides a service (to be called an Instant Information Service) to the public whereby computerised information of prescribed particulars of a company registered under this Act is supplied to the public on payment of a prescribed fee, neither the Government nor any of its employees in the Registry of Companies involved in the supply of such information shall be liable for any loss or damage suffered by members of the public by reason of any errors or omissions of whatever nature appearing therein or however caused if made in good faith and in the ordinary course of the discharge of the duties of such employees.

[15/84]

Supply of magnetic tapes — exclusion of liability for errors or omissions

16A. Where the Registrar furnishes information, whether in bulk or otherwise, to any person by way of magnetic tapes or by any electronic means, neither the Government nor any of the employees in the Registry of Companies nor any authorised agents involved in the furnishing of such information shall be liable for any loss or damage suffered by that person by reason of errors or omissions of whatever nature appearing therein or however caused if made in good faith and in the ordinary course of the discharge of the duties of those employees or authorised agents.

[22/93]

PART III

CONSTITUTION OF COMPANIES

Division 1 — Incorporation

Formation of companies

17.—(1) Subject to the provisions of this Act, any person may, whether alone or together with another person, by subscribing his name or their names to a memorandum and complying with the requirements as to registration, form an incorporated company.

[5/2004]

(2) A company may be —

(*a*) a company limited by shares;

(*b*) a company limited by guarantee; or

(*c*) an unlimited company.

[15/84]

(3) No company, association or partnership consisting of more than 20 persons shall be

formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other written law in Singapore or letters patent.

(4) So much of subsection (3) as prohibits the formation of an association or a partnership consisting of more than 20 persons shall not apply to an association or a partnership formed solely or mainly for the purpose of carrying on any profession or calling which under the provisions of any written law may be exercised only by persons who possess the qualifications laid down in such written law for the purpose of carrying on that profession or calling.

[15/84; 4/2004]

(5) As from 15th August 1984, no company limited by guarantee with a share capital shall be registered under this Act.

[15/84]

(6) The prohibition referred to in subsection (5) shall not affect a company limited by guarantee which has a share capital and is registered as such before 15th August 1984 and section 38(2) shall continue to apply to a company so registered; but any such company shall, within 2 years of that date, elect to convert and re-register that company either as a company limited by shares or as a company limited by guarantee.

[15/84]

(7) The conversion of a company referred to in subsection (6) shall be effected by lodging with the Registrar a special resolution determining the conversion of the company from a company limited by guarantee with a share capital to a company limited by shares or to a company limited by guarantee, as the case may be, and altering its memorandum and articles of association to the extent that is necessary to bring them into conformity with the requirements of this Act relating to the memorandum and articles of a company limited by shares or of a company limited by guarantee, as the case may be.

[15/84]

(8) On compliance by a company with subsection (7) and on the issue by the Registrar of a notice of incorporation of the company in accordance with the special resolution, the company shall be a company limited by shares or a company limited by guarantee, as the case may be.

[15/84; 12/2002]

(9) Upon the application of a company and payment of the prescribed fee, the Registrar shall issue to the company a certificate of confirmation of incorporation under his hand and seal.

[12/2002]

[Aust., 1961, s. 14]

Private company

18.—(1) A company having a share capital may be incorporated as a private company if its memorandum or articles —

(*a*) restricts the right to transfer its shares; and

(*b*) limits to not more than 50 the number of its members (counting joint holders of shares as one person and not counting any person in the employment of the company or of its subsidiary or any person who while previously in the employment of the company or of its subsidiary was and thereafter has continued to be a member of the company).

[5/2004]

(2) Where, on 29th December 1967, neither the memorandum nor articles of a company that is a private company by virtue of paragraph (*a*) of the definition of "private company" in section 4(1) contain the restrictions and limitations required by subsection (1) to be included in the memorandum or articles of a company that may be incorporated as a private company, the articles of the company shall be deemed to include each such restriction or limitation that is not so included and a restriction on the right to transfer its shares that is so deemed to be included in its articles shall be deemed to be a restriction that prohibits the transfer of shares except to a person approved by the directors of the company.

[21/2005]

(3) Where a restriction or limitation deemed to be included in the articles of a company under subsection (2) is inconsistent with any provision already included in the memorandum or articles of the company, that restriction or limitation shall, to the extent of the inconsistency, prevail.

[21/2005]

(4) A private company may, by special resolution, alter any restriction on the right to transfer its shares included, or deemed to be included, in its memorandum or articles or any limitation on the number of its members included, or deemed to be included, in its memorandum or articles, but not so that the memorandum and articles of the company cease to include the limitation required by subsection (1)(*b*) to be included in the memorandum or articles of a company that may be incorporated as a private company.

Registration and incorporation

19.—(1) A person desiring the incorporation of a company shall —

(*a*) submit to the Registrar the memorandum and articles of the proposed company and such other documents as may be prescribed;

(*b*) furnish the Registrar with such information as may be prescribed; and

(*c*) pay the Registrar the prescribed fee.

[12/2002]

(2) Either —

(*a*) a prescribed person engaged in the formation of the proposed company; or

(*b*) a person named in the articles as a director or the secretary of the proposed company,

shall make a declaration to the Registrar that —

(i) all of the requirements of this Act relating to the formation of the company have been complied with; and

(ii) he has verified the identities of the subscribers to the memorandum, and of the persons named in the memorandum or articles as officers of the proposed company,

and the Registrar may accept such declaration as sufficient evidence of those matters.

[12/2002; 8/2003]

(3) Upon receipt of the documents, information and payment referred to in subsection (1) and declaration referred to in subsection (2), the Registrar shall, subject to this Act, register the company by registering its memorandum and articles.

[12/2002]

Notice of incorporation

(4) On the registration of the memorandum the Registrar shall issue in the prescribed manner a notice of incorporation in the prescribed form stating that the company is, on and from the date specified in the notice, incorporated, and that the company is —

(*a*) a company limited by shares;

(*b*) a company limited by guarantee; or

(*c*) an unlimited company,

as the case may be, and where applicable, that it is a private company.

[15/84; 12/2002]

Effect of incorporation

(5) On and from the date of incorporation specified in the notice issued under subsection (4) but subject to this Act, the subscribers to the memorandum together with such other persons as may from time to time become members of the company shall be a body corporate by the name contained in the memorandum capable immediately of exercising all the functions of an incorporated company and of suing and being sued and having perpetual succession and a common seal with power to hold land 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 provided by this Act.

[12/2002]

Members of company

(6) The subscribers to the memorandum shall be deemed to have agreed to become members of the company and on the incorporation of the company shall be entered as members in its register of members, and 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.

(7) Upon the application of a company and payment of the prescribed fee, the Registrar shall issue to the company a certificate of confirmation of incorporation under his hand and seal.

[12/2002]

[UK, 1948, ss. 12-15, 26; Aust., 1961, s. 16]

Power to refuse registration

20.—(1) Without prejudice to the powers of the Registrar under section 12(5), where a memorandum is delivered for registration under section 19, the Registrar shall not register the memorandum unless he is satisfied that all the requirements of this Act in respect of the registration and of all matters precedent and incidental thereto have been complied with.

[15/84]

(2) Notwithstanding anything in this Act or any rule of law, the Registrar shall refuse to register the memorandum of a proposed company where he is satisfied that —

(*a*) the proposed company is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore; or

(*b*) it would be contrary to the national security or interest for the proposed company to be registered.

[15/84]

(3) Any person aggrieved by the decision of the Registrar under subsection (2) may, within 30 days of the date of the decision, appeal to the Minister whose decision shall be final.

[15/84]

Minimum of one member

20A. A company shall have at least one member.

[5/2004]

[Aust., 2001, s. 114]

Membership of holding company

21.—(1) A corporation cannot be a member of a company which is its holding company, and any allotment or transfer of shares in a company to its subsidiary shall be void.

(2) Subsection (1) shall not apply where the subsidiary is concerned as personal representative, or where it is concerned as trustee, unless the holding company or a subsidiary thereof is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

(3) This section shall not prevent a subsidiary which, on 29th December 1967, is a member of its holding company, from continuing to be a member but, subject to subsection (2), the subsidiary shall have no right to vote at meetings of the holding company or any class of members thereof.

[S 258/67]

(4) This section shall not prevent a subsidiary from continuing to be a member of its holding company if, at the time when it becomes a subsidiary thereof, it already holds shares in that holding company, but —

(*a*) subject to subsection (2), the subsidiary shall have no right to vote at meetings of the holding company or any class of members thereof; and

(*b*) the subsidiary shall, within the period of 12 months or such longer period as the Court may allow after becoming the subsidiary of its holding company, dispose of all of its shares in the holding company.

(5) Subject to subsection (2), subsections (1), (3) and (4) shall apply in relation to a nominee for a corporation which is a subsidiary as if references in those subsections to such a corporation included references to a nominee for it.

(6) This section shall not operate to prevent the allotment of shares in a holding company to a subsidiary which already lawfully holds shares in the holding company if the allotment is made by way of capitalisation of reserves of the holding company and is made to all members of the holding company on a basis which is in direct proportion to the number of shares held by each member in the holding company.

(7) Where but for this section a subsidiary would have been entitled to subscribe for shares in the holding company, the holding company may, on behalf of the subsidiary, sell the shares for which the subsidiary would otherwise have been entitled to subscribe.

(8) In relation to a holding company that is a company limited by guarantee, the reference in this section to shares shall be construed as including a reference to the interest of its members as such, whatever the form of that interest.

[15/84]

[UK, 1948, s. 27; Aust., s. 17]

Requirements as to memorandum

22.—(1) The memorandum of every company shall be dated and shall state, in addition to other requirements —

(*a*) the name of the company;

(*b*) [*Deleted by Act 5 of 2004*]

(*c*) [*Deleted by Act 21 of 2005*]

(*d*) if the company is a company limited by shares, that the liability of the members is limited;

(*e*) if the company is a company limited by guarantee, that the liability of the members is limited and 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 contributories among themselves, such amount as may be required not exceeding a specified amount;

(*f*) if the company is an unlimited company, that the liability of the members is unlimited;

(*g*) the full names, addresses and occupations of the subscribers thereto; and

(*h*) that such subscribers are desirous of being formed into a company in pursuance of the memorandum and (where the company is to have a share capital) respectively agree to take the number of shares in the capital of the company set out opposite their respective names.

[12/2002; 5/2004; 21/2005]

(1A) On 30th January 2006, any provision (or part thereof) then subsisting in the memorandum of any company which states —

(*a*) the amount of share capital with which the company proposes to be or is registered; or

(*b*) the division of the share capital of the company into shares of a fixed amount,

shall, in so far as it relates to the matters referred to in either or both of paragraphs (*a*) and (*b*), be deemed to be deleted.

[21/2005]

(2) Each subscriber to the memorandum shall, if the company is to have a share capital, make a declaration to the Registrar, either by himself or through a prescribed person authorised by him, as to the number of shares (not being less than one) that he agrees to take.

[12/2002]

(3) A statement in the memorandum of a company limited by shares that the liability of members is limited shall mean that the liability of the members is limited to the amount, if any, unpaid on the shares respectively held by them.

(4) A copy of the memorandum, duly signed by the subscribers and stating, if the company is to have a share capital, the number of shares that each subscriber has agreed to take, shall be

kept at the registered office of the company.

[12/2002]

[Aust., 1961, s. 18]

Division 2 — Powers

Capacity and powers of company

23.—(1) Subject to the provisions of this Act and any other written law and its memorandum or articles of association, a company has —

(*a*) full capacity to carry on or undertake any business or activity, do any act or enter into any transaction; and

(*b*) for the purposes of paragraph (*a*), full rights, powers and privileges.

[5/2004]

(1A) A company may have the objects of the company included in its memorandum.

[5/2004]

(1B) The memorandum or articles of association of a company may contain a provision restricting its capacity, rights, powers or privileges.

[5/2004]

[NZ, 1993, s. 16]

Restriction as to power of certain companies to hold lands

(2) A company formed for the purpose of providing recreation or amusement or promoting commerce, industry, art, science, religion or any other like object not involving the acquisition of gain by the company or by its individual members shall not acquire any land without the approval of the Minister but the Minister may empower any such company to hold lands in such quantity and subject to such conditions as he thinks fit.

[12/2002]

(3) Notice of a decision of the Minister under subsection (2) shall be given by the Registrar on behalf of the Minister to the company.

[12/2002]

(4) The decision of the Minister under subsection (2) shall be final and shall not be called in question by any court.

[12/2002]

(5) Upon the application of a company and payment of the prescribed fee, the Registrar shall issue to the company a certificate confirming the decision under subsection (2).

[12/2002]

[Aust., 1961, s. 19; NZ, 1993, s. 16]

Power of company to provide for employees on cessation of business

24.—(1) The powers of a company shall, if they would not otherwise do so, be deemed to include power to make provision, in connection with any cessation of the whole or any part of the business carried on by the company or any subsidiary of the company, for the benefit of persons employed or formerly employed by the company or its subsidiary.

[10/74]

(2) Subsection (1) relates only to the capacity of a company as a body corporate and is without prejudice to any provision in a company's memorandum or articles requiring any

exercise of the power mentioned in that subsection to be approved by the company in general meeting or otherwise prescribing the manner in which that power is to be exercised.

[10/74]

Ultra vires transactions

25.—(1) No act or purported act of a company (including the entering into of an agreement by the company and including any act done on behalf of a company by an officer or agent of the company under any purported authority, whether express or implied, of the company) and no conveyance or transfer of property, whether real or personal, to or by a company shall be invalid by reason only of the fact that the company was without capacity or power to do such act or to execute or take such conveyance or transfer.

(2) Any such lack of capacity or power may be asserted or relied upon only in —

(*a*) proceedings against the company by any member of the company or, where the company has issued debentures secured by a floating charge over all or any of the company's property, by the holder of any of those debentures or the trustee for the holders of those debentures to restrain the doing of any act or acts or the conveyance or transfer of any property to or by the company;

(*b*) any proceedings by the company or by any member of the company against the present or former officers of the company; or

(*c*) any application by the Minister to wind up the company.

[42/2005]

(3) If the unauthorised act, conveyance or transfer sought to be restrained in any proceedings under subsection (2)(*a*) is being or is to be performed or made pursuant to any contract to which the company is a party, the Court may, if all the parties to the contract are parties to the proceedings and if the Court considers it to be just and equitable, set aside and restrain the performance of the contract and may allow to the company or to the other parties to the contract, as the case requires, compensation for the loss or damage sustained by either of them which may result from the action of the Court in setting aside and restraining the performance of the contract but anticipated profits to be derived from the performance of the contract shall not be awarded by the Court as a loss or damage sustained.

[Aust., 1961, s. 20]

No constructive notice

25A. Notwithstanding anything in the memorandum or articles of a company, a person is not affected by, or deemed to have notice or knowledge of the contents of, the memorandum or articles of, or any other document relating to, the company merely because —

(*a*) the memorandum, articles or document is registered by the Registrar; or

(*b*) the memorandum, articles or document is available for inspection at the registered office of the company.

[5/2004]

[NZ, 1993, s. 19]

General provisions as to alteration of memorandum

26.—(1) Unless otherwise provided in this Act, the memorandum of a company may be altered by special resolution.

[5/2004]

(1A) Subsection (1) is subject to section 26A and to any provision included in the memorandum of a company in accordance with that section.

[5/2004]

(1B) Notwithstanding subsection (1), a provision contained in the memorandum of a company immediately before 1st April 2004 and which could not be altered under the provisions of this Act in force immediately before that date, may be altered only if all the members of the company agree.

[5/2004]

(2) In addition to observing and subject to any other provision of this Act requiring the lodging with the Registrar of any resolution of a company or order of the Court or other document affecting the memorandum of a company, the company shall within 14 days after the passing of any such resolution or the making of any such order lodge with the Registrar a copy of such resolution or other document or a copy of such order together with (unless the Registrar dispenses therewith) a copy of the memorandum as altered, 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 on conviction to a fine not exceeding $1,000 and also to a default penalty.

[12/2002]

(3) The Registrar shall register every resolution, order or other document lodged with him under this Act that affects the memorandum of a company and, where an order is so registered, shall issue to the company a notice of the registration of that order.

[12/2002]

(4) [*Deleted by Act 12 of 2002*]

(5) Notice of the registration shall be published in such manner, if any, as the Court or the Registrar directs.

(6) The Registrar shall, where appropriate, issue a notice of incorporation in accordance with the alteration made to the memorandum.

[12/2002]

(7) Upon the application of a company and payment of the prescribed fee, the Registrar shall issue to the company a certificate, under his hand and seal, confirming the incorporation in accordance with the alteration made to the memorandum.

[12/2002]

[Aust., 1961, s. 21; UK, Bill, 2002, Clause 20]

Power to entrench provisions of memorandum and articles of company

26A.—(1) An entrenching provision may —

(*a*) be included in the memorandum or articles with which a company is formed; and

(*b*) at any time be inserted in the memorandum or articles of a company only if all the members of the company agree.

[5/2004]

(2) An entrenching provision may be removed or altered only if all the members of the company agree.

[5/2004]

(3) The provisions of this Act relating to the alteration of the memorandum or articles of a

company are subject to any entrenching provision in the memorandum or articles of a company.

[5/2004]

(4) In this section, "entrenching provision" means a provision of the memorandum or articles of a company to the effect that other specified provisions of the memorandum or articles —

(*a*) may not be altered in the manner provided by this Act; or

(*b*) may not be so altered except —

(i) by a resolution passed by a specified majority greater than 75% (the minimum majority required by this Act for a special resolution); or

(ii) where other specified conditions are met.

[UK, Bill, 2002, Clause 21]

[5/2004]

Names of companies

27.—(1) Except with the consent of the Minister, a company shall not be registered by a name that in the opinion of the Registrar —

(*a*) is undesirable;

(*b*) is identical to that of any other company, limited liability partnership or corporation, or to a business name; or

(*c*) [*Deleted by Act 12 of 2002*]

(*d*) is a name of a kind that the Minister has directed the Registrar not to accept for registration.

[15/84; 12/2002; 5/2005]

(2) Notwithstanding anything in this section and section 28 (other than section 28(4)), where the Registrar is satisfied that the company has been registered (whether through inadvertence or otherwise and whether before, on or after 30th January 2006) by a name —

(*a*) which is referred to in subsection (1);

(*b*) which so nearly resembles the name of another company or corporation or a business name as to be likely to be mistaken for it; or

(*c*) the use of which has been restrained by an injunction granted under the Trade Marks Act (Cap. 332),

the Registrar may direct the first-mentioned company to change its name, and the company shall comply with the direction within 6 weeks after the date of the direction or such longer period as the Registrar may allow, unless the direction is annulled by the Minister.

[21/2005]

(2A) Any person may apply, in writing, to the Registrar to give a direction to a company under subsection (2) on a ground referred to in that subsection; but the Registrar shall not consider any application to give a direction to a company on the ground referred to in subsection (2)(*b*) unless the Registrar receives the application within 12 months from the date of incorporation of the company.

[12/2002]

(2B) If the company fails to comply with subsection (2), the company and its officers shall

be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 and also to a default penalty.

[12/2002]

(2C) The Registrar may, if he is satisfied that the company to which the direction under subsection (2) was given had applied for registration under that name in bad faith, require the company to pay the Registrar such fees as may be prescribed by the Minister, and such fees shall be recoverable as a debt due to the Government.

[12/2002]

(2D) The Registrar may, by publication in the *Gazette*, make such rules as he considers appropriate for the purposes of determining the matters referred to in subsections (1) and (2).

[12/2002]

(3) In this section and section 28, "business name" has the meaning assigned to that expression in the Business Registration Act (Cap. 32).

[15/84; 12/2002]

(4) For the purpose of subsection (2), the reference to a corporation therein shall include a reference to a corporation whether or not it is registered under Division 2 of Part XI.

[15/84]

(5) A company aggrieved by the decision of the Registrar under subsection (2) or (2C) may within 30 days of the date of the decision appeal to the Minister whose decision shall be final.

[15/84; 12/2002]

(5A) For the avoidance of doubt, where the Registrar makes a decision under subsection (2) or the Minister makes a decision under subsection (5), he shall accept as correct any decision of the Court to grant an injunction referred to in subsection (2)(*c*).

[21/2005]

(6) The Minister shall cause a direction given by him under subsection (1) to be published in the *Gazette*.

(7) Subject to section 29, a limited company shall have either "Limited" or "Berhad" as part of and at the end of its name.

[12/2002]

(8) A private company shall have the word "Private" or "Sendirian" as part of its name, inserted immediately before the word "Limited" or "Berhad" or, in the case of an unlimited company, at the end of its name.

(9) It shall be lawful to use and no description of a company shall be deemed inadequate or incorrect by reason of the use of —

(*a*) the abbreviation "Pte." in lieu of the word "Private" or the abbreviation "Sdn." in lieu of the word "Sendirian" contained in the name of a company;

(*b*) the abbreviation "Ltd." in lieu of the word "Limited" or the abbreviation "Bhd." in lieu of the word "Berhad" contained in the name of a company; or

(*c*) any of such words in lieu of the corresponding abbreviation contained in the name of a company.

(10) A person may apply in the prescribed form to the Registrar for the reservation of a name set out in the application as —

(*a*) the name of an intended company;

(*b*) the name to which a company proposes to change its name; or

(*c*) the name under which a foreign company proposes to be registered, either originally or upon change of name.

(11) A company shall not be registered under section 19(3) and the Registrar shall not approve the change of name of a company under section 28(2) unless the name which it is proposed to be registered or the proposed new name, as the case may be, has been reserved under subsection (12).

[15/84; 12/2002]

(12) If the Registrar is satisfied as to the bona fides of the application and that the proposed name is a name by which the intended company, company or foreign company could be registered —

(*a*) without contravention of subsection (1) in the case of a company (whether originally or upon change of name); and

(*b*) without contravention of section 378 in the case of a foreign company (whether originally or upon change of name),

he shall reserve the proposed name for a period of 2 months from the date of the lodging of the application.

[22/93]

(13) If, at any time during a period for which a name is reserved, application is made to the Registrar for an extension of that period and the Registrar is satisfied as to the bona fides of the application, he may extend that period for a further period of 2 months.

(14) During a period for which a name is reserved, no company (other than the intended company or company in respect of which the name is reserved) shall be registered under this Act, whether originally or upon change of name, under the reserved name.

[22/93; 12/2002]

(15) The reservation of a name under this section in respect of an intended company, company or foreign company does not in itself entitle the intended company, company or foreign company to be registered by that name, either originally or upon change of name.

[UK, 1948, s. 17; Aust., 1961, s. 22]

Change of name

28.—(1) A company may by special resolution resolve that its name should be changed to a name by which the company could have been registered without contravention of section 27(1).

(2) If the Registrar approves the name which the company has resolved should be its new name, he shall register the company under the new name and issue to the company a notice of incorporation of the company under the new name and, upon the issue of such notice, the change of name shall become effective.

[12/2002]

(3) If the name of a company is, whether through inadvertence or otherwise or whether originally or by a change of name —

(*a*) a name by which the company could not be registered without contravention of section 27(1);

(*b*) a name that so nearly resembles the name of another company or corporation or a

business name as to be likely to be mistaken for it; or

(*c*) a name the use of which has been restrained by an injunction granted under the Trade Marks Act (Cap. 332),

the company may by special resolution change its name to a name that is not referred to in paragraph (*a*), (*b*) or (*c*) and, if the Registrar so directs, shall so change it within 6 weeks after the date of the direction or such longer period as the Registrar may allow, unless the direction is annulled by the Minister.

[21/2005]

(3A) Any person may apply in writing to the Registrar to give a direction to a company under subsection (3) on a ground referred to in that subsection; but the Registrar shall not consider any application to give a direction to a company on the ground referred to in subsection (3)(*b*) unless the Registrar receives the application within 12 months from the date of change of name of the company.

[12/2002]

(3B) If the company fails to comply with subsection (3), the company and its officers shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 and also to a default penalty.

[12/2002]

(3C) The Registrar may, if he is satisfied that the company to which the direction under subsection (3) was given had applied for registration under the name first-mentioned in that subsection in bad faith, require the company to pay the Registrar such fees as may be prescribed by the Minister, and such fees shall be recoverable as a debt due to the Government.

[21/2005]

(3D) A company aggrieved by the decision of the Registrar under subsection (3) or (3C) may within 30 days of the date of the decision appeal to the Minister whose decision shall be final.

[21/2005]

(3E) For the avoidance of doubt, where the Registrar makes a decision under subsection (3) or the Minister makes a decision under subsection (3D), he shall accept as correct any decision of the Court to grant an injunction referred to in subsection (3)(*c*).

[21/2005]

(4) Where the name of a company incorporated pursuant to any corresponding previous written law has not been changed since 29th December 1967, the Registrar shall not, except with the approval of the Minister, exercise his power under subsection (3) to direct the company to change its name.

[S 258/67]

(5) Upon the application of a company and payment of the prescribed fee, the Registrar shall issue to the company a certificate, under his hand and seal, confirming the incorporation of the company under the new name.

[12/2002]

(6) A change of name pursuant to this Act shall not affect the identity of the company or any rights or obligations of the company or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name.

[UK, 1948, s. 18; Aust., 1961, s. 23]

Omission of "Limited" or "Berhad" in name of charitable and other companies

29.—(1) Where it is proved to the satisfaction of the Minister that a proposed limited company is being formed for the purpose of providing recreation or amusement or promoting commerce, industry, art, science, religion, charity, pension or superannuation schemes or any other object useful to the community, that it has some basis of national or general public interest and that it is in a financial position to carry out the objects for which it is to be formed and will apply its profits (if any) or other income in promoting its objects and will prohibit the payment of any dividend to its members, the Minister may (after requiring, if he thinks fit, the proposal to be advertised in such manner as he directs either generally or in a particular case) approve that it be registered as a company with limited liability without the addition of the word "Limited" or "Berhad" to its name, and the company may be registered accordingly.

[12/2002]

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

(*a*) that the objects of a limited company are restricted to those specified in subsection (1) and to objects incidental or conducive thereto;

(*b*) that the company has some basis of national or general public interest;

(*c*) that the company is in a financial position to carry out the objects for which it was formed; and

(*d*) that by its constitution the company is required to apply its profits, if any, or other income in promoting its objects and is prohibited from paying any dividend to its members,

the Minister may grant his approval to the company to change its name to a name which does not contain the word "Limited" or "Berhad", being a name approved by the Registrar.

[12/2002]

(3) The Minister may grant his approval on such conditions as the Minister thinks fit, and those conditions shall be binding on the company and shall, if the Minister so directs, be inserted in the memorandum or articles of the company and the memorandum or articles may by special resolution be altered to give effect to any such direction.

[12/2002]

(4) Where the memorandum or articles of a company include, as a result of a direction of the Minister given pursuant to subsection (3) or pursuant to any corresponding previous written law, a provision that the memorandum or articles shall not be altered except with the consent of the Minister, the company may, with the consent of the Minister, by special resolution alter any provision of the memorandum or articles.

(5) A company shall, while an approval granted under this section to it is in force, be exempted from complying with the provisions of this Act relating to the use of the word "Limited" or "Berhad" as any part of its name.

[12/2002]

(6) Any approval granted under this section may at any time be revoked by the Minister and, upon revocation, the Registrar shall enter the word "Limited" or "Berhad" at the end of the name of the company in the register, and the company shall thereupon cease to enjoy the exemption granted by reason of the approval under this section but before the approval is so revoked the Minister shall give to the company notice in writing of his intention and shall afford it an opportunity to be heard.

[12/2002]

(7) Where the approval of the Minister under this section is revoked, the memorandum or articles of the company may be altered by special resolution so as to remove any provision in or to the effect that the memorandum or articles may be altered only with the consent of the Minister.

[12/2002; 5/2004]

(8) Notice of any approval under this section shall be given by the Registrar on behalf of the Minister to the company or proposed limited company.

[12/2002]

(9) Upon the application of the company or proposed limited company and payment of the prescribed fee, the Registrar shall issue to the company or proposed limited company a certificate confirming the approval under this section.

[12/2002]

[UK, 1948, s. 19; Aust., 1961, s. 24]

Registration of unlimited company as limited company, etc.

30.—(1) Subject to this section —

(*a*) an unlimited company may convert to a limited company if it was not previously a limited company that became an unlimited company in pursuance of paragraph (*b*); and

(*b*) a limited company may convert to an unlimited company if it was not previously an unlimited company that became a limited company in pursuance of paragraph (*a*) or any corresponding previous written law.

[15/84]

(2) Where a company applies to the Registrar for a change of status as provided by subsection (1) and, subject to section 33(8) and (9) as applied by subsection (7), lodges with the application the prescribed documents relating to the application, the Registrar shall, upon registration of such prescribed documents so lodged as are registrable under this Act, issue to the company a notice of incorporation —

(*a*) appropriate to the change of status applied for; and

(*b*) specifying, in addition to the particulars prescribed in respect of a notice of incorporation of a company of that status, that the notice is issued in pursuance of this section,

and, upon the issue of such a notice of incorporation, the company shall be deemed to be a company having the status specified therein.

[15/84; 12/2002]

(3) Where the status of a company is changed in pursuance of this section, notice of the change of status shall be published in such manner, if any, as the Registrar may direct.

[15/84]

(3A) Upon the application of the company and payment of the prescribed fee, the Registrar shall issue to the company a certificate, under his hand and seal, confirming the incorporation of the company with the new status.

[12/2002]

(4) In subsection (2), "prescribed documents", in relation to an application referred to in that subsection, means —

(*a*) a copy of a special resolution of the company —

(i) resolving to change the status of the company and specifying the status sought;

(ii) making such alterations to the memorandum of the company as are necessary to bring the memorandum into conformity with the requirements of this Act relating to the memorandum of a company of the status sought;

(iii) making — where the company has registered articles — such alterations and additions to the articles, if any, as are necessary to bring the articles into conformity with the requirements of this Act relating to the articles of a company of the status sought;

(iv) adopting — where the company has no registered articles — such articles, if any, as are required by this Act to be registered in respect of a company of the status sought or are proposed by the company as the registered articles of the company upon the change in its status; and

(v) changing the name of the company to a name by which it could be registered if it were a company of the status sought;

(*b*) where, by a special resolution referred to in paragraph (*a*), the memorandum of the company is altered or the articles of the company are altered or added to, or articles are adopted by the company — a copy of the memorandum as altered, the articles as altered or added to, or the articles adopted, as the case may be; and

(*c*) in the case of an application by a limited company to convert to an unlimited company —

(i) the prescribed form of assent to the application subscribed by or on behalf of all the members of the company; and

(ii) a declaration by or on behalf of a director or the secretary of the company, or a prescribed person authorised by the company, verifying that the persons by whom or on whose behalf such a form of assent is subscribed constitute the whole membership of the company and, if a member has not subscribed the form himself, that the director, secretary or prescribed person making the declaration has taken all reasonable steps to satisfy himself that each person who subscribed the form was lawfully empowered to do so.

[15/84; 12/2002]

(5) Section 26(2) to (6) shall not apply to or in relation to an application under this section or to any prescribed documents in relation to the application.

[15/84]

(6) A special resolution passed for the purposes of an application under this section shall take effect only upon the issue under this section of a notice of incorporation of the company to which the resolution relates.

[15/84; 12/2002]

(7) With such modifications as may be necessary, section 33 (except subsection (1) thereof) applies to and in respect of the proposal, passing and lodging, and the cancellation or confirmation by the Court, of a special resolution relating to a change of status as if it were a special resolution under that section.

[15/84]

(8) A change in the status of a company in pursuance of this section does not operate —

(*a*) to create a new legal entity;

(*b*) to prejudice or affect the identity of the body corporate constituted by the company or its continuity as a body corporate;

(*c*) to affect the property, or the rights or obligations, of the company; or

(*d*) to render defective any legal proceedings by or against the company,

and any legal proceedings that could have been continued or commenced by or against it prior to the change in its status may, notwithstanding the change in its status, be continued or commenced by or against it after the change in its status.

[15/84]

Change from public to private company

31.—(1) A public company having a share capital may convert to a private company by lodging with the Registrar a copy of a special resolution —

(*a*) determining to convert to a private company and specifying an appropriate alteration to its name; and

(*b*) altering the provisions of its memorandum or articles so far as is necessary to impose the restrictions and limitations referred to in section 18(1).

[5/2004]

Change from private to public company

(2) A private company may, subject to its memorandum or articles, convert to a public company by lodging with the Registrar —

(*a*) a copy of a special resolution determining to convert to a public company and specifying an appropriate alteration to its name;

(*b*) a statement in lieu of prospectus; and

(*c*) a declaration in the prescribed form verifying that section 61(2)(*b*) has been complied with,

and thereupon the restrictions and limitations referred to in section 18(1) as included in or deemed to be included in the memorandum or articles of such company shall cease to form part of the memorandum or articles.

[12/2002; 5/2004]

(3) On compliance by a company with subsection (1) or (2) and on the issue of a notice of incorporation altered accordingly the company shall be a private company or a public company (as the case requires).

[12/2002]

(3A) The company shall, within one month of the issue of the notice of incorporation referred to in subsection (3), lodge with the Registrar in the prescribed form a list of persons holding shares in the company.

[12/2002]

(4) A conversion of a company pursuant to subsection (1) or (2) shall not affect the identity of the company or any rights or obligations of the company or render defective any legal

proceedings by or against the company, and any legal proceedings that could have been continued or commenced by or against it prior to the conversion may, notwithstanding any change in the company's name or capacity in consequence of the conversion, be continued or commenced by or against it after the conversion.

(5) Upon the application of the company and payment of the prescribed fee, the Registrar shall issue to the company a certificate, under his hand and seal, confirming the incorporation of the company with the new status.

[12/2002]

[Aust., 1961, s. 26]

Default in complying with requirements as to private companies

32. —(1) [*Deleted by Act 5 of 2004*]

(2) Where —

(*a*) default has been made in relation to a private company in complying with a limitation of a kind specified in section 18(1)(*b*) that is included, or is deemed to be included in the memorandum or articles of the company;

(*b*) [*Deleted by Act 5 of 2004*]

(*c*) the memorandum or articles of a private company have been so altered that they no longer include restrictions or limitations of the kinds specified in section 18(1); or

(*d*) a private company has ceased to have a share capital,

the Registrar may by notice served on the company determine that, on such date as is specified in the notice, the company ceased to be a private company.

[5/2004]

(3) Where, under this section, the Court or the Registrar determines that a company has ceased to be a private company —

(*a*) the company shall be a public company and shall be deemed to have been a public company on and from the date specified in the order or notice;

(*b*) the company shall, on the date so specified be deemed to have changed its name by the omission from its name of the word "Private" or the word "Sendirian", as the case requires; and

(*c*) the company shall, within a period of 14 days after the date of the order or the notice, lodge with the Registrar —

(i) a statement in lieu of prospectus; and

(ii) a declaration in the prescribed form verifying that section 61(2)(*b*) has been complied with.

[12/2002; 21/2005]

(4) Where the Court is satisfied that a default or alteration referred to in subsection (2) has occurred but that it 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, the Court may, on such terms and conditions as to the Court seem just and expedient, determine that the company has not ceased to be a private company.

[5/2004]

(5) A company that, by virtue of a determination made under this section, has become a public company shall not convert to a private company without the leave of the Court.

(6) If default is made in complying with subsection (3)(*c*), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 and also to a default penalty.

[15/84]

(7) [*Deleted by Act 5 of 2004*]

(8) Where default is made in relation to a private company in complying with any restriction or limitation of a kind specified in section 18(1) that is included, or deemed to be included, in the memorandum or articles of the company, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months.

[15/84; 5/2004]

[UK, 1948, s. 29; Aust., 1961, s. 27]

Alterations of objects in memorandum

33.—(1) Subject to this section, a company may by special resolution alter the provisions of its memorandum with respect to the objects of the company, if any.

[5/2004]

(2) Where a company proposes to alter its memorandum, with respect to the objects of the company, it shall give by post 21 days' written notice specifying the intention to propose the resolution as a special resolution and to submit it for passing to a meeting of the company to be held on a day specified in the notice.

(3) The notice shall be given to all members, and to all trustees for debenture holders and, if there are no trustees for any class of debenture holders, to all debenture holders of that class whose names are, at the time of the posting of the notice, known to the company.

(4) The Court may in the case of any person or class of persons for such reasons as to it seem sufficient dispense with the notice required by subsection (2).

(5) If an application for the cancellation of an alteration is made to the Court in accordance with this section by —

(*a*) the holders of not less in the aggregate than 5% of the total number of issued shares of the company or any class of those shares or, if the company is not limited by shares, not less than 5% of the company's members; or

(*b*) the holders of not less than 5% in nominal value of the company's debentures,

the alteration shall not have effect except so far as it is confirmed by the Court.

[10/74; 21/2005]

(5A) For the purposes of subsection (5), any of the company's issued share capital held as treasury shares shall be disregarded.

[21/2005]

(6) The application shall be made within 21 days after the date on which the resolution altering the company's objects was passed, and may be made on behalf of the persons entitled to make the application by such one or more of their number as they appoint in writing for the purpose.

(7) On the application, the Court —

(*a*) shall have regard to the rights and interests of the members of the company or of any class of them as well as to the rights and interests of the creditors;

(*b*) may if it thinks fit adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase (otherwise than by the company) of the interests of dissentient members;

(*c*) may give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement; and

(*d*) may make an order cancelling the alteration or confirming the alteration either wholly or in part and on such terms and conditions as it thinks fit.

(8) Notwithstanding any other provision of this Act, a copy of a resolution altering the objects of a company shall not be lodged with the Registrar before the expiration of 21 days after the passing of the resolution, or if any application to the Court has been made, before the application has been determined by the Court, whichever is the later.

(9) A copy of the resolution shall be lodged with the Registrar by the company within 14 days after the expiration of the 21 days referred to in subsection (8), but if an application has been made to the Court in accordance with this section, the copy shall be lodged with the Registrar together with a copy of the order of the Court within 14 days after the application has been determined by the Court.

[12/2002]

(10) On compliance by a company with subsection (9), the alteration, if any, of the objects shall take effect.

(11) For the avoidance of doubt, a reference in this section to the alteration of any provision of the memorandum of a company or the alteration of the objects of a company includes the removal of that provision or of all or any of those objects.

[5/2004]

[UK, 1948, s. 5; UK, Treasury Shares, Sch., para. 1; Aust., 1961, s. 28]

Alteration of memorandum by company pursuant to repeal and re-enactment of sections 10 and 14 of Residential Property Act

34.—(1) Where the memorandum of a company contains any of the provisions referred to in section 10(1) of the Residential Property Act (Cap. 274) in force immediately before 31st March 2006, the company may, be special resolution, amend its memorandum to remove that provision.

[9/2006]

(2) Where the memorandum of a company contains a provision to the effect that its memorandum or articles of association shall not be altered to remove any of the provisions referred to in section 10(1) of the Residential Property Act in force immediately before 31st March 2006 except in accordance with the requirements of that Act —

(*a*) that provision shall cease to have effect as from that date; and

(*b*) the company may, by special resolution, amend its memorandum to remove that provision.

[9/2006]

Articles of association

35.—(1) There may in the case of a company limited by shares and there shall in the case of a company limited by guarantee or an unlimited company be registered with the memorandum, articles signed by the subscribers to the memorandum prescribing regulations for the company.

[15/84]

(2) Articles shall comply with such requirements as may be prescribed.

[12/2002]

(3) [*Deleted by Act 21 of 2005*]

(4) In the case of an unlimited company or a company limited by guarantee the articles shall state the number of members with which the company proposes to be registered.

[15/84]

(5) Where a company to which subsection (4) applies changes the number of its members so that it is different from the registered number, the company shall, within 14 days after the date on which the change was resolved or took place, lodge with the Registrar notice of the change in the prescribed form.

[12/2002]

(6) Every company which makes default in complying with subsection (5) and every officer of the company who is in default in complying with that subsection shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 and also to a default penalty.

[15/84]

[UK, 1948, ss. 6, 7; Aust., 1961, s. 29]

Adoption of Table A in Fourth Schedule

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

(2) In the case of a company limited by shares incorporated after 29th December 1967, if articles are not registered, or if articles are registered then, 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 articles of the company in the same manner and to the same extent as if they were contained in registered articles.

[S 258/67]

[UK, 1948, s. 8; Aust., 1961, s. 30]

Alteration of articles

37.—(1) Subject to this Act (in particular section 26A and any provision included in its articles in accordance with that section) and to any conditions in its memorandum, a company may by special resolution alter or add to its articles.

[5/2004]

(2) Any alteration or addition so made in the articles shall, subject to this Act, on and from the date of the special resolution or such later date as is specified in the resolution, be as valid as if originally contained therein and be subject in like manner to alteration by special resolution.

(3) Subject to this section, any company shall have the power and shall be deemed always to have had the power to amend its articles by the adoption of all or any of the regulations contained in Table A, by reference only to the regulations in that Table or to the numbers of particular regulations contained therein, without being required in the special resolution effecting the amendment to set out the text of the regulations so adopted.

[UK, 1948, s. 10; Aust., 1961, s. 31]

As to memorandum and articles of companies limited by guarantee

38.—(1) In the case of a company limited by guarantee, 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.

[15/84]

(2) For the purposes of the provisions of this Act 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 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 number of the shares or interests is not specified thereby.

[21/2005]

[UK, 1948, s. 21; Aust., 1961, s. 32]

Effect of memorandum and articles

39.—(1) Subject to this Act, 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.

As to effect of alterations on members who do not consent

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

[UK, 1948, ss. 20, 22; Aust., 1961, s. 33]

Copies of memorandum and articles

40.—(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 $5 or such lesser sum as is fixed by the directors.

(2) Where an alteration is made in the memorandum or articles of a company, a copy of the memorandum or articles shall not be issued by the company after the date of alteration unless —

(*a*) the copy is in accordance with the alteration; or

(*b*) a printed copy of the order or resolution making the alteration is annexed to the copy of the memorandum or articles and the particular clauses or articles affected are indicated in ink.

(3) [*Omitted*[*]

[*] Subsection (3) of section 40 is omitted from the 2006 Ed., being obsolete by virtue of the amendment to

section 186 of the 1994 Ed. by the Companies (Amendment) Act 2003 (Act 8 of 2003).

]

(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.

[UK, 1948, ss. 24, 25; Aust., 1961, s. 34]

Ratification by company of contracts made before incorporation

41.—(1) Any contract or other transaction purporting to be entered into by a company prior to its formation or by any person on behalf of a company prior to its formation may be ratified by the company after its formation and thereupon the company shall become bound by and entitled to the benefit thereof as if it had been in existence at the date of the contract or other transaction and had been a party thereto.

[10/74; 13/87]

(2) Prior to ratification by the company the person or persons who purported to act in the name or on behalf of the company shall in the absence of express agreement to the contrary be personally bound by the contract or other transaction and entitled to the benefit thereof.

Form of contract

(3) Contracts on behalf of a corporation may be made as follows:

(*a*) a contract which if made between private persons would by law be required to be in writing under seal may be made on behalf of the corporation in writing under the common seal of the corporation;

(*b*) a contract which if made between private persons would by law be required to be in writing signed by the parties to be charged therewith may be made on behalf of the corporation 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 corporation by any person acting under its authority, express or implied,

and any contract so made shall be effectual in law and shall bind the corporation and its successors and all other parties thereto and may be varied or discharged in the manner in which it is authorised to be made.

[UK, 1948, s. 32 (1) and (2); Aust., 1961, s. 35 (1)]

Authentication of documents

(4) A document or proceeding requiring authentication by a corporation may be signed by an authorised officer of the corporation and need not be under its common seal.

[UK, 1948, s. 36; Aust., 1961, s. 35 (2)]

Execution of deeds

(5) A corporation may by writing under its common seal empower any person, either generally or in respect of any specified matters, as its agent or attorney to execute deeds on its behalf and a deed signed by such an agent or attorney on behalf of the corporation and under his seal, or, subject to subsection (7), under the appropriate official seal of the corporation shall bind the corporation and have the same effect as if it were under its common seal.

[UK, 1948, s. 34; Aust., 1961, s. 35 (3)]

(6) The authority of any such agent or attorney shall as between the corporation and any person dealing with him continue during the period, if any, mentioned in the instrument conferring the authority, or if no period is therein mentioned then until notice of the revocation or determination of his authority has been given to the person dealing with him.

[UK, 1948, s. 35 (4); Aust., 1961, s. 35 (4)]

Official seal for use abroad

(7) A corporation whose objects require or comprise the transaction of business outside Singapore may, if authorised by its articles, have for use in any place outside Singapore an official seal, which shall be a facsimile of the common seal of the corporation with the addition on its face of the name of the place where it is to be used and the person affixing any such official seal shall, in writing under his hand, certify on the instrument to which it is affixed the date on which and the place at which it is affixed.

[Aust., 1961, s. 35 (5)]

Authority of agent of a corporation need not be under seal, unless seal required by law of foreign state

(8) The fact that a power of attorney or document of authorisation given to or in favour of the donee of the power or agent of a corporation is not under seal shall not, if such power of attorney or document of authorisation is valid as a power of attorney or document of authorisation in accordance with the laws of the country under which such corporation is incorporated, affect for any purpose intended to be effected in Singapore the validity or effect of any instrument under seal executed on behalf of that corporation by such donee of the power or agent, which shall for all such purposes whatsoever be as valid as if such authority had been under seal.

[13/87]

Retrospective application

(9) Subsection (8) shall also apply to every instrument under seal executed before 15th May 1987 on behalf of any corporation by a donee of a power or an agent of that corporation whose authority was not under seal.

[13/87]

Prohibition of carrying on business with fewer than statutory minimum of members

42. [*Repealed by Act 5 of 2004*]

Company or foreign company with a charitable purpose which contravenes the Charities Act or regulations made thereunder may be wound up or struck off the register

42A.—(1) This section shall apply to a company or a foreign company —

(*a*) that is registered under the Charities Act (Cap. 37); or

(*b*) that has as its sole object or one of its principal objects a charitable purpose connected with persons, events or objects outside Singapore.

[22/93]

(2) A company or foreign company to which this section applies that is convicted of an offence under the Charities Act or any regulations made thereunder shall be deemed to be a

company or foreign company, as the case may be, that is being used for purposes prejudicial to public welfare and may be liable, in the case of a company, to be wound up by the Court under section 254(1)(*m*) or, in the case of a foreign company, to have its name struck off the register by the Registrar under section 377(8).

[22/93]

(3) In this section, "charitable purpose" means any charitable purpose or object or any other religious, public or social purpose or object, whether or not charitable under the law of Singapore.

[22/93]

PART IV

SHARES, DEBENTURES AND CHARGES

Division 1 — Prospectuses

Requirement to issue form of application for shares or debentures with a prospectus

43. [*Repealed by S 236/2002*]

As to invitations to the public to lend money to or to deposit money with a corporation

44. [*Repealed by S 236/2002*]

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51. [*Repealed by S 236/2002*]

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52. [*Repealed by S 236/2002*]

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53. [*Repealed by S 236/2002*]

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57. [*Repealed by S 236/2002*]

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58. [*Repealed by S 236/2002*]

Restriction on allotment in certain cases

59.—(1) A public company having a share capital which does not issue a prospectus on or with reference to its formation shall not allot any of its shares or debentures unless, at least 3 days before the first allotment of either shares or debentures, there has been lodged with the Registrar a statement in lieu of prospectus which complies with the requirements of this Act.

(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 on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months.

[15/84]

(3) Every director of a company who knowingly contravenes or permits or authorises the contravention of subsection (1) shall —

(*a*) be guilty of an offence; and

(*b*) be liable in addition to the penalty or punishment for the offence to compensate the company and allottee respectively for any loss, damages or costs which the company or allottee has sustained or incurred thereby.

[42/2001]

(4) No proceedings for the recovery of any compensation referred to in subsection (3)(*b*) shall be commenced after the expiration of 2 years from the date of the allotment.

[42/2001]

[UK, 1948, s. 48; Aust., 1961, s. 50]

Requirements as to statements in lieu of prospectus

60.—(1) To comply with the requirements of this Act, a statement in lieu of prospectus lodged by or on behalf of a company —

(*a*) shall be signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing;

(*b*) shall, subject to Part III of the Sixth Schedule, be in the form of and state the matters specified in Part I of that Schedule and set out the reports specified in Part II of that Schedule; and

(*c*) shall, where the persons making any report specified in Part II of that Schedule have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 5 of Part III of that Schedule, have endorsed thereon or attached thereto a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(2) The Registrar shall not accept for registration any statement in lieu of prospectus unless it appears to him to comply with the requirements of this Act.

(3) Where in any statement in lieu of prospectus there is any untrue statement or wilful non-disclosure, any director who signed the statement in lieu of prospectus shall, unless he proves either that the untrue statement or non-disclosure was immaterial or that he had reasonable ground to believe and did up to the time of the delivery for registration of the statement in lieu of prospectus believe that the untrue statement was true or the non-disclosure immaterial, be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months or to both.

[15/84]

[UK, 1948, s. 48; Aust., 1961, s. 51]

Restrictions on commencement of business in certain circumstances

61.—(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 power —

(*a*) if any money is or may become liable to be repaid to applicants for any shares or debentures offered for public subscription by reason of any failure to apply for or obtain permission for listing for quotation on any securities exchange; or

(*b*) unless —

(i) 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;

(ii) every director 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

(iii) there has been lodged with the Registrar a declaration in the prescribed form by —

(A) the secretary or one of the directors of the company; or

(B) a prescribed person authorised by the company,

verifying that sub-paragraphs (i) and (ii) have been complied with.

[12/2002; 8/2003]

(2) Where a public 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 power unless —

(*a*) there has been lodged with the Registrar a statement in lieu of prospectus which complies with the provisions of this Act;

(*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 lodged with the Registrar a declaration in the prescribed form by —

(i) the secretary or one of the directors of the company; or

(ii) a prescribed person authorised by the company,

verifying that paragraph (*b*) has been complied with.

[12/2002; 8/2003]

(3) The Registrar shall, on the lodgment of the declaration under subsection (1)(*b*)(iii) or (2)(*c*), as the case may be, issue a notice in the prescribed form that the company is entitled to commence business and to exercise its borrowing powers; and that notice shall be conclusive evidence of the matters stated in it.

[12/2002]

(4) Any contract made by a company before the date on 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) Where shares and debentures are offered simultaneously by a company for subscription, nothing in this section shall prevent the receipt by the company of any money payable on

application for the 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 be guilty of an offence and shall be liable on conviction to a fine not exceeding $4,000 and to a default penalty of $250.

[15/84]

(7) Upon the application of a company which has received a notice under subsection (3) and payment of the prescribed fee, the Registrar shall issue to the company a certificate, under his hand and seal, confirming that the company is entitled to commence business and to exercise its borrowing powers, and that certificate shall be conclusive evidence of the matters stated in it.

[12/2002]

[UK, 1948, s. 109; Aust., 1961, s. 52]

Restriction on varying contracts referred to in prospectus, etc.

62. A company shall not before the statutory meeting vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, unless the variation is made subject to the approval of the statutory meeting.

[UK, 1948, s. 42; Aust., 1961, s. 53]

Division 3 — Shares

No par value shares

62A.—(1) Shares of a company have no par or nominal value.

[21/2005]

(2) Subsection (1) shall apply to all shares, whether issued before, on or after 30th January 2006.

[21/2005]

[Aust., 2001, s. 254C]

Transitional provisions for section 62A

62B.—(1) For the purpose of the operation of this Act on or after 30th January 2006 in relation to a share issued before that date —

(*a*) the amount paid on the share shall be the sum of all amounts paid to the company at any time for the share (but not including any premium); and

(*b*) the amount unpaid on the share shall be the difference between the price of issue of the share (but not including any premium) and the amount paid on the share.

[21/2005]

(2) On 30th January 2006, any amount standing to the credit of a company's share premium account and any amount standing to the credit of a company's capital redemption reserve shall become part of the company's share capital.

[21/2005]

(3) Notwithstanding subsection (2), a company may use the amount standing to the credit of its share premium account immediately before 30th January 2006 to —

(*a*) provide for the premium payable on redemption of debentures or redeemable preference shares issued before that date;

(*b*) write off —

(i) the preliminary expenses of the company incurred before that date; or

(ii) expenses incurred, or commissions or brokerages paid or discounts allowed, on or before that date, for or on any duty, fee or tax payable on or in connection with any issue of shares of the company;

(*c*) pay up, pursuant to an agreement made before that date, shares which were unissued before that date and which are to be issued on or after that date to members of the company as fully paid bonus shares;

(*d*) pay up in whole or in part the balance unpaid on shares issued before that date to members of the company; or

(*e*) pay dividends declared before that date, if such dividends are satisfied by the issue of shares to members of the company.

[21/2005]

(4) Notwithstanding subsection (2), if the company carries on insurance business in Singapore immediately before 30th January 2006, it may also apply the amount standing to the credit of its share premium account immediately before that date by appropriation or transfer to any fund established and maintained pursuant to the Insurance Act (Cap. 142).

[21/2005]

(5) Notwithstanding subsection (1), the liability of a shareholder for calls in respect of money unpaid on shares issued before 30th January 2006 (whether on account of the par value of the shares or by way of premium) shall not be affected by the shares ceasing to have a par value.

[21/2005]

(6) For the purpose of interpreting and applying, on or after 30th January 2006, a contract (including the memorandum and articles of the company) entered into before that date or a trust deed or other document executed before that date —

(*a*) a reference to the par or nominal value of a share shall be a reference to —

(i) if the share is issued before that date, the par or nominal value of the share immediately before that date;

(ii) if the share is issued on or after that date but shares of the same class were on issue immediately before that date, the par or nominal value that the share would have had if it had been issued then; or

(iii) if the share is issued on or after that date and shares of the same class were not on issue immediately before that date, the par or nominal value determined by the directors,

and a reference to share premium shall be taken to be a reference to any residual share capital in relation to the share;

(*b*) a reference to a right to a return of capital on a share shall be taken to be a reference to a right to a return of capital of a value equal to the amount paid in respect of the share's par or nominal value; and

(*c*) a reference to the aggregate par or nominal value of the company's issued share capital shall be taken to be a reference to that aggregate as it existed immediately before that date as —

(i) increased to take account of the par or nominal value as defined in paragraph (*a*) of any shares issued on or after that date; and

(ii) reduced to take account of the par or nominal value as defined in paragraph (*a*) of any shares cancelled on or after that date.

[21/2005]

(7) A company may —

(*a*) at any time before —

(i) the date it is required under section 197(4) to lodge its first annual return after 30th January 2006; or

(ii) the expiry of 6 months from 30th January 2006,

whichever is the earlier; or

(*b*) within such longer period as the Registrar may, if he thinks fit in the circumstances of the case, allow,

file with the Registrar a notice in the prescribed form of its share capital.

[21/2005]

(8) Unless a company has filed a notice of its share capital under subsection (7), the Registrar may for the purposes of the records maintained by the Authority adopt, as the share capital of the company, the aggregate nominal value of the shares issued by the company as that value appears in the Authority's records immediately before 30th January 2006.

[21/2005]

[Aust., Corporations, ss. 1444, 1449; Companies, s. 69 (2) (modified)]

Return as to allotments

63.—(1) Where a company makes any allotment of its shares, other than a deemed allotment, the company shall within 14 days thereafter lodge with the Registrar a return of the allotments stating —

(*a*) the number of the shares comprised in the allotment;

(*b*) the amount (if any) paid or deemed to be paid on the allotment of each share;

(*ba*) the amount (if any) unpaid on each share referred to in paragraph (*b*);

(*c*) where the capital of the company is divided into shares of different classes the class of shares to which each share comprised in the allotment belongs; and

(*d*) the full name, identification, nationality (if such identification or nationality, as the case may be, is required by the Registrar) and address of, and the number and class of shares held by —

(i) each of its members; or

(ii) if it has more than 50 members as a result of the allotment, each of the 50 members who, following the allotment, hold the most number of shares in the company (excluding treasury shares).

[12/2002; 21/2005]

(1A) A return of allotments referred to in subsection (1) by a company the shares of which are listed on a stock exchange in Singapore need not state the particulars referred to in

subsection (1)(*d*).

[12/2002]

(2) In subsection (1), "identification" means in the case of a person issued with an identity card, the number of his identity card and, in the case of a person not issued with an identity card, particulars of his passport or such other similar evidence of identification as is available.

[15/84]

(3) [*Deleted by Act 12 of 2002*]

(4) Where shares are allotted as fully or partly paid up otherwise than in cash and the allotment is made pursuant to a contract in writing, the company shall lodge with the return the contract evidencing the entitlement of the allottee or a copy of any such contract certified as prescribed.

[12/2002]

(5) If a certified copy of a contract is lodged, the original contract duly stamped shall if the Registrar so requests be produced at the same time to the Registrar.

(6) Where shares are allotted as fully or partly paid up otherwise than in cash and the allotment is made —

(*a*) pursuant to a contract not reduced to writing;

(*b*) pursuant to a provision in the memorandum or articles; or

(*c*) in satisfaction of a dividend declared in favour of, but not payable in cash to, the shareholders, or in pursuance of the application of moneys held by the company in an account or reserve in paying up unissued shares to which the shareholders have become entitled,

the company shall lodge with the return a statement containing such particulars as are prescribed but, where the shares are allotted pursuant to a scheme of arrangement approved by the Court under section 210, the company may lodge a copy of the order of the Court in lieu of the statement in the prescribed form.

[12/2002]

(7) In this section, "deemed allotment" means an issue of shares without formal allotment to subscribers to the memorandum.

[12/2002]

(8) If default is made in complying with this section, every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $4,000 and to a default penalty of $250.

[15/84]

[UK, 1948, s. 52; Aust., 1961, s. 54]

As to voting rights of equity shares in certain companies

64.—(1) Notwithstanding any provision in this Act or in the memorandum or articles of a company to which this section applies, but subject to sections 76J and 180(1), each equity share issued by such a company after 29th December 1967 shall confer the right at a poll at any general meeting of the company to one vote, and to one vote only, in respect of each equity share unless it is a management share issued by a newspaper company under section 10 of the Newspaper and Printing Presses Act (Cap. 206).

[15/84; 22/93; 21/2005]

(2) Where any company to which this section applies has, prior to 29th December 1967, or, while it was a company to which this section did not apply, issued any equity share which does not comply with subsection (1), the company shall not issue any invitation to subscribe for or to purchase any shares or debentures of such company until the voting rights attached to each share of that company have been duly varied so as to comply with subsection (1).

[S 258/67]

(3) For the purposes of this section, any alteration of the rights of issued preference shares so that they become equity shares shall be deemed to be an issue of equity shares.

(4) The Minister may, by order published in the *Gazette*, declare that subsection (1) shall apply to all or any equity shares or any class of equity shares which have been issued before 29th December 1967 by a company to which this section applies and which is specified in the declaration and thereupon that subsection shall apply to such equity shares so issued by such company from such date as is specified in the declaration being a date not less than one year after the making of the declaration.

(5) This section shall apply to a public company having a share capital.

[8/2003]

(6) Any person who makes any invitation to the public in breach of subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years.

[15/84]

Differences in calls and payments, etc.

65.—(1) A company if so authorised by its articles may —

(*a*) make arrangements on the issue of shares for varying the amounts and times of payment of calls as between shareholders;

(*b*) accept from any member the whole or a part of the amount remaining unpaid on any shares although no part of that amount has been called up; and

(*c*) pay dividends in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

[UK, 1948, s. 59; Aust., 1961, ss. 55, 56]

Reserve liability

(2) 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 of the company being wound up, but no such resolution shall prejudice the rights of any person acquired before the passing of the resolution.

[Aust., 1961, s. 56]

Share warrants

66.—(1) A company shall not issue any share warrant stating that the bearer of the warrant is entitled to the shares therein specified and which enables the shares to be transferred by delivery of the warrant.

[13/87]

(2) The bearer of a share warrant issued before 29th December 1967 shall be entitled, on surrendering it for cancellation, to have his name entered 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 issued before 29th December 1967 in respect of the shares therein specified without the warrant being surrendered and cancelled.

[Aust., 1961, s. 57]

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

67. [*Repealed by Act 21 of 2005*]

Power to issue shares at a discount

68. [*Repealed by Act 21 of 2005*]

Issue of shares at premium

69. [*Repealed by Act 21 of 2005*]

Relief from section 69

69A. [*Repealed by Act 21 of 2005*]

Merger relief

69B. [*Repealed by Act 21 of 2005*]

Relief from section 69 in respect of group reconstruction

69C. [*Repealed by Act 21 of 2005*]

Retrospective relief from section 69 in certain circumstances

69D. [*Repealed by Act 21 of 2005*]

Provisions supplementary to sections 69B and 69C

69E. [*Repealed by Act 21 of 2005*]

Power to make provision extending or restricting relief from section 69

69F. [*Repealed by Act 21 of 2005*]

Redeemable preference shares

70.—(1) Subject to this section, a company having a share capital may, if so authorised by its articles, issue preference shares which are, or at the option of the company are to be, liable to be redeemed and the redemption shall be effected only on such terms and in such manner as is provided by the articles.

(2) The redemption shall not be taken as reducing the amount of share capital of the company.

[21/2005]

(3) The shares shall not be redeemed unless they are fully paid up.

[21/2005]

(4) The shares shall not be redeemed out of the capital of the company unless —

(*a*) all the directors have made a solvency statement in relation to such redemption; and

(*b*) the company has lodged a copy of the statement with the Registrar.

[21/2005]

(5) [*Deleted by Act 21 of 2005*]

(6) [*Deleted by Act 21 of 2005*]

(7) [*Deleted by Act 21 of 2005*]

(8) If a company redeems any redeemable preference shares it shall within 14 days after so doing give notice thereof to the Registrar specifying the shares redeemed.

[UK, 1948, s. 58; Aust., 1961, s. 61]

Power of company to alter its share capital

71.—(1) A company, if so authorised by its articles, may in general meeting alter its share capital in any one or more of the following ways:

(*a*) [*Deleted by Act 21 of 2005*]

(*b*) consolidate and divide all or any of its share capital;

(*c*) convert all or any of its paid-up shares into stock and reconvert that stock into paid-up shares;

(*d*) subdivide its shares or any of them, so however that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

(*e*) cancel the number of 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 or which have been forfeited and diminish the amount of its share capital by the number of the shares so cancelled.

[21/2005]

(1A) The company may lodge with the Registrar notice of any alteration referred to in subsection (1)(*b*), (*c*), (*d*) or (*e*) in the prescribed form.

[12/2002]

Cancellations

(2) A cancellation of shares under this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

As to share capital of unlimited company on re-registration

(3) An unlimited company having a share capital may by any resolution passed for the purposes of section 30(1) —

(*a*) increase the amount of its share capital by increasing the issue price of each of its shares, but subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company

being wound up; and

(*b*) in addition or alternatively, provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

[21/2005]

Notice of increase of share capital

(4) [*Deleted by Act 21 of 2005*]

(5) [*Deleted by Act 21 of 2005*][*UK, 1948, ss. 61, 64; Aust., 1961, s. 62*]

Validation of shares improperly issued

72. Where a company has purported to issue or allot shares and the creation, issue or allotment of those shares was invalid by reason of any provision of this or any other written law or of the memorandum or articles of the company or otherwise or the terms of issue or allotment were inconsistent with or unauthorised by any such provision the Court may, upon application made by the company or by a holder or mortgagee of any of those shares or by a creditor of the company and upon being satisfied that in all the circumstances it is just and equitable to do so, make an order validating the issue or allotment of those shares or confirming the terms of issue or allotment thereof or both and upon a copy of the order being lodged with the Registrar those shares shall be deemed to have been validly issued or allotted upon the terms of the issue or allotment thereof.

[12/2002]

[Aust., 1961, s. 63]

Special resolution for reduction of share capital

73. [*Repealed by Act 21 of 2005*]

Rights of holders of classes of shares

74.—(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 authorising the variation or abrogation 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 that provision, the rights attached to any such class of shares are at any time varied or abrogated, the holders of not less in the aggregate than 5% of the issued shares of that class may apply to the Court to have the variation or abrogation cancelled, and, if any such application is made, the variation or abrogation shall not have effect until confirmed by the Court.

[10/74]

(1A) For the purposes of subsection (1), any of the company's issued share capital held as treasury shares shall be disregarded.

[21/2005]

(2) An application shall not be invalid by reason of the applicants or any of them having consented to or voted in favour of the resolution for the variation or abrogation if the Court is satisfied that any material fact was not disclosed by the company to those applicants before they so consented or voted.

(3) The application shall be made within one month after the date on which the consent was given or the resolution was passed or such further time as the Court allows, and may be made

on behalf of the shareholders entitled to make the application by such one or more of their number as they appoint in writing for the purpose.

(4) On the 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, may, if satisfied having regard to all the circumstances of the case that the variation or abrogation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation or abrogation, as the case may be, and shall, if not so satisfied, confirm it and the decision of the Court shall be final.

(5) The company shall, within 14 days after the making of an order by the Court on any such application, lodge a copy of the order with the Registrar and if default is made in complying with this provision the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 and also to a default penalty.

[15/84; 12/2002]

(6) The issue by a company of preference shares ranking pari passu with existing preference shares issued by the company shall be deemed to be a variation of the rights attached to those existing preference shares unless the issue of the first-mentioned shares was authorised by the terms of issue of the existing preference shares or by the articles of the company in force at the time the existing preference shares were issued.

(7) For the purposes of this section, the alteration of any provision in the memorandum or articles of a company which affects or relates to the manner in which the rights attaching to the shares of any class may be varied or abrogated shall be deemed to be a variation or abrogation of the rights attached to the shares of that class.

(8) This section shall not operate so as to limit or derogate from the rights of any person to obtain relief under section 216.

[UK, 1948, s. 72; UK, 2003, Sch., para. 9; Aust., 1961, s. 65]

Rights of holders of preference shares to be set out in memorandum or articles

75.—(1) No company shall allot any preference shares or convert any issued shares into preference shares unless there are set out in its memorandum or articles the rights of the holders of those shares with respect to repayment of capital, participation in surplus assets and profits, cumulative or non-cumulative dividends, voting and priority of payment of capital and dividend in relation to other shares or other classes of preference shares.

(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 on conviction to a fine not exceeding $2,000.

[15/84]

[Aust., 1961, s. 66]

Company financing dealings in its shares, etc.

76.—(1) Except as otherwise expressly provided by this Act, a company shall not —

(*a*) whether directly or indirectly, give any financial assistance for the purpose of, or in connection with —

(i) the acquisition by any person, whether before or at the same time as the giving of financial assistance, of —

(A) shares or units of shares in the company; or

(B) shares or units of shares in a holding company of the company; or

(ii) the proposed acquisition by any person of —

(A) shares or units of shares in the company; or

(B) shares or units of shares in a holding company of the company;

(*b*) whether directly or indirectly, in any way —

(i) acquire shares or units of shares in the company; or

(ii) purport to acquire shares or units of shares in a holding company of the company; or

(*c*) whether directly or indirectly, in any way, lend money on the security of —

(i) shares or units of shares in the company; or

(ii) shares or units of shares in a holding company of the company.

[13/87]

(2) A reference in this section to the giving of financial assistance includes a reference to the giving of financial assistance by means of the making of a loan, the giving of a guarantee, the provision of security, the release of an obligation or the release of a debt or otherwise.

[13/87]

(3) For the purposes of this section, a company shall be taken to have given financial assistance for the purpose of an acquisition or proposed acquisition referred to in subsection (1) (*a*) (referred to in this subsection as the relevant purpose) if —

(*a*) the company gave the financial assistance for purposes that included the relevant purpose; and

(*b*) the relevant purpose was a substantial purpose of the giving of the financial assistance.

[13/87]

(4) For the purposes of this section, a company shall be taken to have given financial assistance in connection with an acquisition or proposed acquisition referred to in subsection (1) (*a*) if, when the financial assistance was given to a person, the company was aware that the financial assistance would financially assist —

(*a*) the acquisition by a person of shares or units of shares in the company; or

(*b*) where shares in the company had already been acquired — the payment by a person of any unpaid amount of the subscription payable for the shares, or the payment of any calls on the shares.

[13/87; 21/2005]

(5) If a company contravenes subsection (1), the company shall not be guilty of an offence, notwithstanding section 407, but each officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $20,000 or to imprisonment for a term not exceeding 3 years or to both.

[13/87]

(6) Where a person is convicted of an offence under subsection (5) and the Court by which he is convicted is satisfied that the company or another person has suffered loss or damage as a

result of the contravention that constituted the offence, that Court may, in addition to imposing a penalty under that subsection, order the convicted person to pay compensation to the company or other person, as the case may be, of such amount as the Court specifies, and any such order may be enforced as if it were a judgment of the Court.

[13/87]

(7) The power of a Court under section 391 to relieve a person to whom that section applies, wholly or partly and on such terms as the Court thinks fit, from a liability referred to in that section extends to relieving a person against whom an order may be made under subsection (6) from the liability to have such an order made against him.

[13/87]

(8) Nothing in subsection (1) prohibits —

(*a*) the payment of a dividend by a company in good faith and in the ordinary course of commercial dealing;

(*b*) a payment made by a company pursuant to a reduction of capital in accordance with Division 3A of this Part;

(*c*) the discharge by a company of a liability of the company that was incurred in good faith as a result of a transaction entered into on ordinary commercial terms;

(*d*) anything done in pursuance of an order of Court made under section 210;

(*e*) anything done under an arrangement made in pursuance of section 306;

(*f*) anything done under an arrangement made between a company and its creditors which is binding on the creditors by virtue of section 309;

(*g*) where a corporation is a borrowing corporation by reason that it is or will be under a liability to repay moneys received or to be received by it —

(i) the giving, in good faith and in the ordinary course of commercial dealing, by a company that is a subsidiary of the borrowing corporation, of a guarantee in relation to the repayment of those moneys, whether or not the guarantee is secured by any charge over the property of that company; or

(ii) the provision, in good faith and in the ordinary course of commercial dealing, by a company that is a subsidiary of the borrowing corporation, of security in relation to the repayment of those moneys;

(*ga*) the giving by a company in good faith and in the ordinary course of commercial dealing of any representation, warranty or indemnity in relation to an offer to the public of, or an invitation to the public to subscribe for or purchase, shares or units of shares in that company;

(*h*) the purchase by a company of shares in the company pursuant to an order of a Court;

(*i*) the creation or acquisition, in good faith and in the ordinary course of commercial dealing, by a company of a lien on shares in the company (other than fully-paid shares) for any amount payable to the company in respect of the shares; or

(*j*) the entering into, in good faith and in the ordinary course of commercial dealing, of an agreement by a company with a subscriber for shares in the company permitting the subscriber to make payments for the shares by instalments,

but nothing in this subsection —

(i) shall be construed as implying that a particular act of a company would, but for this subsection, be prohibited by subsection (1); or

(ii) shall be construed as limiting the operation of any rule of law permitting the giving of financial assistance by a company, the acquisition of shares or units of shares by a company or the lending of money by a company on the security of shares or units of shares.

[13/87; 21/2005]

(9) Nothing in subsection (1) prohibits —

(*a*) the making of a loan, or the giving of a guarantee or the provision of security in connection with one or more loans made by one or more other persons, by a company in the ordinary course of its business where the activities of that company are regulated by any written law relating to banking, finance companies or insurance or are subject to supervision by the Monetary Authority of Singapore and where —

(i) the lending of money, or the giving of guarantees or the provision of security in connection with loans made by other persons, is done in the course of such activities; and

(ii) the loan that is made by the company, or, where the guarantee is given or the security is provided in respect of a loan, that loan is made on ordinary commercial terms as to the rate of interest, the terms of repayment of principal and payment of interest, the security to be provided and otherwise;

(*b*) the giving by a company of financial assistance for the purpose of, or in connection with, the acquisition or proposed acquisition of shares or units of shares in the company or in a holding company of the company to be held by or for the benefit of employees of the company or of a corporation that is related to the company, including any director holding a salaried employment or office in the company or in the corporation; or

(*c*) the purchase or acquisition or proposed purchase or acquisition by a company of its own shares in accordance with sections 76B to 76G.

[13/87; 38/98; 21/2005]

(9A) Nothing in subsection (1) prohibits the giving by a company of financial assistance for the purpose of, or in connection with, an acquisition or proposed acquisition by a person of shares or units of shares in the company or in a holding company of the company if —

(*a*) the amount of the financial assistance, together with any other financial assistance given by the company under this subsection repayment of which remains outstanding, would not exceed 10% of the aggregate of —

(i) the total paid-up capital of the company; and

(ii) the reserves of the company,

as disclosed in the most recent financial statements of the company that comply with section 201;

(*b*) the company receives fair value in connection with the financial assistance;

(*c*) the board of directors of the company passes a resolution that —

(i) the company should give the assistance;

(ii) giving the assistance is in the best interests of the company; and

(iii) the terms and conditions under which the assistance is given are fair and reasonable to the company;

(*d*) the resolution sets out in full the grounds for the directors' conclusions;

(*e*) all the directors of the company make a solvency statement in relation to the giving of the financial assistance;

(*f*) within 10 business days of providing the financial assistance, the company sends to each member a notice containing particulars of —

(i) the class and number of shares or units of shares in respect of which the financial assistance was or is to be given;

(ii) the consideration paid or payable for those shares or units of shares;

(iii) the identity of the person receiving the financial assistance and, if that person is not the beneficial owner of those shares or units of shares, the identity of the beneficial owner; and

(iv) the nature and, if quantifiable, the amount of the financial assistance; and

(*g*) not later than the business day next following the day when the notice referred to in paragraph (*f*) is sent to members of the company, the company lodges with the Registrar a copy of that notice and a copy of the solvency statement referred to in paragraph (*e*).

[21/2005]

(9B) Nothing in subsection (1) prohibits the giving by a company of financial assistance for the purpose of, or in connection with, an acquisition or proposed acquisition by a person of shares or units of shares in the company or in a holding company of the company if —

(*a*) the board of directors of the company passes a resolution that —

(i) the company should give the assistance;

(ii) giving the assistance is in the best interests of the company; and

(iii) the terms and conditions under which the assistance is given are fair and reasonable to the company;

(*b*) the resolution sets out in full the grounds for the directors' conclusions;

(*c*) all the directors of the company make a solvency statement in relation to the giving of the financial assistance;

(*d*) not later than the business day next following the day when the resolution referred to in paragraph (*a*) is passed, the company sends to each member having the right to vote on the resolution referred to in paragraph (*e*) a notice containing particulars of —

(i) the directors' resolution referred to in paragraph (*a*);

(ii) the class and number of shares or units of shares in respect of which the financial assistance is to be given;

(iii) the consideration payable for those shares or units of shares;

(iv) the identity of the person receiving the financial assistance and, if that person is not the beneficial owner of those shares or units of shares, the identity of the beneficial owner;

(v) the nature and, if quantifiable, the amount of the financial assistance; and

(vi) such further information and explanation as may be necessary to enable a reasonable member to understand the nature and implications for the company and its members of the proposed transaction;

(*e*) a resolution is passed —

(i) by all the members of the company present and voting either in person or by proxy at the relevant meeting; or

(ii) if the resolution is proposed to be passed by written means under section 184A, by all the members of the company,

to give that assistance;

(*f*) not later than the business day next following the day when the resolution referred to in paragraph (*e*) is passed, the company lodges with the Registrar a copy of that resolution and a copy of the solvency statement referred to in paragraph (*c*); and

(*g*) the financial assistance is given not more than 12 months after the resolution referred to in paragraph (*e*) is passed.

[21/2005]

(9C) A company shall not give financial assistance under subsection (9A) or (9B) if, before the assistance is given —

(*a*) any of the directors who voted in favour of the resolution under subsection (9A)(*c*) or (9B)(*a*), respectively —

(i) ceases to be satisfied that the giving of the assistance is in the best interests of the company; or

(ii) ceases to be satisfied that the terms and conditions under which the assistance is proposed are fair and reasonable to the company; or

(*b*) any of the directors no longer has reasonable grounds for any of the opinions expressed in the solvency statement.

[21/2005]

(9D) A director of a company is not relieved of any duty to the company under section 157 or otherwise, and whether of a fiduciary nature or not, in connection with the giving of financial assistance by the company for the purpose of, or in connection with, an acquisition or proposed acquisition of shares or units of shares in the company or in a holding company of the company, by —

(*a*) the passing of a resolution by the board of directors of the company under subsection (9A) for the giving of the financial assistance; or

(*b*) the passing of a resolution by the board of directors of the company, and the passing of a resolution by the members of the company, under subsection (9B) for the giving of the financial assistance.

[21/2005]

(10) Nothing in subsection (1) prohibits the giving by a company of financial assistance for the purpose of, or in connection with, an acquisition or proposed acquisition by a person of shares or units of shares in the company or in a holding company of the company if —

(*a*) the company, by special resolution, resolves to give financial assistance for the purpose of or in connection with, that acquisition;

(*b*) where —

(i) the company is a subsidiary of a listed corporation; or

(ii) the company is not a subsidiary of a listed corporation but is a subsidiary whose ultimate holding company is incorporated in Singapore,

the listed corporation or the ultimate holding company, as the case may be, has, by special resolution, approved the giving of the financial assistance;

(*c*) the notice specifying the intention to propose the resolution referred to in paragraph (*a*) as a special resolution sets out —

(i) particulars of the financial assistance proposed to be given and the reasons for the proposal to give that assistance; and

(ii) the effect that the giving of the financial assistance would have on the financial position of the company and, where the company is included in a group of corporations consisting of a holding company and a subsidiary or subsidiaries, the effect that the giving of the financial assistance would have on the financial position of the group of corporations,

and is accompanied by a copy of a statement made in accordance with a resolution of the directors, setting out the names of any directors who voted against the resolution and the reasons why they so voted, and signed by not less than 2 directors, stating whether, in the opinion of the directors who voted in favour of the resolution, after taking into account the financial position of the company (including future liabilities and contingent liabilities of the company), the giving of the financial assistance would be likely to prejudice materially the interests of the creditors or members of the company or any class of those creditors or members;

(*d*) the notice specifying the intention to propose the resolution referred to in paragraph (*b*) as a special resolution is accompanied by a copy of the notice, and a copy of the statement, referred to in paragraph (*c*);

(*e*) not later than the day next following the day when the notice referred to in paragraph (*c*) is despatched to members of the company there is lodged with the Registrar a copy of that notice and a copy of the statement that accompanied that notice;

(*f*) the notice referred to in paragraph (*c*) and a copy of the statement referred to in that paragraph are sent to —

(i) all members of the company;

(ii) all trustees for debenture holders of the company; and

(iii) if there are no trustees for, or for a particular class of, debenture holders of

the company — all debenture holders, or all debenture holders of that class, as the case may be, of the company whose names are, at the time when the notice is despatched, known to the company;

(*g*) the notice referred to in paragraph (*d*) and the accompanying documents are sent to —

(i) all members of the listed corporation or of the ultimate holding company;

(ii) all trustees for debenture holders of the listed corporation or of the ultimate holding company; and

(iii) if there are no trustees for, or for a particular class of, debenture holders of the listed corporation or of the ultimate holding company — all debenture holders or debenture holders of that class, as the case may be, of the listed corporation or of the ultimate holding company whose names are, at the time when the notice is despatched, known to the listed corporation or the ultimate holding company;

(*h*) within 21 days after the date on which the resolution referred to in paragraph (*a*) is passed or, in a case to which paragraph (*b*) applies, the date on which the resolution referred to in that paragraph is passed, whichever is the later, a notice —

(i) setting out the terms of the resolution referred to in paragraph (*a*); and

(ii) stating that any of the persons referred to in subsection (12) may, within the period referred to in that subsection, make an application to the Court opposing the giving of the financial assistance,

is published in a daily newspaper circulating generally in Singapore;

(*i*) no application opposing the giving of the financial assistance is made within the period referred to in subsection (12) or, if such an application or applications has or have been made, the application or each of the applications has been withdrawn or the Court has approved the giving of the financial assistance; and

(*j*) the financial assistance is given in accordance with the terms of the resolution referred to in paragraph (*a*) and not earlier than —

(i) in a case to which sub-paragraph (ii) does not apply — the expiration of the period referred to in subsection (12); or

(ii) if an application or applications has or have been made to the Court within that period —

(A) where the application or each of the applications has been withdrawn — the withdrawal of the application or of the last of the applications to be withdrawn; or

(B) in any other case — the decision of the Court on the application or applications.

[8/2003]

(10A) If the resolution referred to in subsection (10)(*a*) or (*b*) is proposed to be passed by written means under section 184A, subsection (10)(*f*) or (*g*), as the case may be, shall be complied with at or before the time —

(*a*) agreement to the resolution is sought in accordance with section 184C; or

(*b*) documents referred to in section 183(3A) in respect of the resolution are served on or made accessible to members of the company in accordance with section 183(3A),

as the case may be.

[13/87; 8/2003]

(11) Where, on application to the Court by a company, the Court is satisfied that the provisions of subsection (10) have been substantially complied with in relation to a proposed giving by the company of financial assistance of a kind mentioned in that subsection, the Court may, by order, declare that the provisions of that subsection have been complied with in relation to the proposed giving by the company of financial assistance.

[13/87]

(12) Where a special resolution referred to in subsection (10)(*a*) is passed by a company, an application to the Court opposing the giving of the financial assistance to which the special resolution relates may be made, within the period of 21 days after the publication of the notice referred to in subsection (10)(*h*) —

(*a*) by a member of the company;

(*b*) by a trustee for debenture holders of the company;

(*c*) by a debenture holder of the company;

(*d*) by a creditor of the company;

(*e*) if subsection (10)(*b*) applies by —

(i) a member of the listed corporation or ultimate holding company that passed a special resolution referred to in that subsection;

(ii) a trustee for debenture holders of that listed corporation or ultimate holding company;

(iii) a debenture holder of that listed corporation or ultimate holding company; or

(iv) a creditor of that listed corporation or ultimate holding company; or

(*f*) by the Registrar.

[13/87]

(13) Where an application or applications opposing the giving of financial assistance by a company in accordance with a special resolution passed by the company is or are made to the Court under subsection (12), the Court —

(*a*) shall, in determining what order or orders to make in relation to the application or applications, have regard to the rights and interests of the members of the company or of any class of them as well as to the rights and interests of the creditors of the company or of any class of them; and

(*b*) shall not make an order approving the giving of the financial assistance unless the Court is satisfied that —

(i) the company has disclosed to the members of the company all material matters relating to the proposed financial assistance; and

(ii) the proposed financial assistance would not, after taking into account the

financial position of the company (including any future or contingent liabilities), be likely to prejudice materially the interests of the creditors or members of the company or of any class of those creditors or members,

and may do all or any of the following:

(A) if it thinks fit, make an order for the purchase by the company of the interests of dissentient members of the company and for the reduction accordingly of the capital of the company;

(B) if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase (otherwise than by the company or by a subsidiary of the company) of the interests of dissentient members;

(C) give such ancillary or consequential directions and make such ancillary or consequential orders as it thinks expedient;

(D) make an order disapproving the giving of the financial assistance or, subject to paragraph (*b*), an order approving the giving of the financial assistance.

[13/87]

(14) Where the Court makes an order under this section in relation to the giving of financial assistance by a company, the company shall, within 14 days after the order is made, lodge with the Registrar a copy of the order.

[13/87; 12/2002]

(15) The passing of a special resolution by a company for the giving of financial assistance by the company for the purpose of, or in connection with, an acquisition or proposed acquisition of shares or units of shares in the company, and the approval by the Court of the giving of the financial assistance, do not relieve a director of the company of any duty to the company under section 157 or otherwise, and whether of a fiduciary nature or not, in connection with the giving of the financial assistance.

[13/87]

(16) A reference in this section to an acquisition or proposed acquisition of shares or units of shares is a reference to any acquisition or proposed acquisition whether by way of purchase, subscription or otherwise.

[13/87]

(17) This section does not apply in relation to the doing of any act or thing pursuant to a contract entered into before 15th May 1987 if the doing of that act or thing would have been lawful if this Act had not been enacted.

[13/87]

[UK, 1948, s. 54; Aust., 1961, s. 67; NZ, 1993, ss. 76-80; Companies, s. 76 (15) (modified)]

Consequences of company financing dealings in its shares, etc.

76A.—(1) The following contracts or transactions made or entered into in contravention of section 76 shall be void:

(*a*) a contract or transaction by which a company acquires or purports to acquire its own shares or units of its own shares, or shares or units of shares in its holding company; and

(*b*) a contract or transaction by which a company lends money on the security of its own

shares or units of its own shares, or on the security of shares or units of shares in its holding company.

[13/87]

(2) Subject to subsection (1), a contract or transaction made or entered into in contravention of section 76, or a contract or transaction related to such contract or transaction, shall be voidable at the option of the company. The company may, subject to the following provisions of this section, avoid any contract or transaction to which this subsection applies by giving notice in writing to the other party or parties to the contract or transaction.

[13/87]

(3) The Court may, on the application of a member of a company, a holder of debentures of a company, a trustee for the holders of debentures of a company or a director of a company, by order, authorise the member, holder of debentures, trustee or director to give a notice or notices under subsection (2) in the name of the company.

[13/87]

(4) Where —

(*a*) a company makes or performs a contract, or engages in a transaction;

(*b*) the contract is made or performed, or the transaction is engaged in, in contravention of section 76 or the contract or transaction is related to a contract that was made or performed, or to a transaction that was engaged in, in contravention of that section; and

(*c*) the Court is satisfied, on the application of the company or of any other person, that the company or that other person has suffered, or is likely to suffer, loss or damage as a result of —

(i) the making or performance of the contract or the engaging in of the transaction;

(ii) the making or performance of a related contract or the engaging in of a related transaction;

(iii) the contract or transaction being void by reason of subsection (1) or avoided under subsection (2); or

(iv) a related contract or transaction being void by reason of subsection (1) or avoided under subsection (2),

the Court may make such order or orders as it thinks just and equitable (including, without limiting the generality of the foregoing, all or any of the orders mentioned in subsection (5)) against any party to the contract or transaction or to the related contract or transaction, or against the company or against any person who aided, abetted, counselled or procured, or was, by act or omission, in any way, directly or indirectly, knowingly concerned in or party to the contravention.

[13/87]

(5) The orders that may be made under subsection (4) include —

(*a*) an order directing a person to refund money or return property to the company or to another person;

(*b*) an order directing a person to pay to the company or to another person a specified amount of the loss or damage suffered by the company or other person; and

(*c*) an order directing a person to indemnify the company or another person against any loss or damage that the company or other person may suffer as a result of the contract or transaction or as a result of the contract or transaction being or having become void.

[13/87]

(6) If a certificate signed by not less than 2 directors, or by a director and a secretary, of a company stating that the requirements of section 76(9A), (9B) or (10) (as the case may be), inclusive, have been complied with in relation to the proposed giving by the company of financial assistance for the purposes of an acquisition or proposed acquisition by a person of shares or units in the company or in a holding company of the company is given to a person —

(*a*) the person to whom the certificate is given is not under any liability to have an order made against him under subsection (4) by reason of any contract made or performed, or any transaction engaged in, by him in reliance on the certificate; and

(*b*) any such contract or transaction is not invalid, and is not voidable under subsection (2), by reason that the contract is made or performed, or the transaction is engaged in, in contravention of section 76 or is related to a contract that was made or performed, or to a transaction that was engaged in, in contravention of that section.

[13/87; 21/2005]

(7) Subsection (6) does not apply in relation to a person to whom a certificate is given under that subsection in relation to a contract or transaction if the Court, on application by the company concerned or any other person who has suffered, or is likely to suffer, loss or damage as a result of the making or performance of the contract or the engaging in of the transaction, or the making or performance of a related contract or the engaging in of a related transaction, by order, declares that it is satisfied that the person to whom the certificate was given became aware before the contract was made or the transaction was engaged in that the requirements of section 76(9A), (9B) or (10) (as the case may be) had not been complied with in relation to the financial assistance to which the certificate related.

[13/87; 21/2005]

(8) For the purposes of subsection (7), a person shall, in the absence of proof to the contrary, be deemed to have been aware at a particular time of any matter of which an employee or agent of the person having duties or acting on behalf of the person in relation to the relevant contract or transaction was aware at the time.

[13/87]

(9) In any proceeding, a document purporting to be a certificate given under subsection (6) shall, in the absence of proof to the contrary, be deemed to be such a certificate and to have been duly given.

[13/87]

(10) A person who has possession of a certificate given under subsection (6) shall, in the absence of proof to the contrary, be deemed to be the person to whom the certificate was given.

[13/87]

(11) If a person signs a certificate stating that the requirements of section 76(9A), (9B) or (10) (as the case may be) have been complied with in relation to the proposed giving by a company of financial assistance and any of those requirements had not been complied with in respect of the proposed giving of that assistance at the time when the certificate was signed by that person, the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months or to both.

[13/87; 21/2005]

(12) It is a defence to a prosecution for an offence under subsection (11) if the defendant proves that at the time when he signed the certificate he believed on reasonable grounds that all the requirements of section 76(9A), (9B) or (10) (as the case may be) had been complied with in respect of the proposed giving of financial assistance to which the certificate relates.

[13/87; 21/2005]

(13) The power of a Court under section 391 to relieve a person to whom that section applies, wholly or partly and on such terms as the Court thinks fit, from a liability referred to in that section extends to relieving a person against whom an order may be made under subsection (4) from the liability to have such an order made against him.

[13/87]

(14) If a company makes a contract or engages in a transaction under which it gives financial assistance as mentioned in section 76(1)(*a*) or lends money as mentioned in section 76(1)(*c*), any contract or transaction made or engaged in as a result of or by means of, or in relation to, that financial assistance or money shall be deemed for the purposes of this section to be related to the first-mentioned contract or transaction.

[13/87]

(15) Any rights or liabilities of a person under this section (including rights or liabilities under an order made by the Court under this section) are in addition to and not in derogation of any rights or liabilities of that person apart from this section but, where there would be any inconsistency between the rights and liabilities of a person under this section or under an order made by the Court under this section and the rights and liabilities of that person apart from this section, the provisions of this section or of the order made by the Court shall prevail.

[13/87]

Company may acquire its own shares

76B.—(1) Notwithstanding section 76, a company may, in accordance with this section and sections 76C to 76G, purchase or otherwise acquire shares issued by it if it is expressly permitted to do so by its articles.

[38/98; 36/2000]

(2) This section and sections 76C to 76G shall apply to ordinary shares, stocks and preference shares.

[36/2000]

(3) The total number of ordinary shares and stocks in any class that may be purchased or acquired by a company during the relevant period shall not exceed 10% (or such other percentage as the Minister may by notification prescribe) of the total number of ordinary shares and stocks of the company in that class ascertained —

(*a*) as at the date of the last annual general meeting of the company held before any resolution passed pursuant to section 76C, 76D, 76DA or 76E; or

(*b*) as at the date of such resolution,

whichever is the higher, unless —

(i) the company has, at any time during the relevant period, reduced its share capital by a special resolution under section 78B or 78C; or

(ii) the Court has, at any time during the relevant period, made an order under section 78I confirming the reduction of share capital of the company.

[21/2005]

(3A) Where a company has reduced its share capital by a special resolution under section 78B or 78C, or the Court has made an order under section 78I, the total number of ordinary shares and stocks of the company in any class shall, notwithstanding subsection (3)(*a*) and (*b*), be taken to be the total number of ordinary shares and stocks of the company in that class as altered by the special resolution of the company or the order of the Court, as the case may be.

[21/2005]

(3B) The total number of preference shares in any class which are not redeemable under section 70 that may be purchased or acquired by a company during the relevant period shall not exceed 10% (or such other percentage as the Minister may by notification prescribe) of the total number of non-redeemable preference shares of the company in that class ascertained —

(*a*) as at the date of the last annual general meeting of the company held before any resolution passed pursuant to section 76C, 76D, 76DA or 76E; or

(*b*) as at the date of such resolution,

whichever is the higher, unless —

(i) the company has, at any time during the relevant period, reduced its share capital by a special resolution under section 78B or 78C; or

(ii) the Court has, at any time during the relevant period, made an order under section 78I confirming the reduction of share capital of the company.

[21/2005]

(3C) Where a company has reduced its share capital by a special resolution under section 78B or 78C, or the Court has made an order under section 78I, the total number of non-redeemable preference shares of the company in any class shall, notwithstanding subsection (3B)(*a*) and (*b*), be taken to be the total number of non-redeemable preference shares of the company in that class as altered by the special resolution of the company or the order of the Court, as the case may be.

[21/2005]

(3D) There shall be no limit on the number of redeemable preference shares that may be purchased or acquired by a company during the relevant period.

[36/2000]

(3E) For the purposes of this section, any of the company's ordinary shares held as treasury shares shall be disregarded.

[21/2005]

(4) In subsection (3), "relevant period" means the period commencing from the date the last annual general meeting of the company was held or if no such meeting was held the date it was required by law to be held before the resolution in question is passed, and expiring on the date the next annual general meeting is or is required by law to be held, whichever is the earlier, after the date the resolution in question is passed.

[38/98]

(5) Ordinary shares that are purchased or acquired by a company pursuant to section 76C, 76D, 76DA or 76E shall, unless held in treasury in accordance with section 76H, be deemed to be cancelled immediately on purchase or acquisition.

[21/2005]

(5A) Preference shares that are purchased or acquired by a company pursuant to section 76C, 76D, 76DA or 76E shall be deemed to be cancelled immediately on purchase or acquisition.

[21/2005]

(6) On the cancellation of a share under subsection (5) or (5A), the rights and privileges attached to that share expire.

[38/98; 21/2005]

(7) For the purposes of this section, shares are deemed to be purchased or acquired on the date on which the company would, apart from subsection (5), become entitled to exercise the rights attached to the shares.

[38/98]

(8) Within 30 days of the passing of a resolution referred to in section 76C, 76D, 76DA or 76E, the directors of the company shall lodge with the Registrar a copy of the resolution.

[38/98; 8/2003]

(9) Within 30 days of the purchase or acquisition of the shares, the directors of the company shall lodge with the Registrar the notice of the purchase or acquisition in the prescribed form with the following particulars:

(*a*) the date of the purchase or acquisition;

(*b*) the number of shares purchased or acquired;

(*c*) the number of shares cancelled;

(*d*) the number of shares held as treasury shares;

(*e*) the company's issued share capital before the purchase or acquisition;

(*f*) the company's issued share capital after the purchase or acquisition;

(*g*) the amount of consideration paid by the company for the purchase or acquisition of the shares;

(*h*) whether the shares were purchased or acquired out of the profits or the capital of the company; and

(*i*) such other particulars as may be required in the prescribed form.

[38/98; 8/2003; 21/2005]

(10) Nothing in this section or in sections 76C to 76G shall be construed so as to limit or affect an order of the Court made under any section that requires a company to purchase or acquire its own shares.

[38/98]

[UK, 1985, s. 162; Aust., Co. Law Rev. Act, 1998, Sch. 1 (ss. 257A, 257B, 257H); Aust., 2001, s. 254Y; NZ, 1993, ss. 58, 59, 66]

Authority for off-market acquisition on equal access scheme

76C.—(1) A company, whether or not it is listed on a securities exchange, may make a purchase or acquisition of its own shares otherwise than on a securities exchange (referred to in this section as an off-market purchase) if the purchase or acquisition is made in accordance with an equal access scheme authorised in advance by the company in general meeting.

[38/98; 42/2001]

(2) The notice specifying the intention to propose the resolution to authorise an off-market

purchase referred to in subsection (1) must —

(*a*) specify the maximum number of shares or the maximum percentage of ordinary issued share capital authorised to be purchased or acquired;

(*b*) determine the maximum price which may be paid for the shares;

(*c*) specify a date on which the authority is to expire, being a date that must not be later than the date on which the next annual general meeting of the company is or is required by law to be held, whichever is the earlier; and

(*d*) specify the sources of funds to be used for the purchase or acquisition including the amount of financing and its impact on the company's financial position.

[38/98]

(3) The resolution authorising an off-market purchase referred to in subsection (2) must state the particulars referred to in subsection (2)(*a*), (*b*) and (*c*).

[38/98]

(4) The authority for an off-market purchase referred to in subsection (2) may, from time to time, be varied or revoked by the company in general meeting.

[38/98]

(5) A resolution to confer or vary the authority for an off-market purchase under this section may determine the maximum price for purchase or acquisition by —

(*a*) specifying a particular sum; or

(*b*) providing a basis or formula for calculating the amount of the price in question without reference to any person's discretion or opinion.

[38/98]

(6) For the purposes of this section and sections 76D and 76DA, an "equal access scheme" means a scheme which satisfies all the following conditions:

(*a*) the offers under the scheme are to be made to every person who holds shares to purchase or acquire the same percentage of their shares;

(*b*) all of those persons have a reasonable opportunity to accept the offers made to them; and

(*c*) the terms of all the offers are the same except that there shall be disregarded —

(i) differences in consideration attributable to the fact that the offers relate to shares with different accrued dividend entitlements;

(ii) differences in consideration attributable to the fact that the offers relate to shares with different amounts remaining unpaid; and

(iii) differences in the offers introduced solely to ensure that each member is left with a whole number of shares.

[38/98; 8/2003]

[Aust., Co. Law Rev. Act, 1998, Sch. 1 (s. 257B)]

Authority for selective off-market acquisition

76D.—(1) A company may make a purchase or acquisition of its own shares otherwise than on a securities exchange and not in accordance with an equal access scheme (referred to in this

section as a selective off-market purchase) if —

(*a*) the purchase or acquisition is made in accordance with an agreement authorised in advance under subsection (2); and

(*b*) the company is not listed on a securities exchange.

[38/98; 42/2001]

(2) The terms of the agreement for a selective off-market purchase must be authorised by a special resolution of the company, with no votes being cast by any person whose shares are proposed to be purchased or acquired or by his associated persons, and subsections (3) to (13) shall apply with respect to that authority and to resolutions conferring it.

[38/98]

(3) The notice specifying the intention to propose a special resolution to authorise an agreement for a selective off-market purchase must —

(*a*) specify a date on which the authority is to expire, being a date that must not be later than the date on which the next annual general meeting of the company is or is required by law to be held, whichever is the earlier; and

(*b*) specify the sources of funds to be used for the purchase or acquisition including the amount of financing and its impact on the company's financial position.

[38/98]

(4) The special resolution authorising a selective off-market purchase referred to in subsection (2) must state the expiry date referred to in subsection (3)(*a*).

[38/98]

(4A) If the special resolution referred to in subsection (2) is proposed to be passed by written means under section 184A —

(*a*) a person whose shares are proposed to be purchased or acquired or any of his associated persons shall not be regarded as a member having the right to vote on the resolution at a general meeting of the company for the purposes of section 184A;

(*b*) subsection (7) does not apply; but all documents referred to in this section shall be given to all members having the right to vote on the resolution at a general meeting for the purposes of section 184A at or before the time —

(i) agreement to the resolution is sought in accordance with section 184C; or

(ii) documents referred to in section 183(3A) in respect of the resolution are served on or made accessible to them in accordance with section 183(3A),

as the case may be.

[8/2003]

(5) The authority referred to in subsection (2) may, from time to time, be varied or revoked by a special resolution with no votes being cast by any person whose shares are proposed to be purchased or acquired or by his associated persons.

[38/98]

(6) For the purposes of subsections (2) and (5) —

(*a*) a member or his associated persons who holds any of the shares to which the resolution relates is regarded as exercising the voting rights carried by those shares not only if he votes in respect of them on a poll on the question whether the

resolution shall be passed, but also if he votes on the resolution otherwise than on a poll;

(*b*) notwithstanding anything in the company's articles, any member of the company may demand a poll on that question; and

(*c*) a vote and a demand for a poll by a person as proxy for a member or any of his associated persons are the same respectively as a vote and a demand by the member.

[38/98]

(7) The special resolution referred to in subsection (2) is not effective for the purposes of this section unless (if the proposed agreement is in writing) a copy of the agreement or (if not) a written memorandum of its terms is available for inspection by members of the company both —

(*a*) at the company's registered office for not less than 15 days ending with the date of the meeting at which the resolution is passed; and

(*b*) at the meeting itself.

[38/98]

(8) A memorandum of terms so made available must include the names of any members holding shares to which the agreement relates and where a member holds such shares as nominee for another person, the name of that other person; and a copy of the agreement so made available must have annexed to it a written memorandum specifying any such names which do not appear in the agreement itself.

[38/98]

(9) A company may agree to a variation of an existing agreement so approved, but only if the variation is authorised, before it is agreed to, by a special resolution of the company, with no votes being cast by any person whose shares are proposed to be purchased or acquired or by his associated persons.

[38/98]

(10) Subsections (3) to (7) shall apply to the authority for a proposed variation as they apply to the authority for a proposed agreement except that a copy of the original agreement or (as the case may require) a memorandum of its terms, together with any variations previously made, must also be available for inspection in accordance with subsection (7).

[38/98]

(11) The rights of a company under an agreement for a selective off-market purchase approved under this section shall not be capable of being assigned except by order of the Court made pursuant to any provision of this Act or any other written law.

[38/98]

(12) An agreement by a company to release its rights under an agreement for a selective off-market purchase approved under this section is void unless the terms of the release agreement are approved in advance before the agreement is entered into by a special resolution of the company with no votes being cast by any person whose shares are proposed to be purchased or acquired or by his associated persons; and subsections (3) to (7) shall apply to the approval for a proposed release agreement as they apply to authority for the proposed variation of an existing agreement.

[38/98]

(13) A resolution to confer or vary authority for a selective off-market purchase under this section may determine the maximum price for purchase or acquisition by —

(*a*) specifying a particular sum; or

(*b*) providing a basis or formula for calculating the amount of the price in question without reference to any person's discretion or opinion.

[38/98]

(14) For the purposes of this section, "associated person" in relation to a person means —

(*a*) the person's spouse, child or step-child; or

(*b*) a person who would, by virtue of section 7(5), be treated as an associate of the first-mentioned person.

[38/98]

[UK, 1985, s. 164; Aust., Co. Law Rev. Act 1998, Sch. 1 (s. 257D)]

Contingent purchase contract

76DA.—(1) A company may, whether or not it is listed on a securities exchange, make a purchase or acquisition of its own shares under a contingent purchase contract if the proposed contingent purchase contract is authorised in advance by a special resolution of the company.

[8/2003]

(2) Subject to subsection (3), the authority under subsection (1) may, from time to time, be varied or revoked by a special resolution of the company.

[8/2003]

(3) The notice specifying the intention to propose a special resolution to authorise a contingent purchase contract must specify a date on which the authority is to expire and that date must not be later than the date on which the next annual general meeting of the company is or is required by law to be held, whichever is the earlier.

[8/2003]

(4) The special resolution referred to in subsection (1) is invalid for the purposes of this section unless a copy of the proposed contingent purchase contract is available for inspection by members of the company —

(*a*) at the company's registered office for not less than 15 days ending with the date of the meeting at which the resolution is passed; and

(*b*) at the meeting itself.

[8/2003]

(5) A company may agree to a variation of an existing contingent purchase contract so approved if, and only if, the variation is authorised, before it is agreed to, by a special resolution of the company.

[8/2003]

(6) Subsections (2), (3) and (4) shall apply to the authority for a proposed variation as they apply to the authority for a proposed contingent purchase contract, except that a copy of the original contract, together with any variations previously made, must also be available for inspection in accordance with subsection (4).

[8/2003]

(7) The company may only make an offer to enter into a contingent purchase contract in accordance with all of the following conditions:

(*a*) the offer must be made to every person who holds shares of the same class in the company;

(*b*) the number of shares that a company is obliged or entitled to purchase or acquire under the contract from any person, in relation to the total number of shares of the same class held by that person, must be of the same proportion for every person who holds shares of that class to whom the offer is made; and

(*c*) the terms of all offers in respect of each class of shares must be the same.

[8/2003]

(8) For the avoidance of doubt, the company may purchase or acquire shares under a contingent purchase contract from any person whether or not the offer to enter into the contract was originally made to him.

[8/2003]

(9) In this section, "contingent purchase contract" means a contract entered into by a company and relating to any of its shares —

(*a*) which does not amount to a contract to purchase or acquire those shares; but

(*b*) under which the company may (subject to any condition) become entitled or obliged to purchase or acquire those shares.

[8/2003]

[UK, 1985, s. 165]

Authority for market acquisition

76E.—(1) A company shall not make a purchase or acquisition of its own shares on a securities exchange (referred to in this section as a market purchase) unless the purchase or acquisition has been authorised in advance by the company in general meeting.

[38/98; 42/2001]

(2) The notice specifying the intention to propose the resolution to authorise a market purchase must —

(*a*) specify the maximum number of shares or the maximum percentage of ordinary issued share capital authorised to be purchased or acquired;

(*b*) determine the maximum price which may be paid for the shares;

(*c*) specify a date on which the authority is to expire, being a date that must not be later than the date on which the next annual general meeting of the company is or is required by law to be held, whichever is the earlier; and

(*d*) specify the sources of funds to be used for the purchase or acquisition including the amount of financing and its impact on the company's financial position.

[38/98]

(3) The authority for a market purchase may be unconditional or subject to conditions and must state the particulars referred to in subsection (2)(*a*), (*b*) and (*c*).

[38/98]

(4) The authority for a market purchase may, from time to time, be varied or revoked by the company in general meeting but the variation must comply with subsections (2) and (3).

[38/98]

(5) A resolution to confer or vary authority for a market purchase under this section may determine the maximum price for purchase or acquisition by —

(*a*) specifying a particular sum; or

(*b*) providing a basis or formula for calculating the amount of the price in question without reference to any person's discretion or opinion.

[38/98]

[UK, 1985, s. 166]

Payments to be made only if company is solvent

76F.—(1) A payment made by a company in consideration of —

(*a*) acquiring any right with respect to the purchase or acquisition of its own shares in accordance with section 76C, 76D, 76DA or 76E;

(*b*) the variation of an agreement approved under section 76D or 76DA; or

(*c*) the release of any of the company's obligations with respect to the purchase or acquisition of any of its own shares under an agreement approved under section 76D or 76DA,

may be made out of the company's capital or profits so long as the company is solvent.

[21/2005]

(2) If the requirements in subsection (1) are not satisfied in relation to an agreement —

(*a*) in a case within subsection (1)(*a*), no purchase or acquisition by the company of its own shares in pursuance of that agreement is lawful;

(*b*) in a case within subsection (1)(*b*), no such purchase or acquisition following the variation is lawful; and

(*c*) in a case within subsection (1)(*c*), the purported release is void.

[21/2005]

(3) Every director or manager of a company who approves or authorises, the purchase or acquisition of the company's own shares or the release of obligations, knowing that the company is not solvent shall, without prejudice to any other liability, be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 3 years.

[21/2005]

(4) For the purposes of this section, a company is solvent if —

(*a*) the company is able to pay its debts in full at the time of the payment referred to in subsection (1) and will be able to pay its debts as they fall due in the normal course of business during the period of 12 months immediately following the date of the payment; and

(*b*) the value of the company's assets is not less than the value of its liabilities (including contingent liabilities) and will not after the proposed purchase, acquisition or release, become less than the value of its liabilities (including contingent liabilities).

[21/2005]

(5) In determining, for the purposes of subsection (4), whether the value of a company's assets is less than the value of its liabilities (including contingent liabilities), the directors or managers of a company —

(*a*) must have regard to —

(i) the most recent financial statements of the company that comply with

section 201(1A), (3) and (3A), as the case may be; and

(ii) all other circumstances that the directors or managers know or ought to know affect, or may affect, the value of the company's assets and the value of the company's liabilities (including contingent liabilities); and

(*b*) may rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances.

[21/2005]

(6) In determining, for the purposes of subsection (5), the value of a contingent liability, the directors or managers of a company may take into account —

(*a*) the likelihood of the contingency occurring; and

(*b*) any claim the company is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.

[21/2005]

[Companies, s. 76F (modified)]

Reduction of capital or profits or both on cancellation of repurchased shares

76G. Where under section 76C, 76D, 76DA or 76E, shares of a company are purchased or acquired, and cancelled under section 76B(5), the company shall —

(*a*) reduce the amount of its share capital where the shares were purchased or acquired out of the capital of the company;

(*b*) reduce the amount of its profits where the shares were purchased or acquired out of the profits of the company; or

(*c*) reduce the amount of its share capital and profits proportionately where the shares were purchased or acquired out of both the capital and the profits of the company,

by the total amount of the purchase price paid by the company for the shares cancelled.

[21/2005]

Treasury shares

76H.—(1) Where ordinary shares or stocks are purchased or otherwise acquired by a company in accordance with sections 76B to 76G, the company may —

(*a*) hold the shares or stocks (or any of them); or

(*b*) deal with any of them, at any time, in accordance with section 76K.

[21/2005]

(2) Where ordinary shares or stocks are held under subsection (1)(*a*) then, for the purposes of section 190 (Register and index of members), the company shall be entered in the register as the member holding those shares or stocks.

[21/2005]

[UK, 1985, s. 162A; UK, Treasury Shares, reg. 3]

Treasury shares: maximum holdings

76I.—(1) Where a company has shares of only one class, the aggregate number of shares held as treasury shares shall not at any time exceed 10% of the total number of shares of the company at that time.

[21/2005]

(2) Where the share capital of a company is divided into shares of different classes, the aggregate number of the shares of any class held as treasury shares shall not at any time exceed 10% of the total number of the shares in that class at that time.

[21/2005]

(3) Where subsection (1) or (2) is contravened by a company, the company shall dispose of or cancel the excess shares in accordance with section 76K before the end of the period of 6 months beginning with the day on which that contravention occurs, or such further period as the Registrar may allow.

[21/2005]

(4) In subsection (3), "the excess shares" means such number of the shares, held by the company as treasury shares at the time in question, as resulted in the limit being exceeded.

[21/2005]

[UK, 1985, s. 162B; UK, Treasury Shares, reg. 3]

Treasury shares: voting and other rights

76J.—(1) This section shall apply to shares which are held by a company as treasury shares.

[21/2005]

(2) The company shall not exercise any right in respect of the treasury shares and any purported exercise of such a right is void.

[21/2005]

(3) The rights to which subsection (2) applies include any right to attend or vote at meetings (including meetings under section 210) and for the purposes of this Act, the company shall be treated as having no right to vote and the treasury shares shall be treated as having no voting rights.

[21/2005]

(4) No dividend may be paid, and no other distribution (whether in cash or otherwise) of the company's assets (including any distribution of assets to members on a winding up) may be made, to the company in respect of the treasury shares.

[21/2005]

(5) Nothing in this section is to be taken as preventing —

(*a*) an allotment of shares as fully paid bonus shares in respect of the treasury shares; or

(*b*) the subdivision or consolidation of any treasury share into treasury shares of a smaller amount, if the total value of the treasury shares after the subdivision or consolidation is the same as the total value of the treasury share before the subdivision or consolidation, as the case may be.

[21/2005]

(6) Any shares allotted as fully paid bonus shares in respect of the treasury shares shall be treated for the purposes of this Act as if they were purchased by the company at the time they were allotted, in circumstances in which section 76H applied.

[21/2005]

[UK, 1985, s. 162C; UK, Treasury Shares, reg. 3]

Treasury shares: disposal and cancellation

76K.—(1) Where shares are held as treasury shares, a company may at any time —

(*a*) sell the shares (or any of them) for cash;

(*b*) transfer the shares (or any of them) for the purposes of or pursuant to an employees' share scheme;

(*c*) transfer the shares (or any of them) as consideration for the acquisition of shares in or assets of another company or assets of a person;

(*d*) cancel the shares (or any of them); or

(*e*) sell, transfer or otherwise use the treasury shares for such other purposes as the Minister may by order prescribe.

[21/2005]

(2) In subsection (1)(*a*), "cash", in relation to a sale of shares by a company, means —

(*a*) cash (including foreign currency) received by the company;

(*b*) a cheque received by the company in good faith which the directors have no reason for suspecting will not be paid;

(*c*) a release of a liability of the company for a liquidated sum; or

(*d*) an undertaking to pay cash to the company on or before a date not more than 90 days after the date on which the company agrees to sell the shares.

[21/2005]

(3) But if the company receives a notice under section 215 (Power to acquire shares of shareholders dissenting from scheme or contract approved by 90% majority) that a person desires to acquire any of the shares, the company shall not, under subsection (1), sell or transfer the shares to which the notice relates except to that person.

[21/2005]

(4) The directors may take such steps as are requisite to enable the company to cancel its shares under subsection (1) without complying with section 78B (Reduction of share capital by private company), 78C (Reduction of share capital by public company) or 78I (Court order approving reduction).

[21/2005]

(5) Within 30 days of the cancellation or disposal of treasury shares in accordance with subsection (1), the directors of the company shall lodge with the Registrar the notice of the cancellation or disposal of treasury shares in the prescribed form with such particulars as may be required in the form, together with payment of the prescribed fee.

[21/2005]

[UK, 1985, s. 162D; UK, Treasury Shares, reg. 3]

Options over unissued shares

77.—(1) An option granted after 29th December 1967 by a public company which enables any person to take up unissued shares of the company after a period of 5 years has elapsed from the date on which the option was granted shall be void.

[S 258/67]

(1A) An option granted on or after 18th November 1998 by a public company which enables any employee of that company or its related corporation (including any director holding a salaried office or employment in that company or corporation) to take up unissued shares of the company after a period of 10 years has elapsed from the date on which the option was granted shall be void and subsection (1) shall not apply to such an option.

[38/98]

(2) Subsection (1) or (1A) shall not apply in any case where the holders of debentures have an option to take up shares of the company by way of redemption of the debentures.

[38/98]

[Aust., 1961, s. 68]

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

78. 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 long period, the company may pay interest on so much of such share capital (except treasury shares) as is for the time being paid up and charge the interest so paid to capital as part of the cost of the construction or provision but —

(*a*) no such payment shall be made unless it is authorised, by the articles or by special resolution, and is approved by the Court;

(*b*) before approving any such payment, the Court may at the expense of the company appoint a person to inquire and report as to the circumstances of the case, and may require the company to give security for the payment of the costs of the inquiry;

(*c*) the payment shall be made only for such period as is determined by the Court, but in no case extending beyond a period of 12 months after the works or buildings have been actually completed or the plant provided;

(*d*) the rate of interest shall in no case exceed 5% per annum or such other rate as is for the time being prescribed; and

(*e*) 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.

[21/2005]

[UK, 1948, s. 65; Aust., 1961, s. 69]

Division 3A — Reduction of share capital

Preliminary

78A.—(1) A company may reduce its share capital under the provisions of this Division in any way and, in particular, do all or any of the following:

(*a*) extinguish or reduce the liability on any of its shares in respect of share capital not paid up;

(*b*) cancel any paid-up share capital which is lost or unrepresented by available assets;

(*c*) return to shareholders any paid-up share capital which is more than it needs.

[21/2005]

(2) A company may not reduce its share capital in any way except by a procedure provided for it by the provisions of this Division.

[21/2005]

(3) A company's memorandum or articles may exclude or restrict any power to reduce share capital conferred on the company by this Division.

[21/2005]

(4) In this Division —

"Comptroller" means the Comptroller of Income Tax appointed under section 3(1) of the Income Tax Act (Cap. 134);

"reduction information", in relation to a proposed reduction of share capital by a special resolution of a company, means the following information:

(*a*) the amount of the company's share capital that is thereby reduced; and

(*b*) the number of shares that are thereby cancelled;

"resolution date", in relation to a resolution, means the date when the resolution is passed.

[21/2005]

(5) This Division shall not apply to an unlimited company, and shall not preclude such a company from reducing in any way its share capital.

[21/2005]

(6) This Division shall not apply to the purchase or acquisition or proposed purchase or acquisition by a company of its own shares in accordance with sections 76B to 76G.

[21/2005]

[UK, 1985, s. 50]

Reduction of share capital by private company

78B.—(1) A private company limited by shares may reduce its share capital in any way by a special resolution if the company —

(*a*) sends to the Comptroller a notice —

(i) stating that the resolution has been passed; and

(ii) containing the text of the resolution and the resolution date,

within 8 days beginning with the resolution date;

(*b*) meets the solvency requirements; and

(*c*) meets such publicity requirements as may be prescribed by the Minister,

but the resolution and the reduction of the share capital shall take effect only as provided by section 78E.

[21/2005]

(2) Notwithstanding subsection (1), the company need not meet the solvency requirements if the reduction of share capital is solely by way of cancellation of any paid-up share capital which is lost or unrepresented by available assets.

[21/2005]

(3) For the purposes of subsection (1), the company meets the solvency requirements if —

(*a*) all the directors of the company make a solvency statement in relation to the reduction of capital; and

(*b*) the statement is made —

(i) in time for subsection (4)(*a*) to be complied with; but

(ii) not before the beginning of the period of 15 days ending with the resolution date.

[21/2005]

(4) Unless subsection (2) applies, the company —

(*a*) shall —

(i) if the resolution for reducing share capital is a special resolution to be passed by written means under section 184A, ensure that every copy of the resolution served under section 183(3A) or 184C(1) (as the case may be) is accompanied by a copy of the solvency statement; or

(ii) if the resolution is a special resolution to be passed in a general meeting, throughout that meeting make the solvency statement or a copy of it available for inspection by the members at that meeting; and

(*b*) shall, throughout the 6 weeks beginning with the resolution date, make the solvency statement or a copy of it available at the company's registered office for inspection free of charge by any creditor of the company.

[21/2005]

(5) The resolution does not become invalid by virtue only of a contravention of subsection (4), but every officer of the company who is in default shall be guilty of an offence.

[21/2005]

(6) Any requirement under subsection (4)(*b*) ceases if the resolution is revoked.

[21/2005]

[UK, 1985, s. 51]

Reduction of share capital by public company

78C.—(1) A public company may reduce its share capital in any way by a special resolution if the company —

(*a*) sends to the Comptroller a notice —

(i) stating that the resolution has been passed; and

(ii) containing the text of the resolution and the resolution date,

within 8 days beginning with the resolution date;

(*b*) meets the solvency requirements; and

(*c*) meets such publicity requirements as may be prescribed by the Minister,

but the resolution and the reduction of the share capital shall take effect only as provided by section 78E.

[21/2005]

(2) Notwithstanding subsection (1), the company need not meet the solvency requirements if the reduction of share capital is solely by way of cancellation of any paid-up share capital which is lost or unrepresented by available assets.

[21/2005]

(3) The company meets the solvency requirements if —

(*a*) all the directors of the company make a solvency statement in relation to the reduction of share capital;

(*b*) the statement is made —

(i) in time for subsection (4)(*a*) to be complied with; but

(ii) not before the beginning of the period of 22 days ending with the resolution date; and

(*c*) a copy of the solvency statement is lodged with the Registrar, together with the copy of the resolution required to be lodged with the Registrar under section 186, within 15 days beginning with the resolution date.

[21/2005]

(4) Unless subsection (2) applies, the company shall —

(*a*) throughout the meeting at which the resolution is to be passed, make the solvency statement or a copy of it available for inspection by the members at the meeting; and

(*b*) throughout the 6 weeks beginning with the resolution date, make the solvency statement or a copy of it available at the company's registered office for inspection free of charge by any creditor of the company.

[21/2005]

(5) The resolution does not become invalid by virtue only of a contravention of subsection (4), but every officer of the company who is in default shall be guilty of an offence.

[21/2005]

(6) Any requirement under subsection (3)(*c*) or (4)(*b*) ceases if the resolution is revoked.

[21/2005]

[UK, 1985, ss. 52, 53, 88]

Creditor's right to object to company's reduction

78D.—(1) This section shall apply where a company has passed a special resolution for reducing share capital under section 78B or 78C.

[21/2005]

(2) Any creditor of the company to which this subsection applies may, at any time during the 6 weeks beginning with the resolution date, apply to the Court for the resolution to be cancelled.

[21/2005]

(3) Subsection (2) shall apply to a creditor of the company who, at the date of his application to 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.

[21/2005]

(4) When an application is made under subsection (2) —

(*a*) the creditor shall as soon as possible serve the application on the company; and

(*b*) the company shall as soon as possible give to the Registrar notice of the application.

[21/2005]

[UK, 1985, s. 54]

Position at end of period for creditor objections

78E.—(1) Where —

(*a*) a private company passes a special resolution for reducing its share capital and meets the requirements under section 78B(1)(*a*) and (*c*) and the solvency requirements under section 78B(3) (if applicable); and

(*b*) no application for cancellation of the resolution has been made under section 78D(2) during the 6 weeks beginning with the resolution date,

for the reduction of share capital to take effect, the company must lodge with the Registrar —

(i) a copy of the resolution in accordance with section 186; and

(ii) the following documents after the end of 6 weeks, and before the end of 8 weeks, beginning with the resolution date:

(A) a copy of the solvency statement under section 78B(3) (if applicable);

(B) a statement made by the directors confirming that the requirements under section 78B(1)(*a*) and (*c*) and the solvency requirements under section 78B(3) (if applicable) have been complied with, and that no application for cancellation of the resolution has been made; and

(C) a notice containing the reduction information.

[21/2005]

(2) Where —

(*a*) a public company passes a special resolution for reducing its share capital and meets the requirements under section 78C(1)(*a*) and (*c*) and the solvency requirements (if applicable) under section 78C(3); and

(*b*) no application for cancellation of the resolution has been made under section 78D(2) during the 6 weeks beginning with the resolution date,

for the reduction of share capital to take effect, the company must lodge with the Registrar the following documents after the end of 6 weeks, and before the end of 8 weeks, beginning with the resolution date:

(i) a statement made by the directors confirming that the requirements under section 78C(1)(*a*) and (*c*) and the solvency requirements under section 78C(3) (if applicable) have been complied with, and that no application for cancellation of the resolution has been made; and

(ii) a notice containing the reduction information.

[21/2005]

(3) Where —

(*a*) a private company passes a special resolution for reducing its share capital and meets the requirements under section 78B(1)(*a*) and (*c*) and the solvency requirements under section 78B(3) (if applicable); but

(*b*) during the 6 weeks beginning with the resolution date, one or more applications for cancellation of the resolution are made under section 78D(2),

for the reduction of share capital to take effect, the following conditions must be satisfied:

(i) the company has complied with section 78D(4)(*b*) (notification to Registrar) in relation to all such applications;

(ii) the proceedings in relation to each such application have been brought to an end —

(A) by the dismissal of the application under section 78F; or

(B) without determination (for example, because the application has been withdrawn); and

(iii) the company has, within 15 days beginning with the date on which the last such proceedings were brought to an end in accordance with paragraph (ii), lodged with the Registrar —

(A) a statement made by the directors confirming that the requirements under section 78B(1)(*a*) and (*c*), the solvency requirements under section 78B(3) (if applicable) and section 78D(4)(*b*) have been complied with, and that the proceedings in relation to each such application have been brought to an end by the dismissal of the application or without determination;

(B) in relation to each such application which has been dismissed by the Court, a copy of the order of the Court dismissing the application; and

(C) a notice containing the reduction information.

[21/2005]

(4) Where —

(*a*) a public company passes a special resolution for reducing its share capital and meets the requirements under section 78C(1)(*a*) and (*c*) and the solvency requirements under section 78C(3) (if applicable); but

(*b*) during the 6 weeks beginning with the resolution date, one or more applications for cancellation of the resolution are made under section 78D(2),

for the reduction of capital to take effect, the following conditions must be satisfied:

(i) the company has complied with section 78D(4)(*b*) (notification to Registrar) in relation to all such applications;

(ii) the proceedings in relation to each such application have been brought to an end —

(A) by the dismissal of the application under section 78F; or

(B) without determination (for example, because the application has been withdrawn); and

(iii) the company has, within 15 days beginning with the date on which the last such proceedings were brought to an end in accordance with paragraph (ii), lodged with the Registrar —

(A) a statement made by the directors confirming that the requirements under section 78C(1)(*a*) and (*c*), the solvency requirements under section 78C(3) (if applicable) and section 78D(4) have been complied with, and that the proceedings in relation to each such application have been brought to an end by the dismissal of the application or without determination;

(B) in relation to each such application which has been dismissed by the Court, a copy of the order of the Court dismissing the application; and

(C) a notice containing the reduction information.

[21/2005]

(5) The resolution in a case referred to in subsection (1), (2), (3) or (4), and the reduction of the share capital, shall take effect when the Registrar has recorded the information lodged with him in the appropriate register.

[21/2005]

[UK, 1985, ss. 55, 57]

Power of Court where creditor objection made

78F.—(1) An application by a creditor under section 78D shall be determined by the Court in accordance with this section.

[21/2005]

(2) The Court shall make an order cancelling the resolution if, at the time the application is considered, the resolution has not been cancelled previously, any debt or claim on which the application was based is outstanding and the Court is satisfied that —

(*a*) the debt or claim has not been secured and the applicant does not have other adequate safeguards for it; and

(*b*) it is not the case that security or other safeguards are unnecessary in view of the assets that the company would have after the reduction.

[21/2005]

(3) Otherwise, the Court shall dismiss the application.

[21/2005]

(4) Where the Court makes an order under subsection (2), the company must send notice of the order to the Registrar within 15 days beginning with the date the order is made.

[21/2005]

(5) If a company contravenes subsection (4), every officer of the company who is in default shall be guilty of an offence.

[21/2005]

(6) For the purposes of this section, a debt is outstanding if it has not been discharged, and a claim is outstanding if it has not been terminated.

[21/2005]

[UK, 1985, ss. 56, 58]

Reduction by special resolution subject to Court approval

78G.—(1) A company limited by shares may, as an alternative to reducing its share capital under section 78B or 78C, reduce it in any way by a special resolution approved by an order of the Court under section 78I, but the resolution and the reduction of the share capital shall not take effect until —

(*a*) that order has been made;

(*b*) the company has complied with section 78I(3) (lodgment of information with Registrar); and

(*c*) the Registrar has recorded the information lodged with him under section 78I(3) in the appropriate register.

[21/2005]

(2) The company shall —

(*a*) within 8 days beginning with the resolution date; and

(*b*) in any case, before making an application to the Court under subsection (1),

send to the Comptroller a notice stating that the resolution has been passed and containing the text of the resolution and the resolution date.

[21/2005]

[UK, 1985, s. 59]

Creditor protection

78H.—(1) This section shall apply if a company makes an application under section 78G(1) and the proposed reduction of share capital involves either —

(*a*) a reduction of liability in respect of unpaid share capital; or

(*b*) the payment to a shareholder of any paid-up share capital,

and also applies if the Court so directs in any other case where a company makes an application under that section.

[21/2005]

(2) Upon the application to the Court, the Court shall settle a list of qualifying creditors.

[21/2005]

(3) If the proposed reduction of share capital involves either —

(*a*) a reduction of liability in respect of unpaid share capital; or

(*b*) the payment to a shareholder of any paid-up share capital,

the Court may, if having regard to any special circumstances of the case it thinks it appropriate to do so, direct that any class or classes of creditors shall not be qualifying creditors.

[21/2005]

(4) For the purpose of settling the list of qualifying creditors, the Court —

(*a*) shall ascertain, as far as possible without requiring an application from any creditor, the names of qualifying creditors and the nature and amount of their debts or claims; and

(*b*) may publish notices fixing a day or days within which creditors not included in the list are to claim to be so included or are to be excluded from the list.

[21/2005]

(5) Any officer of the company who —

(*a*) intentionally conceals the name of a qualifying creditor;

(*b*) intentionally misrepresents the nature or amount of the debt or claim of any creditor; or

(*c*) aids, abets or is privy to any such concealment or misrepresentation,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $15,000 or to imprisonment for a term not exceeding 3 years.

[21/2005]

(6) In this section and section 78I but subject to subsection (3), "qualifying creditor" means a creditor of the company who, at a 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.

[21/2005]

[UK, 1985, s. 60]

Court order approving reduction

78I.—(1) On an application by a company under section 78G(1), the Court may, subject to subsection (2), make an order approving the reduction in share capital unconditionally or on

such terms and conditions as it thinks fit.

[21/2005]

(2) If, at the time the Court considers the application, there is a qualifying creditor within the meaning of section 78H —

(*a*) who is included in the Court's list of qualifying creditors under that section; and

(*b*) whose claim has not been terminated or whose debt has not been discharged,

the Court must not make an order approving the reduction unless satisfied, as respects each qualifying creditor, that —

(i) he has consented to the reduction;

(ii) his debt or claim has been secured or he has other adequate safeguards for it; or

(iii) security or other safeguards are unnecessary in view of the assets the company would have after the reduction.

[21/2005]

(3) Where an order is made under this section approving a company's reduction in share capital, the company shall (for the reduction to take effect) lodge with the Registrar —

(*a*) a copy of the order; and

(*b*) a notice containing the reduction information,

within 90 days beginning with the date the order is made, or within such longer period as the Registrar may, on the application of the company and on receiving the prescribed fee, allow.

[21/2005]

[UK, 1985, s. 61]

Offences for making groundless or false statements

78J. A director making a statement under section 78E(1)(ii)(B), (2)(i), (3)(iii)(A) or (4)(iii)(A) shall be guilty of an offence if the statement —

(*a*) is false; and

(*b*) is not believed by him to be true.

[21/2005]

[UK, 1985, s. 65]

Liability of members on reduced shares

78K. Where a company's share capital is reduced under any provision of this Division, a member of the company (past or present) is not liable in respect of the issue price of any share to any call or contribution greater in amount than the difference (if any) between —

(*a*) the issue price of the share; and

(*b*) the aggregate of the amount paid up on the share (if any) and the amount reduced on the share.

[21/2005]

Division 4 — Substantial shareholdings

Application and interpretation of Division

79.—(1) This section shall have effect for the purposes of this Division but shall not prejudice the operation of any other provision of this Act.

(2) A reference to a company is a reference —

(*a*) [*Deleted by Act 2/2009 wef 19/11/2012*]

(*b*) to a body corporate, being a body incorporated in Singapore, that is for the time being declared by the Minister, by notification in the *Gazette*, to be a company for the purposes of this Division; or

(*c*) to a body, not being a body corporate formed in Singapore, that is for the time being declared by the Minister, by notification in the *Gazette*, to be a company for the purposes of this Division.

[62/70; 49/73; 42/2001]

(3) In relation to a company the whole or a portion of the share capital of which consists of stock, an interest of a person in any such stock shall be deemed to be an interest in an issued share in the company having attached to it the same rights as are attached to that stock.

[21/2005]

(4) A reference in the definition of "voting share" in section 4(1) to a body corporate includes a reference to a body referred to in subsection (2)(*c*).

Persons obliged to comply with Division

80.—(1) The obligation to comply with this Division extends to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all bodies corporate, whether incorporated or carrying on business in Singapore or not.

[62/70]

(2) This Division extends to acts done or omitted to be done outside Singapore.

(3) The Minister may, by order published in the *Gazette*, exempt any person or any class of persons from all or any of the provisions of this Division, subject to such terms or conditions as may be prescribed.

[5/2004]

Substantial shareholdings and substantial shareholders

81.—(1) For the purposes of this Division, a person has a substantial shareholding in a company if —

(*a*) he has an interest or interests in one or more voting shares in the company; and

(*b*) the total votes attached to that share, or those shares, is not less than 5% of the total votes attached to all the voting shares in the company.

[21/2005]

(2) For the purposes of this Division, a person has a substantial shareholding in a company, being a company the share capital of which is divided into 2 or more classes of shares, if —

(*a*) he has an interest or interests in one or more voting shares included in one of those classes; and

(*b*) the total votes attached to that share, or those shares, is not less than 5% of the total votes attached to all the voting shares included in that class.

[21/2005]

(3) For the purposes of this Division, a person who has a substantial shareholding in a company is a substantial shareholder in that company.

(4) In this section and section 83, "voting shares" exclude treasury shares.

[21/2005]

(5) [*Deleted by Act 21 of 2005*][*Aust. 1961, s. 69C; Aust., 2001, s. 9*]

Substantial shareholder to notify company of his interests

82.—(1) A person who is a substantial shareholder in a company shall give notice in writing to the company stating his name and address and full particulars (including unless the interest or interests cannot be related to a particular share or shares the name of the person who is registered as the holder) of the voting shares in the company in which he has an interest or interests and full particulars of each such interest and of the circumstances by reason of which he has that interest.

[62/70; 49/73; 13/87]

(2) The notice shall be given —

(*a*) if the person was a substantial shareholder on 1st October 1971 — within one month after that date; or

(*b*) if the person became a substantial shareholder after that date — within 2 business days after becoming a substantial shareholder.

[8/2003; S 249/71]

(3) The notice shall be so given notwithstanding that the person has ceased to be a substantial shareholder before the expiration of whichever period referred to in subsection (2) is applicable.

[Aust. 1961, s. 69D]

Substantial shareholder to notify company of change in interests

83.—(1) Where there is a change in the percentage level of the interest or interests of a substantial shareholder in a company in voting shares in the company, the substantial shareholder shall give notice in writing to the company stating the information specified in subsection (2) within 2 business days after he becomes aware of such a change.

[8/2003]

(2) The information referred to in subsection (1) shall be —

(*a*) the name and address of the substantial shareholder;

(*b*) the date of the change and the circumstances leading to that change; and

(*c*) such other particulars as may be prescribed.

[8/2003]

(3) In subsection (1), "percentage level", in relation to a substantial shareholder, means the percentage figure ascertained by expressing the total votes attached to all the voting shares in which the substantial shareholder has an interest or interests immediately before or (as the case may be) immediately after the relevant time as a percentage of the total votes attached to —

(*a*) all the voting shares in the company; or

(*b*) where the share capital of the company is divided into 2 or more classes of shares, all the voting shares included in the class concerned,

and, if it is not a whole number, rounding that figure down to the next whole number.

[8/2003; 21/2005]

[Aust. 1961, s. 69E; Aust., 2001, s. 671B; UK, 1985, s. 200; HK S(DI), s. 5]

Person who ceases to be substantial shareholder to notify company

84.—(1) A person who ceases to be a substantial shareholder in a company shall give notice in writing to the company stating his name and the date on which he ceased to be a substantial shareholder and full particulars of the circumstances by reason of which he ceased to be a substantial shareholder.

[62/70; 10/74; 13/87]

(2) The notice shall be given within 2 business days after the person ceased to be a substantial shareholder.

[8/2003]

[Aust. 1961, s. 69F]

References to operation of section 7

85. The circumstances required to be stated in the notice under section 82, 83 or 84 include circumstances by reason of which, having regard to section 7 —

(*a*) a person has an interest in voting shares;

(*b*) a change has occurred in an interest in voting shares; or

(*c*) a person has ceased to be a substantial shareholder in a company,

respectively.

[62/70]

[Aust. 1961, s. 69G]

Persons holding shares as trustees

86.—(1) A person who holds voting shares in a company, being voting shares in which a non-resident has an interest, shall give to the non-resident a notice in the prescribed form as to the requirements of this Division.

[62/70; 49/73; 13/87]

(2) The notice shall be given —

(*a*) if the first-mentioned person holds the shares on 1st October 1971 — within 14 days after that date; or

(*b*) if the first-mentioned person did not hold the shares on that date — within 2 days after becoming the holder of the shares.

[S 249/71]

(3) In this section, "non-resident" means a person who is not resident in Singapore or a body corporate that is not incorporated in Singapore.

(4) Nothing in this section affects the operation of section 80.

Registrar may extend time for giving notice under this Division

87. The Registrar may, on the application of a person who is required to give a notice under this Division, in his discretion, extend, or further extend, the time for giving the notice.

Company to keep register of substantial shareholders

88.—(1) A company shall keep a register in which it shall immediately enter —

(*a*) in alphabetical order the names of persons from whom it has received a notice under section 82; and

(*b*) against each name so entered, the information given in the notice and, where it receives a notice under section 83 or 84, the information given in that notice.

[62/70; 49/73; 15/84]

(2) The register shall be kept at the registered office of the company, or, if the company does not have a registered office, at the principal place of business of the company in Singapore and shall be open for inspection by a member of the company without charge and by any other person on payment for each inspection of a sum of $2 or such lesser sum as the company requires.

(3) A person may request the company to furnish him with a copy of the register or any part of the register on payment in advance of a sum of $1 or such lesser sum as the company requires for every page or part thereof required to be copied and the company shall send the copy to that person, within 14 days or such longer period as the Registrar thinks fit, after the day on which the request is received by the company.

(4) The Registrar may at any time in writing require the company to furnish him with a copy of the register or any part of the register and the company shall furnish the copy within 7 days after the day on which the requirement is received by the company.

[49/73]

(5) 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 on conviction to a fine not exceeding $5,000 and in the case of a continuing offence to a further fine of $500 for every day during which the offence continues after conviction.

[15/84]

(6) A company is not, by reason of anything done under this Division —

(*a*) to be taken for any purpose to have notice of; or

(*b*) to be put upon inquiry as to,

a right of a person to or in relation to a share in the company.

[Aust. 1961, s. 69K]

Offences against certain sections

89. A person who fails to comply with section 82, 83, 84 or 86 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and in the case of a continuing offence to a further fine of $500 for every day during which the offence continues after conviction.

[62/70; 15/84]

[Aust. 1961, s. 69L]

Defence to prosecutions

90.—(1) It is a defence to a prosecution for failing to comply with section 82, 83, 84 or 86 if the defendant proves that his failure was due to his not being aware of a fact or occurrence the existence of which was necessary to constitute the offence and that —

(*a*) he was not so aware on the date of the summons; or

(*b*) he became so aware less than 7 days before the date of the summons.

[62/70; 15/84]

(2) For the purposes of subsection (1), a person shall conclusively be presumed to have been aware of a fact or occurrence at a particular time —

(*a*) of which he would, if he had acted with reasonable diligence in the conduct of his affairs, have been aware at that time; or

(*b*) of which an employee or agent of the person, being an employee or agent having duties or acting in relation to his master's or principal's interest or interests in a share or shares in the company concerned, was aware or would, if he had acted with reasonable diligence in the conduct of his master's or principal's affairs, have been aware at that time.

Powers of Court with respect to defaulting substantial shareholders

91.—(1) Where a person is a substantial shareholder, or at any time after 1st October 1971 has been a substantial shareholder in a company and has failed to comply with section 82, 83 or 84, the Court may, on the application of the Minister, whether or not that failure still continues, make one or more of the following orders:

(*a*) an order restraining the substantial shareholder from disposing of any interest in shares in the company in which he is or has been a substantial shareholder;

(*b*) an order restraining a person who is, or is entitled to be registered as, the holder of shares referred to in paragraph (*a*) from disposing of any interest in those shares;

(*c*) an order restraining the exercise of any voting or other rights attached to any share in the company in which the substantial shareholder has or has had an interest;

(*d*) an order directing the company not to make payment, or to defer making payment, of any sum due from the company in respect of any share in which the substantial shareholder has or has had an interest;

(*e*) an order directing the sale of all or any of the shares in the company in which the substantial shareholder has or has had an interest;

(*f*) an order directing the company not to register the transfer or transmission of specified shares;

(*g*) an order that any exercise of the voting or other rights attached to specified shares in the company in which the substantial shareholder has or has had an interest be disregarded;

(*h*) for the purposes of securing compliance with any other order made under this section, an order directing the company or any other person to do or refrain from doing a specified act.

[62/70; S 249/71]

(2) Any order made under this section may include such ancillary or consequential provisions as the Court thinks just.

(3) An order made under this section directing the sale of a share may provide that the sale shall be made within such time and subject to such conditions, if any, as the Court thinks fit,

including, if the Court thinks fit, a condition that the sale shall not be made to a person who is, or, as a result of the sale, would become a substantial shareholder in the company.

(4) The Court may direct that, where a share is not sold in accordance with an order of the Court under this section, the share shall vest in the Registrar.

(5) The Court shall, before making an order under this section and in determining the terms of such an order, satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.

(6) The Court shall not make an order under this section, other than an order restraining the exercise of voting rights, if it is satisfied —

(*a*) that the failure of the substantial shareholder to comply as mentioned in subsection (1) was due to his inadvertence or mistake or to his not being aware of a relevant fact or occurrence; and

(*b*) that in all the circumstances, the failure ought to be excused.

(7) The Court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(8) The Court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

(9) Section 347 applies in relation to a share that vests in the Registrar under this section as it applies in relation to an estate or interest in property vested in the Official Receiver under the first-mentioned section.

(10) Any person who contravenes or fails to comply with an order made under this section that is applicable to him shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and, in the case of a continuing offence, to a further fine of $500 for every day during which the offence continues after conviction.

(11) Subsection (10) does not affect the powers of the Court in relation to the punishment of contempt of the Court.
[Aust. 1961, s. 69N]

Power of company to require disclosure of beneficial interest in its voting shares

92. [*Repealed by Act 2/2009 wef 19/11/2012*]

Division 5 — Debentures

Register of debenture holders and copies of trust deed

93.—(1) Every company which issues debentures (not being debentures transferable by delivery) shall keep a register of holders of the debentures at the registered office of the company or at some other place in Singapore.

(2) Every company shall within 7 days after the register is first kept at a place other than the registered office lodge with the Registrar notice of the place where the register is kept and shall, within 7 days after any change in the place at which the register is kept, lodge with the Registrar notice of the change.

(3) The register shall except when duly closed be open to the inspection of the registered holder of any debentures and of any holder of shares in the company and shall contain particulars of the names and addresses of the debenture holders and the amount of debentures held by them.

(4) For the purposes of this section, a register shall be deemed to be duly closed if closed in accordance with the provisions contained in the articles or in the debentures or debenture stock certificates, or in the trust deed or other document relating to or securing the debentures, during such periods (not exceeding in the aggregate 30 days in any calendar year) as is therein specified.

(5) Every registered holder of debentures and every holder of shares in a company shall at his request be supplied by the company with a copy of the register of the holders of debentures of the company or any part thereof on payment of $1 for every page or part thereof required to be copied, but the copy need not include any particulars as to any debenture holder other than his name and address and the debentures held by him.

(6) A copy of any trust deed relating to or securing any issue of debentures shall be forwarded by the company to a holder of those debentures at his request on payment of the sum of $3 or such less sum as is fixed by the company, or where the copy has to be specially made to meet the request on payment of $1 for every page or part thereof required to be copied.

(7) If inspection is refused, or a copy is refused or not forwarded within a reasonable time (but not more than one month) after a request has been made pursuant to this section, the company and every officer of the company who is in default shall be guilty of an offence.

(8) A company which issues debentures may cause to be kept in any place outside Singapore a branch register of debenture holders which shall be deemed to be part of the company's register of debenture holders and Division 4 of Part V shall with such adaptations as are necessary apply to and in relation to the keeping of a branch register of debenture holders.

(9) If a company fails to comply 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 on conviction to a fine not exceeding $1,000 and also to a default penalty.

[15/84]

[UK, 1948, s. 87; Aust., 1961, s. 70]

Specific performance of contracts

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

[UK, 1948, s. 92; Aust., 1961, s. 71]

Perpetual debentures

95. A condition in any debenture or in any deed for securing any debentures whether the debenture or deed is issued or made before or after 29th December 1967 shall not be invalid by reason only that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency however remote or on the expiration of a period however long, any rule of law or equity to the contrary notwithstanding.

[S 258/67]

[UK, 1948, s. 89; Aust., 1961, s. 72]

Reissue of redeemed debentures

96.—(1) Where a company has redeemed any debentures whether before or after 29th December 1967 —

(*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 but the reissue of a debenture or the issue of one debenture in place of another under this subsection, whether the reissue or issue was made before or after that date, shall not be regarded as the issue of a new debenture for the purpose of any provision limiting the amount or number of debentures that may be issued by the company.

(2) After the reissue 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 either before or after 29th December 1967 deposited any of its debentures to secure advances 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 while the debentures remain so deposited.

[S 258/67]

[UK, 1948, s. 90; Aust., 1961, s. 73]

Qualifications of trustee for debenture holders

97. [*Repealed by S 236/2002*]

Retirement of trustees

98. [*Repealed by S 236/2002*]

Contents of trust deed

99. [*Repealed by S 236/2002*]

Power of Court in relation to certain irredeemable debentures

100.—(1) Notwithstanding anything in any debenture or trust deed, the security for any debentures which are irredeemable or redeemable only on the happening of a contingency shall, if the Court so orders, be enforceable, immediately or at such other time as the Court directs if on the application of the trustee for the holders of the debentures or (where there is no trustee) on the application of the holder of any of the debentures the Court is satisfied that —

(*a*) at the time of the issue of the debentures the assets of the corporation which constituted or were intended to constitute the security therefor were sufficient or likely to become sufficient to discharge the principal debt and any interest thereon;

(*b*) the security, if realised under the circumstances existing at the time of the application, would be likely to bring not more than 60% of the principal sum of moneys outstanding (regard being had to all prior charges and charges ranking pari passu if any); and

(*c*) the assets covered by the security, on a fair valuation on the basis of a going concern after allowing a reasonable amount for depreciation are worth less than the principal sum and the borrowing corporation is not making sufficient profit to pay the interest due on the principal sum or (where no definite rate of interest is payable) interest thereon at such rate as the Court considers would be a fair rate to expect from a similar investment.

(2) Subsection (1) shall not affect any power to vary rights or accept any compromise or arrangement created by the terms of the debentures or the relevant trust deed or under a compromise or arrangement between the borrowing corporation and creditors.

(3) Subsection (1) shall not apply in relation to any debenture that is offered to the public for subscription or purchase.

[42/2001]

[Aust., 1961, s. 74c]

Duties of trustees

101. [*Repealed by S 236/2002*]

Powers of trustee to apply to Court for directions, etc.

102. [*Repealed by S 236/2002*]

Obligations of borrowing corporation

103. [*Repealed by S 236/2002*]

Obligation of guarantor corporation to furnish information

104. [*Repealed by S 236/2002*]

Loans and deposits to be immediately repayable on certain events

105. [*Repealed by S 236/2002*]

Liability of trustees for debenture holders

106. [*Repealed by S 236/2002*]

Division 5A — Exemptions from Divisions 1 and 5 in relation to Prospectus Requirements

Interpretation

106A. [*Repealed by S 236/2002*]

Offer made by or to certain persons or under certain circumstances

106B. [*Repealed by S 236/2002*]

Offer made to certain institutions or persons

106C. [*Repealed by S 236/2002*]

Offer to sophisticated investors

106D. [*Repealed by S 236/2002*]

Circumstances in which a prospectus is not required on first sale of shares or debentures acquired pursuant to exemptions in section 106C or 106D

106E. [*Repealed by S 236/2002*]

Stock exchange offer

106F. [*Repealed by S 236/2002*]

Offer of international debentures

106G. [*Repealed by S 236/2002*]

Offer of debentures made by the Government or international financial institutions

106H. [*Repealed by S 236/2002*]

Reporting requirements

106I. [*Repealed by S 236/2002*]

Revocation of exemption

106J. [*Repealed by S 236/2002*]

Power to conduct investigations

106K. [*Repealed by S 236/2002*]

Transactions under exempted offers subjects to Division II of Part XII of this Act and Part IX of Securities Industry Act

106L. [*Repealed by S 236/2002*]

Division 6 — Interests other than shares, debentures, etc.

Interpretation of this Division

107. [*Repealed by S 236/2002*]

Approved deeds

108. [*Repealed by S 236/2002*]

Approval of deeds

109. [*Repealed by S 236/2002*]

Approval of trustees

110. [*Repealed by S 236/2002*]

Covenants to be included in deeds

111. [*Repealed by S 236/2002*]

Interests to be issued by companies only

112. [*Repealed by S 236/2002*]

Statement to be issued

113. [*Repealed by S 236/2002*]

Restriction on issue, etc., of interest to public

113A. [*Repealed by S 236/2002*]

No issue without approved deed

114. [*Repealed by S 236/2002*]

Register of interest holders

115. [*Repealed by S 236/2002*]

Returns, information, etc., relating to interests

116. [*Repealed by S 236/2002*]

Penalty for contravention of Division, etc.

117. [*Repealed by S 236/2002*]

Winding up of schemes, etc.

118. [*Repealed by S 236/2002*]

Power to exempt from compliance with Division and non-application of Division in certain circumstances

119. [*Repealed by S 236/2002*]

Non-application of Division to personal representatives, etc.

120. [*Repealed by S 236/2002*]

Division 7 — Title and transfers

Nature of shares

121. The shares or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles, and shall not be of the nature of immovable property.

[UK, 1948, s. 73; Aust., 1961, s. 90]

Numbering of shares

122.—(1) Each share in a company shall be distinguished by an appropriate number.

(2) Notwithstanding subsection (1) —

(*a*) if at any time all the issued shares in a company or all the issued shares therein of a particular class are fully paid up and rank equally for all purposes, none of those shares need thereafter have a distinguishing number so long as each of those shares remains fully paid up and ranks equally for all purposes with all shares of the same class for the time being issued and fully paid up; or

(*b*) if all the issued shares in a company are evidenced by certificates in accordance with section 123 and each certificate is distinguished by an appropriate number and that number is recorded in the register of members, none of those shares need have a distinguishing number.

[UK, 1948, s. 74; Aust., 1961, s. 91]

Certificate to be evidence of title

123.—(1) A certificate under the common or official seal of a company specifying any shares held by any member of the company shall be prima facie evidence of the title of the member to the shares.

(2) Every share certificate shall be under the common seal of the company or, in the case of a share certificate relating to shares on a branch register, the official seal of the company and shall state as at the date of the issue of the certificate —

(*a*) the name of the company and the authority under which the company is constituted;

(*b*) the address of the registered office of the company in Singapore, or, where the certificate is issued by a branch office, the address of that branch office; and

(*c*) the class of the shares, the amount paid on the shares, the amount (if any) unpaid on the shares and the extent to which the shares are paid up.

[21/2005]

(3) Failure to comply with this section shall not affect the rights of any holder of shares.

(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.

[UK, 1948, s. 81; Aust., 1961, s. 92]

Company may have duplicate common seal

124. A company may, if authorised by its articles, have a duplicate common seal which shall be a facsimile of the common seal of the company with the addition on its face of the words "Share Seal" and a certificate under such duplicate seal shall be deemed to be sealed with the common seal of the company for the purposes of this Act.

[Aust., 1961, s. 93]

Loss or destruction of certificates

125.—(1) Subject to subsection (2), where a certificate or other document of title to shares or debentures is lost or destroyed, the company shall on payment of a fee not exceeding $2 issue a duplicate certificate or document in lieu thereof to the owner on his application accompanied by —

(*a*) a statutory declaration that the certificate or document has been lost or destroyed, and has not been pledged, sold or otherwise disposed of, and, if lost, that proper searches have been made; and

(*b*) an undertaking in writing that if it is found or received by the owner it will be returned to the company.

(2) Where the value of the shares or debentures represented by the certificate or document is greater than $500 the directors of the company may, before accepting an application for the issue of a duplicate certificate or document, require the applicant —

(*a*) to cause an advertisement to be inserted in a newspaper circulating in a place specified by the directors stating that the certificate or document has been lost or destroyed and that the owner intends after the expiration of 14 days after the publication of the advertisement to apply to the company for a duplicate; or

(*b*) to furnish a bond for an amount equal to at least the current market value of the shares or debentures indemnifying the company against loss following on the production of the original certificate or document,

or may require the applicant to do both of those things.

(3) Any duplicate certificate issued on or after 30th January 2006 in respect of a share certificate issued before that date shall state, in place of the historical nominal value of the shares, the amount paid on the shares and the amount (if any) unpaid on the shares.

[21/2005]

[Aust., 1961, s. 94]

Instrument of transfer

126.—(1) Notwithstanding anything in its articles, a company shall not register a transfer of shares or debentures unless a proper instrument of transfer has been delivered to the company, but this subsection shall not prejudice any power to register as a shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

Transfer by personal representatives

(2) A transfer of the share, debenture or other interest of a deceased person made by his personal representative shall, although the personal 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.

(3) The production to a company of any document which is by law sufficient evidence of probate of the will, or letters of administration of the estate, 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.

(4) In this section, "instrument of transfer" includes a written application for transmission of a share debenture or other interest to a personal representative.

[UK, 1948, ss. 75, 76, 82; Aust., 1961, s. 95]

Registrations of transfer at request of transferor

127.—(1) On the request in writing of the transferor of any share, debenture or other interest

in a company the company shall enter in the appropriate register the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

(2) On the request in writing of the transferor of a share or debenture the company shall by notice in writing require the person having the possession, custody or control of the share certificate or debenture and the instrument of transfer thereof or either of them to bring it or them into the office of the company within a stated period, being not less than 7 and not more than 28 days after the date of the notice, to have the share certificate or debenture cancelled or rectified and the transfer registered or otherwise dealt with.

(3) If any person refuses or neglects to comply with a notice given under subsection (2), the transferor may apply to a judge to issue a summons for that person to appear before the Court and show cause why the documents mentioned in the notice should not be delivered up or produced as required by the notice.

(4) Upon appearance of a person so summoned the Court may examine him upon oath and receive other evidence, or if he does not appear after being duly served with such summons, the Court may receive evidence in his absence and in either case the Court may order him to deliver up such documents to the company upon such terms or conditions as to the Court seems fit, and the costs of the summons and proceedings thereon shall be in the discretion of the Court.

(5) Lists of share certificates or debentures called in under this section and not brought in shall be exhibited in the office of the company and shall be advertised in such newspapers and at such times as the company thinks fit.

[UK, 1948, s. 77; Aust., 1961, s. 96]

Notice of refusal to register transfer

128.—(1) If a company refuses to register a transfer of any shares, debentures or other interests in the company it shall, within one month after the date on which the transfer was lodged with it, send to the transferor and to the transferee notice of the refusal.

(2) Where an application is made to a company for a person to be registered as a member in respect of shares which have been transferred or transmitted to him by act of parties or operation of law, the company shall not refuse registration by virtue of any discretion in that behalf conferred by the articles unless it has served on the applicant, within one month beginning with the day on which the application was made, a notice in writing stating the facts which are considered to justify refusal in the exercise of that discretion.

[10/74]

(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 on conviction to a fine not exceeding $1,000 and also to a default penalty.

[15/84]

[UK, 1948, s. 78; Aust., 1961, s. 97]

Notice of transfer of shares

128A.—(1) Where there has been a transfer of shares, a company may lodge with the Registrar notice of that transfer of shares in the prescribed form.

[12/2002]

(2) The notice must state —

(*a*) every other transfer of shares effected prior to the date of the notice, other than a transfer that has been previously notified to the Registrar; or

(*b*) if it has more than 50 members after the transfer, the prescribed information in relation to the shares held by each of the 50 members who hold the most number of shares in the company after the transfer.

[12/2002]

Certification of transfers

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

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

(3) Where any certification is expressed to be limited to 42 days or any longer period from the date of certification, the company and its officers shall not, in the absence of fraud, be liable in respect of the registration of any transfer of shares, debentures or other interests comprised in the certification after the expiration of the period so limited or any extension thereof given by the company if the instrument of transfer has not within that period been lodged with the company for registration.

(4) For the purposes of this section —

(*a*) an instrument of transfer shall be deemed to be certificated if it bears the words "certificate lodged" or words to the like effect;

(*b*) the certification of an instrument of transfer shall be deemed to be made by a company if —

(i) the person issuing the instrument is a person apparently authorised to issue certificated instruments of transfer on the company's behalf; and

(ii) the certification is signed by a person apparently authorised to certificate transfers on the company's behalf or by any officer either of the company or of a corporation so apparently authorised; and

(*c*) a certification that purports to be authenticated by a person's signature or initials (whether handwritten or not) shall be deemed to be signed by him unless it is shown that the signature or initials were not placed there by him and were not placed there by any other person apparently authorised to use the signature or initials for the purpose of certificating transfers on the company's behalf.

[UK, 1948, s. 79; Aust., 1961, s. 98]

Duties of company with respect to issue of certificates and default in issue of certificates

130.—(1) Every company shall within 2 months after the allotment of any of its shares or debentures, and within one month after the date on which a transfer (other than such a transfer as the company is for any reason entitled to refuse to register and does not register) of any of its

shares or debentures is lodged with the company, complete and have ready for delivery all the appropriate certificates and debentures in connection with the allotment or transfer.

(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 on conviction to a fine not exceeding $1,000 and also to a default penalty.

[15/84]

(3) If any company on which a notice has been served requiring the company to make good any default in complying with this section fails to make good the default within 10 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 is specified in the order, and the 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 in default in such proportions as the Court thinks fit.
[UK, 1948, s. 80; Aust., 1961, s. 99]

Division 7A — The Central Depository System — a book-entry or scripless system for the transfer of securities

Interpretation

130A. In this Division, unless the contrary intention appears —

"account holder" means a person who has an account directly with the Depository and not through a depository agent;

"bare trustee" means a trustee who has no beneficial interest in the subject-matter of the trust;

"book-entry securities", in relation to the Depository, means securities —

(*a*) the documents evidencing title to which are deposited by a depositor with the Depository and are registered in the name of the Depository or its nominee; and

(*b*) which are transferable by way of book-entry in the Depository Register and not by way of an instrument of transfer;

"Depository" means the Central Depository (Pte) Limited or any other corporation approved by the Minister as a depository company or corporation for the purposes of this Act, which operates the Central Depository System for the holding and transfer of book-entry securities;

"Depository Register" means a register maintained by the Depository in respect of book-entry securities;

"depositor" means an account holder or a depository agent but does not include a sub-account holder;

"depository agent" means a member company of the Securities Exchange, a trust company (licensed under the Trust Companies Act (Cap. 336)), a banking corporation or merchant bank (approved by the Monetary Authority of Singapore under the Monetary Authority of Singapore Act (Cap. 186)) or any other person or body approved by the Depository who or which —

(*a*) performs services as a depository agent for sub-account holders in accordance with the terms of a depository agent agreement entered into between the Depository and the depository agent;

(*b*) deposits book-entry securities with the Depository on behalf of the sub-account holders; and

(*c*) establishes an account in its name with the Depository;

"derivative instruments", in relation to debentures, stocks and shares, includes warrants, transferable subscription rights, options to subscribe for stocks or shares, convertibles, depository receipts and such other instruments as the Minister may, by order, prescribe;

"documents evidencing title" means —

(*a*) in the case of stocks, shares, debentures or any derivative instruments related thereto of a company or debentures or any derivative instruments related thereto of the Government — the stock certificates, share certificates, debenture certificates or certificates representing the derivative instrument, as the case may be; and

(*b*) in the case of stocks, shares, debentures or any derivative instruments related thereto of a foreign company or debentures or any derivative instruments related thereto of a foreign government or of an international body, or any other securities — such documents or other evidence of title thereto, as the Depository may require;

"international body" means the Asian Development Bank, the International Bank for Reconstruction and Development, the International Monetary Fund, the European Bank for Reconstruction and Development and such other international bodies as the Minister may, by order, prescribe;

"instrument" includes a deed or any other instrument in writing;

"rules" means the rules made by the Depository in relation to the operation of the Central Depository System and includes the Central Depository Rules and Procedures made by the Depository pursuant to its Articles of Association (as the same may be amended from time to time) and any rule with regard to payment of fees to the Depository;

"securities" has the same meaning as in section 2(1) of the Securities and Futures Act (Cap. 289), and includes derivative instruments;

"Securities Exchange" means the Singapore Exchange Securities Trading Limited;

"sub-account holder" means a holder of an account maintained with a depository agent.

[22/93; 42/2001; 5/2004; 11/2005; 21/2005]

Application of this Division

130B.—(1) This Division shall apply only to —

(*a*) book-entry securities; and

(*b*) designated securities, as if a reference to "book-entry securities" includes a reference to designated securities.

[5/2004]

(2) The application of this Division to designated securities under subsection (1)(*b*) shall be subject to such modifications as the Minister may by order prescribe, and different modifications may be prescribed for different classes of designated securities.

[5/2004]

(3) In this section, "designated securities" means such securities as may be accepted or designated by the Depository or its nominee for deposit, custody, clearing or book-entry settlement.

[5/2004]

Establishment of Central Depository System

130C. There is hereby established a computerised Central Depository System whereby, in accordance with the rules of the Depository —

(*a*) documents evidencing title in respect of securities (with where applicable, in the case of shares or registered debentures, proper instruments of transfer duly executed) are deposited with the Depository and are registered in the name of the Depository or its nominee;

(*b*) accounts are maintained by the Depository in the names of the depositors so as to reflect the title of the depositors to the book-entry securities; and

(*c*) transfers of the book-entry securities are effected electronically, and not by any other means, by the Depository making an appropriate entry in the Depository Register of the book-entry securities that have been transferred.

[22/93; 5/2004]

Depository or nominee deemed to be bare trustee

130CA.—(1) The Depository or its nominee shall be deemed to hold the book-entry securities deposited with it as a bare trustee for the collective benefit of depositors.

[5/2004]

(2) Subject to subsections (3) and (4), a depositor shall not have any right to specific book-entry securities deposited with the Depository or its nominee but shall be entitled to a pro rata share computed on the basis of the book-entry securities credited to one or more accounts in the name of the depositor.

[5/2004]

(3) A depository agent shall be deemed to hold book-entry securities deposited in its name with the Depository or its nominee, on behalf of any sub-account holder, as a bare trustee.

[5/2004]

(4) A sub-account holder shall not have any right to specific book-entry securities deposited with the Depository or its nominee but shall be entitled to a pro rata share computed on the basis of the book-entry securities credited to one or more accounts maintained by the sub-account holder with a depository agent.

[5/2004]

Depository not a member of a company and depositors deemed to be members

130D.—(1) Notwithstanding anything in this Act or any other written law or rule of law or in any instrument or in the memorandum or articles of a corporation, where book-entry

securities of the corporation are deposited with the Depository or its nominee —

(*a*) the Depository or its nominee (as the case may be) shall be deemed not to be a member of the corporation; and

(*b*) the persons named as the depositors in a Depository Register shall, for such period as the book-entry securities are entered against their names in the Depository Register, be deemed to be —

(i) members of the corporation in respect of the amount of book-entry securities (relating to the stocks or shares issued by the corporation) entered against their respective names in the Depository Register; or

(ii) holders of the amount of the book-entry securities (relating to the debentures or any derivative instrument) entered against their respective names in the Depository Register.

[5/2004]

(1A) Notwithstanding anything in this Act or any other written law or rule of law or in any instrument or in the memorandum or articles of a corporation, where book-entry securities relating to units in any collective investment scheme within the meaning of the Securities and Futures Act (Cap. 289) (whether or not constituted as a corporation) are deposited with the Depository or its nominee —

(*a*) the Depository or its nominee (as the case may be) shall be deemed not to be a holder of the book-entry securities; and

(*b*) the persons named as the depositors in a Depository Register shall, for such period as the book-entry securities are entered against their names in the Depository Register, be deemed to be holders of the amount of the book-entry securities entered against their respective names in the Depository Register.

[5/2004]

(2) Nothing in this Division shall be construed as affecting —

(*a*) the obligation of a company to keep —

(i) a register of its members under section 190 and allow inspection of the register under section 192; and

(ii) a register of holders of debentures issued by the company under section 93 and allow inspection of the register under that section,

except that the company shall not be obliged to enter in such registers the names and particulars of persons who are deemed members or holders of debentures under subsection (1)(*b*);

(*b*) the right of a depositor to withdraw his documents evidencing title in respect of securities from the Depository at any time in accordance with the rules of the Depository and to register them in his or any other name; or

(*c*) the enjoyment of any right, power or privilege conferred by, or the imposition of any liability, duty or obligation under this Act, any rule of law or under any instrument or under the memorandum or articles of association of a corporation upon a depositor, as a member of a corporation or as a holder of debentures or any derivative instruments except to the extent provided for in this Division or prescribed by

regulations made thereunder.

[22/93; 5/2004]

(3) Notwithstanding any provision in this Act, a depositor shall not be regarded as a member of a company entitled to attend any general meeting of the company and to speak and vote thereat unless his name appears on the Depository Register 48 hours before the general meeting.

(4) The payment by a corporation to the Depository of any dividend payable to a depositor shall, to the extent of the payment made, discharge the corporation from any liability in respect of that payment.

[5/2004]

Depository to certify names of depositors to corporation upon request

130E. The Depository shall certify the names of persons on the Depository Register to a corporation in accordance with the rules of the Depository upon a written request being made to it by the corporation.

[22/93; 5/2004]

Maintenance of accounts

130F. The Depository shall maintain accounts of book-entry securities on behalf of depositors in accordance with the rules of the Depository.

[22/93]

Transfers effected by Depository under book-entry clearing system

130G.—(1) Subject to this Division, a transfer of book-entry securities between depositors shall be effected, notwithstanding anything in this Act or any other written law or rule of law or in any instrument or in a corporation's memorandum or articles of association to the contrary, by the depository making an appropriate entry in its Depository Register.

[22/93]

(2) A transfer of securities by the Depository by way of book-entry to a depositor under this Division shall be valid and shall not be challenged in any Court on the ground that the transfer is not accompanied by a proper instrument of transfer or that otherwise the transfer is not made in writing.

[22/93]

(3) This section shall apply to a transfer of book-entry securities whether effected before or after 12th November 1993.

[22/93]

Depository to be discharged from liability if acting on instructions

130H.—(1) Subject to the regulations, the Depository, if acting in good faith and without negligence, shall not be liable for conversion or for any breach of trust or duty where the Depository has, in respect of book-entries in accounts maintained by it, made entries regarding the book-entry securities, or transferred or delivered the book-entry securities, according to the instructions of a depositor notwithstanding that the depositor had no right to dispose of or take any other action in respect of the book-entry securities.

[22/93]

(2) The Depository or a depository agent, if acting in good faith and without negligence, shall be fully discharged of its obligations to the account holder or sub-account holder by the

transfer or delivery of book-entry securities upon the instructions of the account holder or sub-account holder, as the case may be.

[22/93]

(3) The Depository, if acting in good faith and without negligence, shall be fully discharged of its obligations to a depository agent by the transfer or delivery of book-entry securities upon the instructions of the depository agent.

[22/93]

(4) For the purposes of this section, the Depository or a depository agent is not to be treated as having been negligent by reason only of its failure to concern itself with whether or not the depositor or sub-account holder, as the case may be, has a right to dispose of or take any other action in respect of the book-entry securities or to issue the instructions.

[22/93]

Confirmation of transaction

130I. The Depository shall, in accordance with the rules made by the Depository, issue to each account holder and to each sub-account holder through his depository agent, following upon any transaction affecting book-entry securities maintained for such account holder by the Depository and maintained for such sub-account holder by his depository agent under this Division, a confirmation note which shall specify the amount and description of the book-entry securities and any other relevant transaction information.

[22/93]

No rectification of Depository Register

130J.—(1) Notwithstanding anything in this Act or any written law or rule of law, no order shall be made by the Court for rectification of the Depository Register; subject to that where the Court is satisfied that —

(*a*) a depositor did not consent to a transfer of the book-entry securities; or

(*b*) a depositor should not have been registered in the Depository Register as having title to the book-entry securities,

it may award damages to the first-mentioned depositor or to any person who would have been entitled to have been registered in the Depository Register as having title to the book-entry securities, as the case may be, on such terms as the Court thinks to be equitable or make such other order as the Court thinks fit including an order for the transfer of book-entry securities to such depositor or person.

[22/93]

(2) Where provisions exist in the memorandum or articles of association of a corporation that entitle a corporation to refuse registration of a transfer of book-entry securities, it may in relation to any transfer to which it objects, notify the Depository in writing of its refusal before the transfer takes place and furnish the Depository with the facts upon which such refusal is considered to be justified.

[22/93]

(3) Where the Depository has had prior notice of the corporation's refusal under subsection (2) (but not otherwise), it shall refuse to effect the transfer and to enter the name of the transferee in the Depository Register and thereupon convey the facts upon which such refusal is considered to be justified to the transferee.

[22/93]

(4) Section 128 shall not apply to any refusal to register a transfer under subsections (2) and (3).

[22/93]

Trustee, executor or administrator of deceased depositor named as depositor

130K.—(1) Any trustee, executor or administrator of the estate of a deceased depositor whose name was entered in the Depository Register as owner or as having an interest in book-entry securities may open an account with the Depository and have his name entered in the Depository Register so as to reflect the interest of the trustee, executor or administrator in the book-entry securities.

[22/93]

(2) Subject to this section, no notice of any trust expressed, implied or constructive shall be entered on the Depository Register and no liabilities shall be affected by anything done in pursuance of subsection (1) or pursuant to the law of any other place which corresponds to this section and the Depository and the issuer of the book-entry securities shall not be affected with notice of any trust by anything so done.

[22/93]

Non-application of certain provisions in bankruptcy and company liquidation law

130L. Where by virtue of the provisions of any written law in relation to bankruptcy or company liquidation it is provided that —

(*a*) any disposition of the property of a company after commencement of a winding up shall be void, unless the Court orders otherwise; or

(*b*) any disposition of the property of a person who is adjudged bankruptcy after the making of an application for a bankruptcy order and before vesting of the bankrupt's estate in a trustee shall be void unless done with the consent or ratification of the Court,

those provisions shall not apply to any disposition of book-entry securities; but where a Court is satisfied that a party to the disposition, being a party other than the Depository, had notice that an application has been made for the winding up or bankruptcy of the other party to the disposition, it may award damages against that party on such terms as it thinks equitable or make such other order as the Court thinks fit, including an order for the transfer of book-entry securities by that party but not an order for the rectification of the Depository Register.

[22/93; 42/2005]

Non-application of certain provisions in sections 21 and 76A

130M. Sections 21 and 76A, insofar as those sections provide that a transfer or contract of sale of shares or debentures in contravention of either section shall be void, shall not apply to any disposition of book-entry securities; but a Court, on being satisfied that a disposition of book-entry securities would in the absence of this section be void may, on the application of the Registrar or any other person, order the transfer of the shares acquired in contravention of either of those sections.

[42/2001]

Security interest

130N.—(1) Except as provided in this section or any other written law or any regulations

made under section 130P, no security interest may be created in book-entry securities.

[22/93]

(2) A security interest in book-entry securities to secure the payment of a debt or liability may be created in favour of any depositor in the following manner:

(*a*) by way of assignment, by an instrument of assignment in the prescribed form executed by the assignor; or

(*b*) by way of charge, by an instrument of charge in the prescribed form executed by the chargor:

Provided that no security interest in any book-entry securities subsequent to any assignment or charge thereof may be created by the assignor or the chargor, as the case may be, in favour of any other person and any such assignment or charge shall be void.

[22/93]

(3) Upon receipt of the instrument of assignment, the Depository shall immediately, by way of an off-market transaction, transfer the book-entry securities to the assignee and thereafter notify the assignor and the assignee of the transfer in the prescribed manner.

[22/93]

(4) Upon receipt of the instrument of charge, the Depository shall immediately register the instrument in a register of charges maintained by the Depository and thereafter notify the chargor and the chargee in the prescribed manner.

[22/93]

(5) The register of charges shall not be open to inspection to any person other than the chargor or the chargee or their authorised representatives and except for the purpose of the performance of its duties or the exercise of its functions or when required to do by any court or under the provisions of any written law, the Depository shall not disclose to any unauthorised person any information contained in the register of charges.

[22/93]

(6) An assignment or a charge made in accordance with the provisions of this section, but not otherwise, shall have effect upon the Depository transferring the book-entry securities or endorsing the charge in the register of charges except that the instrument of assignment or charge shall not have any effect if on the date of receipt of such instrument, the number of book-entry securities in the account of the assignor or chargor is less than the number of book-entry securities specified in such instrument.

[22/93]

(7) The provisions of section 130D(1), (1A) and (2) shall apply to an assignment of book-entry securities made under this section.

[22/93; 5/2004]

(8) An assignee or a registered chargee of book-entry securities shall have the following powers:

(*a*) a power, when the loan or liability has become due and payable, to sell the book-entry securities or any part thereof and in the case of a chargee he shall have the power to sell the book-entry securities or any part thereof in the name of and for and on behalf of the chargor; and

(*b*) any other power which may be granted to him in writing by the assignor or chargor in relation to the book-entry securities provided that the Depository shall not be

concerned with or affected by the exercise of any such power.

[22/93]

(9) Nothing in subsection (8) shall be construed as imposing on the Depository a duty to ascertain whether the power of sale has become exercisable or has been lawfully exercised by the assignee or chargee.

[22/93]

(10) No book-entry securities assigned by way of security or charged in accordance with the provisions of this section may be —

(*a*) transferred by way of an off-market transaction to the assignor save upon the production of a duly executed re-assignment in the prescribed form; or

(*b*) transferred by the chargor, by way of sale or otherwise, save upon the production of a duly executed discharge or charge in the prescribed form.

[22/93]

(11) Upon the sale by the assignee or the chargee in exercise of his power of sale of any book-entry securities assigned or charged in accordance with the provisions of this section, the assignee or the chargee shall immediately notify the Depository of the sale and the particulars of the book-entry securities sold by him, and the Depository shall —

(*a*) in the case of the sale by the assignee, notify the assignor of the sale; and

(*b*) in the case of the sale by the chargee, effect a transfer of the book-entry securities to the buyer in accordance with section 130G and notify the chargor of the transfer.

The provisions of sections 130I, 130J, 130L and 130M shall apply, with the necessary modifications, to a transfer effected pursuant to this section.

[22/93]

(12) Upon fulfilling his obligations under an assignment by way of security or a charge, the assignor or the chargor shall be entitled to obtain from the assignee or chargee a re-assignment or a discharge of charge, as the case may be, of the whole or part of the book-entry securities.

[22/93]

(13) A re-assignment or discharge of charge shall be effected by the Depository by transferring the book-entry securities to the assignor or cancelling the endorsement of charge in the register of charges and in the account of the chargor, as the case may be.

[22/93]

(14) Book-entry securities may be assigned by way of security by an assignee or charged in the prescribed form by a chargee to secure the payment of any debt or liability of the assignee or the chargee, as the case may be, in accordance with the provisions of this section provided that no book-entry security may be charged by a chargee subsequent to any sub-charge.

[22/93]

(15) All acts, powers and rights which might previously have been done or exercised by the chargee thereunder in relation to the book-entry securities may thereafter be done or exercised by the sub-chargee, and, except with the consent of the sub-chargee, shall not be done or exercised by the chargee thereunder during the currency of the sub-charge.

[22/93]

(16) Upon the sale by the sub-chargee in exercise of his power of sale of any book-entry securities in accordance with the provisions of this section, the provisions of subsection (11), in respect of a sale by a chargee, shall apply with the necessary modifications to the sale by the

sub-chargee.

[22/93]

(17) Nothing in subsection (14) shall affect the rights or liabilities of the original assignor or chargor of the book-entry securities under subsections (12) and (13) and he shall be entitled to a re-assignment or discharge of charge from the assignee or chargee free from all subsequent security interests created without his consent upon satisfying his indebtedness or liability to the assignee or the chargee.

[22/93]

(18) The provisions of section 130H shall apply to relieve the Depository and its servants or agents of any liability in respect of any act done or omission made under this section as if references to "depositor" include references to "assignee", "chargee" or "sub-chargee", as the case may be.

[22/93]

(19) Nothing in this section shall affect the validity and operation of floating charges on book-entry securities created under the common law before or after 12th November 1993, but that the Depository shall not be required to recognise, even when having notice thereof, any equitable interest in any book-entry securities under a floating charge except the power of the chargee, upon the crystallisation of the floating charge, to sell the book-entry securities in the name of the chargor in accordance with the provisions of this section.

[22/93]

(20) Nothing in subsection (19) shall be construed as imposing on the Depository a duty to ascertain whether the power of sale pursuant to a floating charge has become exercisable or has been lawfully exercised.

[22/93]

(21) A stockbroker shall have a lien over unpaid book-entry securities purchased for the account of a customer which shall be enforceable by sale in accordance with and subject to the provisions of this section as if the same had been charged to him under this section except that the stockbroker shall not be obliged to notify the Depository of the sale or the particulars of the book-entry securities sold by him.

[22/93; S 92/97]

(22) Any security interest on book-entry securities created before 12th November 1993 and subsisting or in force on that date shall continue to have effect as if that Act had not been enacted.

[22/93]

(23) In this section, "off-market transaction" means a transaction effected outside the Securities Exchange.

[22/93; 42/2001]

Depository rules to be regarded as rules of a securities exchange that are subject to Securities and Futures Act

130O.—(1) Rules made by the Depository in relation to the operation of the Central Depository System, including any amendments made thereto from time to time, shall be regarded as having the same force and effect as if made by a securities exchange and shall likewise be subject to the provisions of the Securities and Futures Act (Cap. 289).

[22/93; 42/2001]

(2) Without prejudice to the generality of subsection (1), section 23 (Business rules and

listing rules of approved exchanges) and section 25 (Power of court to order observance of or enforce business rules or listing rules) of the Securities and Futures Act shall apply to rules made by the Depository under subsection (1) as they apply to rules made by a securities exchange.

[22/93; 42/2001]

Regulations

130P. The Minister may make regulations for all matters or things which by this Division are required or permitted to be prescribed or which are necessary or expedient to give effect to this Division and, in particular, regulations may be made for or with respect to —

(*a*) rights and obligations of persons in relation to securities dealt with under the Central Depository System;

(*b*) procedures for the deposit and custody of securities and the transfer of title to book-entry securities and the regulation of persons concerned in that operation;

(*c*) matters relating to security interest in book-entry securities;

(*d*) keeping of depositors' accounts by the Depository and sub-accounts by the depository agents;

(*e*) keeping of the Depository Register and of records generally;

(*f*) safeguards for depositors including the maintenance of insurance and the establishment and maintenance of compensation funds by the Depository for the purpose of settling claims by depositors;

(*g*) matters relating to link-ups between the Depository and other securities depositories (by whatever name called) established and maintained outside Singapore;

(*ga*) any requirement for fees charged by the Depository to be approved by a regulatory authority, and regulations made under this paragraph may provide —

(i) that the regulatory authority may require the Depository to furnish it with such information or documents as the Authority considers necessary for such approval;

(ii) that a contravention of any specified provision in the regulations shall be an offence; and

(iii) for penalties not exceeding a fine of $150,000 for each offence and, in the case of a continuing offence, a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part thereof during which the offence continues after conviction;

(*h*) the modification or exclusion of any provision of any written law, rule of law, any instrument or articles of association;

(*i*) the application, with such modifications as may be required, of the provisions of any written law, instrument or articles of association; and

(*j*) such supplementary, incidental, saving or transitional provisions as may be necessary or expedient.

[22/93; 21/2005]

Division 8 — Registration of charges

Registration of charges

131.—(1) Subject to this Division, where a charge to which this section applies is created by a company there shall be lodged with the Registrar for registration, within 30 days after the creation of the charge, a statement containing the prescribed particulars of the charge, and if this section is not complied with in relation to the charge the charge shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company.

[13/87; 12/2002]

(1A) In connection with the registration of a charge to which this section applies which is created by a company there shall be produced to the Registrar, upon the Registrar's request and for the purposes of inspection, at no cost to the Registrar, the instrument (if any) by which the charge is created or evidenced or a certified true copy thereof.

[13/87; 12/2002]

(2) Nothing in subsection (1) shall prejudice any contract or obligation for repayment of the money secured by a charge and when a charge becomes void under this section the money secured thereby shall immediately become payable.

(3) The charges to which this section applies are —

(*a*) a charge to secure any issue of debentures;

(*b*) a charge on uncalled share capital of a company;

(*c*) a charge on shares of a subsidiary of a company which are owned by the company;

(*d*) a charge or an assignment created or evidenced by an instrument which if executed by an individual, would require registration as a bill of sale;

(*e*) a charge on land wherever situate or any interest therein;

(*f*) a charge on book debts of the company;

(*g*) a floating charge on the undertaking or property of a company;

(*h*) a charge on calls made but not paid;

(*i*) a charge on a ship or aircraft or any share in a ship or aircraft; and

(*j*) a charge on goodwill, on a patent or licence under a patent, on a trade mark, or on a copyright or a licence under a copyright.

(3A) The reference to a charge on book debts in subsection (3)(*f*) shall not include a reference to a charge on a negotiable instrument or on debentures issued by the Government.

[40/89]

(3B) A charge referred to in subsection (3) does not include a charge created at any time on or after the date of commencement of the International Interests in Aircraft Equipment Act 2009 to the extent that it is capable of being registered under that Act.

[5/2009 wef 01/05/2009]

(3C) In subsection (3B), "registered" has the same meaning as in section 2(1) of the International Interests in Aircraft Equipment Act 2009.

[5/2009 wef 01/05/2009]

(4) Where a charge created in Singapore affects property outside Singapore, the statement containing the prescribed particulars of the charge may be lodged for registration under and in accordance with subsection (1) notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the place in which the property is situate.

[13/87; 12/2002]

(5) When a series of debentures containing or giving by reference to any other instrument any charge to the benefit of which the debenture holders of that series are entitled equally is created by a company, it shall be sufficient if there are lodged with the Registrar for registration within 30 days after the execution of the instrument containing the charge, or if there is no such instrument after the execution of the first debenture of the series, a statement containing the following particulars:

(*a*) the total amount secured by the whole series;

(*b*) the dates of the resolutions authorising the issue of the series and the date of the covering instrument, if any, by which the security is created or defined;

(*c*) a general description of the property charged; and

(*d*) the names of the trustee, if any, for the debenture holders.

[13/87; 12/2002]

(6) For the purposes of subsection (5), where more than one issue is made of debentures in the series, there shall be lodged within 30 days after each issue particulars of the date and amount of each issue, but an omission to do so shall not affect the validity of the debentures issued.

(7) Where any commission, allowance or discount has been paid or made either directly or indirectly by a company to any person in consideration of his (whether absolutely or conditionally) subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any debentures the particulars required to be lodged under this section shall include particulars as to the amount or rate per cent of the commission, allowance or discount so paid or made, but omission to do so shall not affect the validity of the debentures issued.

(8) The deposit of any debentures as security for any debt of the company shall not for the purposes of subsection (7) be treated as the issue of the debentures at a discount.

(9) No charge or assignment to which this section applies (except a charge or assignment relating to land) need be filed or registered under any other written law.

(10) Where a charge requiring registration under this section is created before the lapse of 30 days after the creation of a prior unregistered charge, and comprises all or any part of the property comprised in the prior charge, and the subsequent charge is given as a security for the same debt as is secured by the prior charge, or any part of that debt, then to the extent to which the subsequent charge is a security for the same debt or part thereof, and so far as respects the property comprised in the prior charge, the subsequent charge shall not be operative or have any validity unless it is proved to the satisfaction of the Court that it was given in good faith for the purpose of correcting some material error in the prior charge or under other proper circumstances and not for the purposes of avoiding or evading the provisions of this Division.

[UK, 1948, s. 95; Aust., 1961, s. 100]

Duty to register charges

132.—(1) Documents and particulars required to be lodged for registration in accordance with section 131 may be lodged for registration by the company concerned or by any person interested in the documents, but if default is made in complying with that section the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

[15/84]

(2) Where registration is effected by 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 on the registration.

[UK, 1948, s. 96; Aust., 1961, s. 101]

Duty of company to register charges existing on property acquired

133.—(1) Where a company acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Division or, where a foreign company becomes registered in Singapore and has prior to such registration created a charge which if it had been created by the company while it was registered in Singapore would have been required to be registered under this Division or, where a foreign company becomes registered in Singapore and has prior to such registration acquired property which is subject to a charge of any such kind as would if it had been created by the company after the acquisition and while it was registered in Singapore have been required to be registered under this Division, the company shall cause a statement of the prescribed particulars to be lodged with the Registrar for registration within 30 days after the date on which the acquisition is completed or the date of the registration of the company in Singapore, as the case may be.

[13/87; 12/2002]

(2) If default is made in complying with this section, the company or the foreign company and every officer of the company or foreign company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

[15/84]

[UK, 1948, s. 97; Aust., 1961, s. 102]

Register of charges to be kept by Registrar

134.—(1) The Registrar shall keep a register of all the charges lodged for registration under this Division and shall enter in the register with respect to those 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 required to be contained in a statement furnished under section 131(5); and

(*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;

(ii) the amount secured by the charge;

(iii) a description sufficient to identify the property charged; and

(iv) the name of the person entitled to the charge.

(2) The Registrar shall issue a notice to the company concerned of the registration of a charge and the notice shall be conclusive evidence that the requirements as to registration have been complied with.

[13/87; 12/2002]

(3) Upon the application of the company and payment of the prescribed fee, the Registrar shall issue to the company a certificate, under his hand and seal, confirming the registration of the charge and the certificate shall be conclusive evidence that the requirements as to registration have been complied with.

[12/2002]

[UK, 1948, s. 98; Aust., 1961, s. 103]

Endorsement of certificate of registration on debentures

135.—(1) The company shall cause to be endorsed on every debenture forming one of a series of debentures, or certificate of debenture stock which is issued by the company and the payment of which is secured by a charge so registered —

(*a*) a copy of the notice of registration; or

(*b*) a statement that the registration has been effected and the date of registration.

[12/2002]

(2) Subsection (1) shall not apply to any debenture or certificate of debenture stock which has been issued by the company before the charge was registered.

(3) Every person who knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock which is not endorsed as required by this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000.

[15/84]

[UK, 1948, s. 99; Aust., 1961, s. 104]

Entries of satisfaction and release of property from charge

136.—(1) Where, with respect to any registered charge —

(*a*) the debt for which the charge was given has been paid or satisfied in whole or in part; or

(*b*) the property or undertaking charged or any part thereof has been released from the charge or has ceased to form part of the company's property or undertaking of the company concerned,

the company may lodge with the Registrar in the prescribed form a statement of satisfaction in whole or in part, or of the fact that the property or undertaking or any part thereof has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be, and the Registrar shall enter particulars of that statement in the register.

[12/2002]

(2) The statement shall be endorsed with a statement by the chargee of the payment, satisfaction, release or ceasing referred to in subsection (1), as the case may be, and the second-mentioned statement shall constitute sufficient evidence of that payment, satisfaction, release or ceasing.

[13/87; 12/2002]

[UK, 1948, s. 100; Aust., 1961, s. 105]

Extension of time and rectification of register of charges

137. The Court, on being satisfied that the omission to register a charge (whether under this or any corresponding previous written law) within the time required or that the omission or mis-statement of any particular with respect to any such charge or in a statement 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 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 (including a term or condition that the extension or rectification is to be without prejudice to any liability already incurred by the company or any of its officers in respect of the default) order that the time for registration be extended or that the omission or mis-statement be rectified.

[12/2002]

[UK, 1948, s. 101; Aust., 1961, s. 106]

Company to keep copies of charging instruments and register of charges

138.—(1) Every company shall cause the instrument creating any charge requiring registration under this Division or a copy thereof to be kept at the registered office of the company but in the case of a series of debentures the keeping of a copy of one debenture of the series shall be sufficient for the purposes of this subsection.

[13/87]

(2) Every 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.

(3) The instruments or copies thereof and the register of charges kept in pursuance of this section shall be open 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 $2 for each inspection as is fixed by the company.

(3A) Any person may, on application to a company and on payment of a fee, not exceeding $1 for every page or part thereof, be furnished with a copy of any instrument or debenture kept by the company in pursuance of this section within 3 days of his making the application.

[13/87]

(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 on conviction to a fine not exceeding $2,000 and also to a default penalty.

[15/84]

[UK, 1948, ss. 103-105; Aust., 1961, s. 107]

Documents made out of Singapore

139. Where under this Division an instrument, deed, statement or other document is required to be lodged with the Registrar within a specified time, the time so specified shall, by force of this section, in relation to an instrument, deed, statement or other document executed or made in a place out of Singapore, be extended by 7 days or such further periods as the Registrar may

from time to time allow.

[Aust., 1961, s. 108]

Charges, etc., created before 29th December 1967

140. Except as is otherwise expressly provided, this Division shall apply to any charge that on 29th December 1967 was registrable under any of the repealed written laws but which at that date was not registered under any of those laws.

[S 258/67]

[Aust., 1961, s. 109]

Application of Division

141. A reference in this Division to a company shall be read as including a reference to a foreign company registered under Division 2 of Part XI, but nothing in this Division applies to a charge on property outside Singapore of such foreign company.

[15/84]

[Aust., 1961, s. 110]

PART V

MANAGEMENT AND ADMINISTRATION

Division 1 — Office and name

Registered office of company

142.—(1) A company shall as from the date of its incorporation have a registered office within Singapore to which all communications and notices may be addressed and which shall be open and accessible to the public for not less than 3 hours during ordinary business hours on each business day.

[15/84]

(2) If default is made in complying 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 on conviction to a fine not exceeding $5,000 and also to a default penalty.

[15/84; 13/87]

[UK, 1948, s. 107; Aust., 1961, s. 111]

Office hours

143.—(1) Notice in the prescribed form of the situation of the registered office, the days and hours during which it is open and accessible to the public, shall, in the case of a proposed company, be lodged with the Registrar together with its memorandum and its articles, if any, at the time of lodgment for the incorporation of the proposed company and in the case of any subsequent change of the particulars therein be so lodged within 14 days of any such change, but no notice of the days and hours during which the office is open and accessible to the public shall be required if the office is open for at least 5 hours during ordinary business hours on each business day.

[15/84; 40/89]

(1A) In subsection (1), the word "particulars", in relation to the situation of the registered office, shall be deemed to include the address and designation of the situation or address of the registered office.

[40/89]

Penalty

(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 on conviction to a fine not exceeding $5,000 and also to a default penalty.

[15/84; 13/87]

[UK, 1948, s. 107; Aust., 1961, s. 112]

Publication of name and registration number

144.—(1) The name of a company shall appear in legible romanised letters on —

(*a*) its seal; and

(*b*) all business letters, statements of account, invoices, official notices, publications, bills of exchange, promissory notes, indorsements, cheques, orders, receipts and letters of credit of or purporting to be issued or signed by or on behalf of the company.

[5/2004]

(1A) The registration number of a company shall appear in a legible form on all business letters, statements of account, invoices, official notices and publications of or purporting to be issued or signed by or on behalf of the company.

[5/2004]

(1B) A company shall be guilty of an offence if default is made in complying with subsection (1) or (1A).

[5/2004]

(2) If an officer of a company or any person on its behalf —

(*a*) uses or authorises the use of any seal purporting to be a seal of the company whereon its name does not so appear;

(*b*) issues or authorises the issue of any business letter, statement of account, invoice or official notice or publication of the company wherein its name is not so mentioned; or

(*c*) signs, issues or authorises to be signed or issued on behalf of the company any bill of exchange, promissory note, cheque or other negotiable instrument or any indorsement, order, receipt or letter of credit wherein its name is not so mentioned,

he shall be guilty of an offence, and where he has signed, issued or authorised to be signed or issued on behalf of the company any bill of exchange, promissory note or other negotiable instrument or any indorsement thereon or order wherein that name is not so mentioned, he shall in addition be liable to the holder of the instrument or order for the amount due thereon unless it is paid by the company.

Name to be displayed on all offices

(3) [*Deleted by Act 5 of 2004*][*UK, 1948, s. 108; Aust., 1961, s. 113*]

Division 2 — Directors and officers

Directors

145.—(1) Every company shall have at least one director who is ordinarily resident in

Singapore and, where the company only has one member, that sole director may also be the sole member of the company.

[5/2004]

(2) No person other than a natural person who has attained the age of 18 years and who is otherwise of full legal capacity shall be a director of a company.

[7/2009 wef 01/03/2009]

(3) [*Deleted by Act 12 of 2002*]

(4) Any provision in the memorandum or articles of a company which was in force immediately before 29th December 1967 and which operated to constitute a corporation as a director of the company shall be read and construed as if it authorised that corporation to appoint a natural person to be a director of that company.

[S 258/67]

(5) Notwithstanding anything in this Act or in the memorandum or articles of the company, or in any agreement with the company, a director of a company shall not resign or vacate his office unless there is remaining in the company at least one director who is ordinarily resident in Singapore; and any purported resignation or vacation of office in breach of this subsection shall be deemed to be invalid.

[5/2004]

(6) Subsection (5) shall not apply where a director of a company is required to resign or vacate his office if he has not within the period referred to in section 147(1) obtained his qualification or by virtue of his disqualification under section 148, 149, 149A, 154 or 155 of this Act, or sections 50, 54, 66 and 67 of the Banking Act (Cap. 19) or sections 47 and 49 of the Finance Companies Act (Cap. 108), section 57 of the Financial Advisers Act (Cap. 110), section 31, 31A, 35ZJ or 41(2)(*a*)(ii) of the Insurance Act (Cap. 142), section 30AAI of the Monetary Authority of Singapore Act (Cap. 186), section 12A of the Money-changing and Remittance Businesses Act (Cap. 187), section 22 of the Payment Systems (Oversight) Act 2006 (Act 1 of 2006) or section 44, 46Z, 81P, 81ZJ, 97 or 292A of the Securities and Futures Act (Cap. 289).

[15/84; 42/2001; 12/2002; 1/2006; S 227/95]
[16/2011 wef 01/05/2011]
[1/2001 wef 31/03/2007]
[Act 10/2013 wef 18/04/2013]
[Act 11 of 2013 wef 18/04/2013]
[Act 34 of 2012 wef 01/08/2013]

(7) If there is a contravention of subsection (1), the Registrar may, either of his own motion or on the application of any person, direct the members of the company to appoint a director who is ordinarily resident in Singapore if he considers it to be in the interests of the company for such appointment to be made.

[5/2004]

(8) If the direction under subsection (7) is not complied with, each member in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 and, in the case of a continuing offence, to a further fine not exceeding $1,000 for every day or part thereof during which the offence continues after conviction.

[5/2004]

(9) If there is a contravention of subsection (1) and —

(*a*) the Registrar fails to give the direction under subsection (7); or

(*b*) such direction has been given but is not complied with,

the court may, on the application of the Registrar or any person, order the members of the company to make the appointment if it considers it to be in the interests of the company for such appointment to be made.

[5/2004]

(10) If a company carries on business without having at least one director who is ordinarily resident in Singapore for more than 6 months, a person who, for the whole or any part of the period that it so carries on business after those 6 months —

(*a*) is a member of the company; and

(*b*) knows that it is carrying on business in that manner,

shall be liable for the payment of all the debts of the company contracted during the period or, as the case may be, that part of it, and may be sued therefor.

[5/2004]

[UK, 1948, s. 176; Aust., 1961, s. 114]

Restrictions on appointment or advertisement of director

146.—(1) A person shall not be named as a director or proposed director in —

(*a*) any document filed or lodged with or submitted to the Registrar for the purposes of the incorporation of a company; or

(*b*) the register of directors, managers and secretaries of a company,

unless, before —

(i) the incorporation of the company; or

(ii) the filing of any return in the prescribed form containing the particulars required to be specified in the register of directors, managers and secretaries,

as the case may be, the person has complied with the conditions set out in subsection (1A).

[12/2002]

(1A) The conditions to be complied with by a person referred to in subsection (1) are the following:

(*a*) he has, by himself or through a prescribed person authorised by him, filed with the Registrar —

(i) a declaration that he has consented to act as a director; and

(ii) a statement in the prescribed form that he is not disqualified from acting as a director under this Act; and

(*b*) he has, by himself or through a prescribed person authorised by him —

(i) filed with the Registrar a declaration that he has agreed to take a number of shares of the company that is not less than his qualification, if any;

(ii) filed with the Registrar an undertaking that he will take from the company and pay for his qualification shares, if any;

(iii) filed with the Registrar a declaration that a specified number of shares, not less than his qualification, if any, has been registered in his name; or

(iv) in the case of a company formed or intended to be formed by way of

reconstruction of another corporation or group of corporations or to acquire the shares in another corporation or group of corporations, filed with the Registrar a declaration that —

(A) he was a shareholder in that other corporation or in one or more of the corporations of that group; and

(B) as a shareholder he will be entitled to receive and have registered in his name a number of shares not less than his qualification, by virtue of the terms of an agreement relating to the reconstruction.

[12/2002; 8/2003]

(2) Where a person has undertaken to the Registrar under subsection (1A)(*b*)(ii) 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.

[12/2002]

(3) Subsections (1) and (2) (other than the provisions relating to the signing of a consent to act as director) shall not apply to —

(*a*) a company not having a share capital;

(*b*) a private company; or

(*c*) a prospectus or a statement in lieu of prospectus issued or lodged with the Registrar by or on behalf of a company or to articles adopted by a company after the expiration of one year from the date on which the company was entitled to commence business.

(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 on conviction to a fine not exceeding $10,000 and also to a default penalty.

[15/84]

(5) The restrictions in this section on a director or proposed director of a company incorporated under this Act in relation to a prospectus shall apply in the same manner and extent to a director or proposed director of a foreign company as if the references in subsections (1) and (4) to a company included references to a foreign company.

[22/93]

[UK, 1948, s. 181; Aust., 1961, s. 115]

Qualification of director

147.—(1) Without affecting the operation of sections 145 and 146, every director, who is by the articles required to hold a specified share qualification and who is not already qualified, shall obtain his qualification within 2 months after his appointment or such shorter period as is fixed by the articles.

(2) Unless otherwise provided by the articles, the qualification of any director of a company must be held by him solely and not as one of several joint holders.

(3) A director shall vacate his office if he has not within the period referred to in subsection (1) obtained his qualification or if after so obtaining it he ceases at any time to hold his qualification.

(4) Any person who fails to comply with subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $4,000 and also to a default penalty.

[15/84]

(5) A person vacating office under this section shall be incapable of being reappointed as director until he has obtained his qualification.

[UK, 1948, s. 182; Aust., 1961, s. 116]

Restriction on undischarged bankrupt being director or manager

148.—(1) Every person who, being an undischarged bankrupt (whether he was adjudged bankrupt by a Singapore Court or a foreign court having jurisdiction in bankruptcy), acts as director of, or directly or indirectly takes part in or is concerned in the management of, any corporation, except with the leave of the Court or the written permission of the Official Assignee, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.

[37/99]

(2) On an application by an undischarged bankrupt under subsection (1) to the Court or the Official Assignee, as the case may be, the Court or the Official Assignee may refuse the application or approve the application subject to such condition as the Court or the Official Assignee, as the case may be, may impose.

[37/99]

(3) The Court shall not give leave under this section unless notice of intention to apply therefor has been served on the Minister and on the Official Assignee and the Minister and the Official Assignee or either of them may be represented at the hearing of and may oppose the granting of the application.

[37/99]

(4) Any person who has been granted leave by the Court or written permission by the Official Assignee under subsection (1) shall, within one month after the issue of the Court order or written permission, lodge a copy of the order or written permission with the Registrar.

[8/2003]

Disqualification of unfit directors of insolvent companies

149.—(1) The Court may —

(*a*) on the application of the Minister or the Official Receiver as provided for in subsection (9)(*a*); and

(*b*) on being satisfied as to the matters referred to in subsection (2),

make an order disqualifying a person specified in the order from being a director or in any way, whether directly or indirectly, being concerned in, or take part in, the management of a company during such period not exceeding 5 years after the date of the order as is specified in the order (referred to in this section as a disqualification order).

[13/87]

(2) The Court shall make a disqualification order under subsection (1) if it is satisfied that —

(*a*) the person against whom the order is sought has been given not less than 14 days' notice of the application; and

(*b*) the person —

(i) is or has been a director of a company which has at any time gone into liquidation (whether while he was a director or within 3 years of his ceasing to be a director) and was insolvent at that time; and

(ii) that his conduct as director of that company either taken alone or taken together with his conduct as a director of any other company or companies makes him unfit to be a director of or in any way, whether directly or indirectly, be concerned in, or take part in, the management of a company.

(3) If in the case of a person who is or has been a director of a company which is —

(*a*) being wound up by the Court, it appears to the Official Receiver or to the liquidator (if he is not the Official Receiver); or

(*b*) being wound up otherwise than as mentioned in paragraph (*a*), it appears to the liquidator,

that the conditions mentioned in subsection (2)(*b*) are satisfied as respects that person, the Official Receiver or the liquidator, as the case may be, shall immediately report the matter to the Minister.

(4) The Minister may require the Official Receiver or the liquidator or the former liquidator of a company —

(*a*) to furnish him with such information with respect to any person's conduct as a director of the company; and

(*b*) to produce and permit inspection of such books, papers and other records relevant to that person's conduct as such a director,

as the Minister may reasonably require for the purpose of determining whether to exercise, or of exercising, any of his functions under this section; and if default is made in complying with that requirement the Court may, on the application of the Minister, make an order requiring that person to make good the default within such time as is specified in the order.

(5) For the purposes of this section —

(*a*) a company has gone into liquidation —

(i) if it is wound up by the Court, on the date of the filing of the winding up application;

(ii) where a provisional liquidator was appointed under section 291(1), at the time when the declaration made under that subsection was lodged with the Registrar; and

(iii) in any other case, on the date of the passing of the resolution for the voluntary winding up; and

(*b*) a company was insolvent at the time it has gone into liquidation if it was unable to pay its debts, within the meaning of that expression in section 254(2),

and references in this section to a person's conduct as a director of any company or companies include, where any of those companies have become insolvent, references to that person's conduct in relation to any matter connected with or arising out of the insolvency of that company.

[42/2005]

(6) In deciding whether a person's conduct as a director of any particular company or companies make him unfit to be concerned in, or take part in, the management of a company as is mentioned in subsection (2)(*b*), the Court shall in relation to his conduct as a director of that

company or, as the case may be, each of those companies have regard, generally to the matters referred to in paragraph (*a*), and, in particular, to the matters referred to in paragraph (*b*), notwithstanding that the director has not been convicted or may be criminally liable in respect of any of these matters —

(*a*) (i) as to whether there has been any misfeasance or breach of any fiduciary or other duty by the director in relation to the company;

(ii) as to whether there has been any misapplication or retention by the director of, or any conduct by the director giving rise to an obligation to account for, any money or other property of the company;

(iii) as to the extent of the director's responsibility for any failure by the company to comply with sections 138, 190, 191, 197, 199 and 201; and

(*b*) (i) as to the extent of the director's responsibility for the causes of the company becoming insolvent;

(ii) as to the extent of the director's responsibility for any failure by the company to supply any goods or services which have been paid for (in whole or in part);

(iii) as to the extent of the director's responsibility for the company entering into any transaction liable to be set aside under section 259;

(iv) as to whether the causes of the company becoming insolvent are attributable to its carrying on business in a particular industry where the risk of insolvency is generally recognised to be higher.

(7) The Minister may, by notification in the *Gazette*, add to, vary or amend the matters referred to in subsection (6) and that notification may contain such transitional provisions as may appear to the Minister to be necessary or expedient.

(8) In this section, "company" includes a corporation and a foreign company but does not include a partnership or association to which Division 5 of Part X applies.

[8/2003]

(9) (*a*) In the case of a person who is or has been a director of a company which has gone into liquidation and is being wound up by the Court, an application under this section shall be made by the Official Receiver but in any other case an application shall be made by the Minister.

(*b*) On a hearing of an application under this section —

(i) the Minister or the Official Receiver, as the case may be, shall appear and call the attention of the Court to any matter which appears to him to be relevant (and for this purpose the Minister may be represented) and may give evidence or call witnesses; and

(ii) the person against whom an order is sought may appear and himself give evidence or call witnesses.

(10) This section shall not apply unless the company mentioned in subsection (2)(*b*) has gone into insolvent liquidation on or after 15th August 1984 and the conduct to which the Court shall have regard shall not include conduct as a director of a company that has gone into liquidation before that date.

(11) A person who acts as judicial manager, receiver or receiver manager shall not be liable to have a disqualification order made against him in respect of acts done in his capacity as judicial manager, receiver or receiver manager, as the case may be.

[40/89]

(12) Any person who acts in contravention of a disqualification order made under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.

(13) Nothing in this section shall prevent a person who is disqualified pursuant to an order made under subsection (1) from applying for leave of the Court to be concerned in or take part in the management of a company.

[40/89]

(14) On the hearing of an application made under subsection (13) or (15), the Minister or the Official Receiver shall appear (and for this purpose the Minister may be represented) and call attention of the Court to any matter which appears to him to be relevant to the application and may himself give evidence or call witnesses.

[40/89]

(15) Any right to apply for leave of the Court to be concerned or take part in the management of a company that was subsisting immediately before 23rd March 1990 shall, after that date, be treated as subsisting by virtue of the corresponding provision made under this section.

[40/89]

Disqualification of directors of companies wound up on grounds of national security or interest

149A.—(1) Subject to subsections (2) and (3), where a company is ordered to be wound up by the Court under section 254(1)(*m*) on the ground that it is being used for purposes against national security or interest, the Court may, on the application of the Minister, make an order (referred to in this section as a disqualification order) disqualifying any person who is a director of that company from being a director or in any way, directly or indirectly, being concerned in, or from taking part in, the management of any company or foreign company for a period of 3 years from the date of the making of the winding up order.

[36/2000]

(2) The Court shall not make a disqualification order against any person under subsection (1) unless the Court is satisfied that the person against whom the order is sought has been given not less than 14 days' notice of the Minister's application for the order.

[36/2000]

(3) The Court shall not make a disqualification order against any person under subsection (1) if such person proves to the satisfaction of the Court that —

(*a*) the company had been used for purposes against national security or interest without his consent or connivance; and

(*b*) he had exercised such diligence to prevent the company from being so used as he ought to have exercised having regard to the nature of his function in that capacity and to all the circumstances.

[36/2000]

(4) Any person who acts in contravention of a disqualification order made under

subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.

[36/2000]

(5) In this section, "foreign company" means a foreign company to which Division 2 of Part XI applies.

[36/2000; 8/2003]

Appointment of directors to be voted on individually

150.—(1) At a general meeting of a public company, a motion for the appointment of 2 or more persons as directors by a single resolution shall not be made unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.

(2) A resolution passed in pursuance of a motion made in contravention of this section shall be void, whether or not its being so moved was objected to at the time.

(3) Where a resolution pursuant to a motion made in contravention of this section is passed no provision for the automatic reappointment of retiring directors in default of another appointment shall apply.

(4) For the purposes of this section, a motion for approving a person's appointment or for nominating a person for appointment shall be treated as a motion for his appointment.

(5) Nothing in this section shall —

(*a*) apply to a resolution altering the company's articles;

(*b*) prevent the election of 2 or more directors by ballot or poll.

[UK, 1948, s. 183; Aust., 1961, s. 118]

Validity of acts of directors and officers

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

[UK, 1948, s. 180; Aust., 1961, s. 119]

Removal of directors

152.—(1) A public company may by ordinary resolution remove a director before the expiration of his period of office, notwithstanding anything in its memorandum or articles or in any agreement between it and him but where any director so removed was appointed to represent the interests of any particular class of shareholders or debenture holders the resolution to remove him shall not take effect until his successor has been appointed.

(2) Special notice shall be required of any resolution to remove a director under this section or to appoint some person in place of a director so removed at the meeting at which he is removed, and on receipt of notice of an intended resolution to remove a director under this section the company shall immediately send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.

(3) Where notice is given pursuant to subsection (2) and the director concerned makes with respect thereto representations in writing to the company, not exceeding a reasonable length, and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so —

(*a*) in any notice of the resolution given to members of the company state the fact of the representations having been made; and

(*b*) send a copy of the representations to every member of the company to whom notice of the meeting is sent, whether before or after receipt of the representations by the company,

and if a copy of the representations is not so sent because they were received too late or because of the company's default the director may, without prejudice to his right to be heard orally, require that the representations shall be read out at the meeting.

(4) Notwithstanding subsections (1), (2) and (3), copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter and the Court may order the company's costs on an application under this section to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.

(5) A vacancy created by the removal of a director under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.

(6) A person appointed director in place of a person removed under this section shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become a director on the day on which the person in whose place he is appointed was last appointed a director.

(7) Nothing in subsections (1) to (6) shall be taken as depriving a person removed thereunder of compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director or as derogating from any power to remove a director which may exist apart from this section.

(8) A director of a public company shall not be removed by, or be required to vacate his office by reason of, any resolution, request or notice of the directors or any of them notwithstanding anything in the articles or any agreement.
[UK, 1948, s. 184; Aust., 1961, s. 120]

Age limit for directors

153.—(1) Subject to this section but notwithstanding anything in the memorandum or articles of the company, no person of or over the age of 70 years shall be appointed or act as a director of a public company or of a subsidiary of a public company.

(2) The office of a director of a public company or of a subsidiary of a public company shall become vacant at the conclusion of the annual general meeting commencing next after he attains the age of 70 years.

(3) Any act done by a person as director shall be valid notwithstanding that it is afterwards discovered that there was a defect in his appointment or that his appointment had terminated by virtue of subsection (2).

(4) Where the office of a director has become vacant by virtue of subsection (2) no provision for the automatic reappointment of retiring directors in default of another appointment shall apply in relation to that director.

(5) If any such vacancy has not been filled at the meeting at which the office became vacant

the office may be filled as a casual vacancy.

(6) Notwithstanding anything in this section, a person of or over the age of 70 years may, by an ordinary resolution passed at an annual general meeting of a company —

(*a*) be appointed or re-appointed as a director of the company to hold office; or

(*b*) be authorised to continue in office as a director of the company,

until the next annual general meeting of the company.

[8/2003]

(7) Section 179 relating to the demanding of a poll and the holding of a poll shall apply to a resolution under this section.

(8) Nothing in this section shall limit or affect the operation of any provision of the memorandum or articles of a company preventing any person from being appointed a director or requiring any director to vacate his office at any age below 70 years.

(9) The provisions of the articles of a company relating to the rotation and retirement of directors shall not apply to a director who is appointed or reappointed pursuant to this section but such provisions of the articles shall continue to apply to all other directors of the company.
[UK, 1948, s. 185; Aust., 1961, s. 121]

Disqualification to act as director on conviction of certain offences

154.—(1) Where a person is convicted (whether in Singapore or elsewhere) of any offence involving fraud or dishonesty punishable with imprisonment for 3 months or more, he shall be subject to the disqualifications provided in subsection (3).

[22/93]

(2) Where a person is convicted in Singapore of —

(*a*) any offence in connection with the formation or management of a corporation; or

(*b*) any offence under section 157 or 339,

the court may make a disqualification order in addition to any other sentence imposed.

(3) A person who is disqualified under subsection (1) or who has had a disqualification order made against him under subsection (2) shall not act as a director of a company or of a foreign company to which Division 2 of Part XI applies nor shall he take part, whether directly or indirectly, in the management of such a company or foreign company.

(4) (*a*) Where a disqualified person has not been sentenced to imprisonment, the disqualifications in subsection (3) shall take effect upon conviction and shall continue for a period of 5 years or for such shorter period as the court may order under subsection (2).

(*b*) Where a disqualified person is sentenced to imprisonment, the disqualifications in subsection (3) shall take effect upon conviction and shall continue for a period of 5 years after his release from prison.

(5) A person who acts in contravention of a disqualification under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.

(6) An application for leave to act as a director of a company or of a foreign company to which Division 2 of Part XI applies or to take part whether directly or indirectly, in the

management of such a company or foreign company may be made by a person against whom a disqualification order has been made upon that person giving the Minister not less than 14 days' notice of his intention to apply for such leave.

(7) On the hearing of any application under this section, the Minister may be represented at the hearing and may oppose the granting of the application.

(8) Without prejudice to section 409, a District Court may make a disqualification order under this section.

(9) Any right to apply for leave of the Court to be a director or promoter or to be concerned or take part in the management of a company that was subsisting immediately before 12th November 1993 shall on or after that date be treated as subsisting by virtue of the corresponding provision made under this section.
[UK, 1948, s. 188; Aust. 1961, s. 122]

Disqualification for persistent default in relation to delivery of documents to Registrar

155.—(1) Where a person has been persistently in default in relation to relevant requirements of this Act and that person, within a period of 5 years after he has last been adjudged guilty of any offence or has had made against him an order under section 13 or 399 in relation to any such relevant requirements of this Act, without the leave of the Court, is a director or promoter of, or is in any way directly or indirectly concerned or takes part in the management of a company, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.
[15/84]

(2) Any provision of this Act which requires any return, account or other document to be filed with, delivered or sent, or notice of any matter to be given, to the Registrar is a relevant requirement of this Act for the purposes of this section.

(3) For the purposes of this section, the fact that a person has been persistently in default in relation to relevant requirements of this Act may, subject to subsection (8), be conclusively proved by showing that, within a period of 5 years, he has been adjudged guilty of 3 or more offences in relation to any such requirements or has had 3 or more orders made against him under section 13 or 399 in relation to those requirements.
[13/87]

(4) A person shall be treated as being adjudged guilty of 3 or more offences in relation to any such relevant requirements of this Act for the purpose of subsection (3) if he is convicted of any 3 or more offences by virtue of any contravention of, or failure to comply with, any such requirements (whether on his own part or on the part of any company).

(5) For the purpose of this section, a conviction for an offence under section 154(2)(*a*) shall not be treated as an offence in relation to a relevant requirement of this Act.

(6) Where a person has had a third or subsequent order made against him under section 13 or 399 and by virtue of the operation of this section that person is disqualified from being a director or promoter of or from being in any way directly or indirectly concerned or taking part in the management of a company, nothing in this section shall be construed as preventing that person from complying with the order of the Court and for this purpose he shall be deemed to have the same status, powers and duties as he had at the time the act, matter or thing should have been done.

(7) For the purpose of this section, a certificate of the Registrar stating that a person has been adjudged guilty of 3 or more offences or has had made against him 3 or more orders under section 13 or 399 in relation to the requirements of this Act shall in all courts be received as prima facie evidence of the facts stated therein.

(8) No account shall be taken for the purposes of this section of any offence which was committed or, in the case of a continuing offence, began before 15th May 1984.

[S 205/84]

(9) A person intending to apply for leave of the Court under this section shall give to the Minister not less than 14 days' notice of his intention so to apply.

(10) On the hearing of any application under this section, the Minister may be represented and may oppose the granting of the application.

(11) In this section, company includes an unregistered company within the meaning of section 350(1).

Disqualification under Limited Liability Partnerships Act 2005

155A. A person who is subject to a disqualification or disqualification order under section 34, 35 or 36 of the Limited Liability Partnerships Act 2005 (Act 5 of 2005) shall not act as director of, or in any way (whether directly or indirectly) take part in or be concerned in the management of, a corporation during the period of the disqualification or disqualification order.

[5/2005]

Disclosure of interests in transactions, property, offices, etc.

156.—(1) Subject to this section, every director of a company who is in any way, whether directly or indirectly, interested in a transaction or proposed transaction with the company shall as soon as practicable after the relevant facts have come to his knowledge declare the nature of his interest at a meeting of the directors of the company.

[8/2003]

(2) The requirements of subsection (1) shall not apply in any case where the interest of the director consists only of being a member or creditor of a corporation which is interested in a transaction or proposed transaction with the first-mentioned company if the interest of the director may properly be regarded as not being a material interest.

[8/2003]

(3) A director of a company shall not be deemed to be interested or to have been at any time interested in any transaction or proposed transaction by reason only —

(*a*) in a case where the transaction or proposed transaction relates to any loan to the company — that he has guaranteed or joined in guaranteeing the repayment of the loan or any part of the loan; or

(*b*) in a case where the transaction or proposed transaction has been or will be made with or for the benefit of or on behalf of a corporation which by virtue of section 6 is deemed to be related to the company — that he is a director of that corporation,

and this subsection shall have effect not only for the purposes of this Act but also for the purposes of any other law, but shall not affect the operation of any provision in the articles of the company.

[8/2003]

(4) For the purposes of subsection (1), a general notice given to the directors of a company by a director to the effect that he is an officer or member of a specified corporation or a member of a specified firm or a partner or officer of a specified limited liability partnership and is to be regarded as interested in any transaction which may, after the date of the notice, be made with that corporation, firm or limited liability partnership shall be deemed to be a sufficient declaration of interest in relation to any transaction so made if —

(*a*) it specifies the nature and extent of his interest in the specified corporation, firm or limited liability partnership;

(*b*) his interest is not different in nature or greater in extent than the nature and extent so specified in the general notice at the time any transaction is so made; and

(*c*) it is given at a meeting of the directors or the director takes reasonable steps to ensure that it is brought up and read at the next meeting of the directors after it is given.

[5/2005]

(5) Every director of a company who holds any office or possesses any property whereby whether directly or indirectly duties or interests might be created in conflict with his duties or interests as director shall declare at a meeting of the directors of the company the fact and the nature, character and extent of the conflict.

(6) The declaration shall be made at the first meeting of the directors held —

(*a*) after he becomes a director; or

(*b*) (if already a director) after he commenced to hold the office or to possess the property,

as the case requires.

(7) The secretary of the company shall record every declaration under this section in the minutes of the meeting at which it was made.

(8) For the purposes of this section, an interest of a member of a director's family shall be treated as an interest of the director and the words "member of a director's family" shall include his spouse, son, adopted son, step-son, daughter, adopted daughter and step-daughter.

[10/74; 8/2003]

(9) Subject to subsection (3), this section shall be in addition to and not in derogation of the operation of any rule of law or any provision in the articles restricting a director from having any interest in transactions with the company or from holding offices or possessing properties involving duties or interests in conflict with his duties or interests as a director.

[8/2003]

(10) Any director of a company who fails to comply with any of the provisions of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months.

[15/84]

[UK, 1948, s. 199; Aust., 1961, s. 123]

As to the duty and liability of officers

157.—(1) A director shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office.

(2) An officer or agent of a company shall not make improper use of any information

acquired by virtue of his position as an officer or agent of the company to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the company.

[62/70]

(3) An officer or agent who commits a breach of any of the provisions of this section shall be —

(*a*) liable to the company for any profit made by him or for any damage suffered by the company as a result of the breach of any of those provisions; and

(*b*) guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months.

[15/84]

(4) This section is in addition to and not in derogation of any other written law or rule of law relating to the duty or liability of directors or officers of a company.

(5) In this section —

"officer" includes a person who at any time has been an officer of the company;

"agent" includes a banker, solicitor or auditor of the company and any person who at any time has been a banker, solicitor or auditor of the company.

[Aust., 1961, s. 124]

Powers of directors

157A.—(1) The business of a company shall be managed by or under the direction of the directors.

[8/2003]

(2) The directors may exercise all the powers of a company except any power that this Act or the memorandum and articles of the company require the company to exercise in general meeting.

[8/2003]

[Aust., 2002, s. 198A]

Director declarations where company has one director

157B. Where a company only has one director, that director may make a declaration required or authorised to be made under this Act by recording the declaration and signing the record; and such recording and signing of the declaration satisfies any requirement in this Act that the declaration be made at a meeting of the directors.

[5/2004]

[Aust., 2001, s. 248B]

Use of information and advice

157C.—(1) Subject to subsection (2), a director of a company may, when exercising powers or performing duties as a director, rely on reports, statements, financial data and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:

(*a*) an employee of the company whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned;

(*b*) a professional adviser or an expert in relation to matters which the director believes on reasonable grounds to be within the person's professional or expert competence;

(*c*) any other director or any committee of directors upon which the director did not serve in relation to matters within that other director's or committee's designated authority.

[5/2004]

(2) Subsection (1) shall apply to a director only if the director —

(*a*) acts in good faith;

(*b*) makes proper inquiry where the need for inquiry is indicated by the circumstances; and

(*c*) has no knowledge that such reliance is unwarranted.

[5/2004]

[NZ, 1993, s. 138 (originally s. 107B of the New Zealand draft legislation as reflected in the NZ Law Commission 1989 Report)]

Disclosure of company information by certain directors

158.—(1) A director of a company may disclose information which he has in his capacity as a director or an employee of a company, being information that would not otherwise be available to him, to the persons specified in subsection (2) if the conditions specified in subsection (3) are met.

[8/2003]

(2) The information referred to in subsection (1) may be disclosed to —

(*a*) a person whose interests the director represents; or

(*b*) a person in accordance with whose directions or instructions the director may be required or is accustomed to act in relation to the director's powers and duties.

[8/2003]

(3) The conditions referred to in subsection (1) are —

(*a*) the director declares at a meeting of the directors of the company the name and office or position held by the person to whom the information is to be disclosed and the particulars of such information;

(*b*) the director is first authorised by the board of directors to make the disclosure; and

(*c*) the disclosure will not be likely to prejudice the company.

[8/2003]

(4) The matters declared by a director under subsection (3)(*a*) shall be recorded in the minutes of the meeting of the directors.

[8/2003]

[NZ, 1993, s. 145]

Power of directors to have regard to interest of its employees, members and rulings of Securities Industry Council

159. The matters to which the directors of a company are entitled to have regard in exercising their powers shall include —

(*a*) the interests of the company's employees generally, as well as the interests of its members; and

(*b*) the rulings of the Securities Industry Council on the interpretation of the principles and rules of and the practice to be followed under the Singapore Code on Take-overs and Mergers.

[10/74]

Approval of company required for disposal by directors of company's undertaking or property

160.—(1) Notwithstanding anything in a company's memorandum or articles, the directors shall not carry into effect any proposals for disposing of the whole or substantially the whole of the company's undertaking or property unless those proposals have been approved by the company in general meeting.

[10/74]

(2) The Court may, on the application of any member of the company, restrain the directors from entering into a transaction in contravention of subsection (1).

(3) A transaction entered into in contravention of subsection (1) shall, in favour of any person dealing with the company for valuable consideration and without actual notice of the contravention, be as valid as if that subsection had been complied with.

(4) This section shall not apply to proposals for disposing of the whole or substantially the whole of the company's undertaking or property made by a receiver and manager of any part of the undertaking or property of the company appointed under a power contained in any instrument or a liquidator of a company appointed in a voluntary winding up.

Substantial property transactions

160A. [*Repealed by Act 38 of 1998*]

Exceptions from section 160A

160B. [*Repealed by Act 38 of 1998*]

Liability arising from contravention of section 160A

160C. [*Repealed by Act 38 of 1998*]

Interpretation

160D. [*Repealed by Act 38 of 1998*]

Approval of company required for issue of shares by directors

161.—(1) Notwithstanding anything in a company's memorandum or articles, the directors shall not, without the prior approval of the company in general meeting, exercise any power of the company to issue shares.

[10/74; 15/84]

(2) Approval for the purposes of this section may be confined to a particular exercise of that power or may apply to the exercise of that power generally; and any such approval may be unconditional or subject to conditions.

(3) Any approval for the purposes of this section shall continue in force until —

(*a*) the conclusion of the annual general meeting commencing next after the date on

which the approval was given; or

(*b*) the expiration of the period within which the next annual general meeting after that date is required by law to be held,

whichever is the earlier; but any approval may be previously revoked or varied by the company in general meeting.

(4) The directors may issue shares notwithstanding that an approval for the purposes of this section has ceased to be in force if the shares are issued in pursuance of an offer, agreement or option made or granted by them while the approval was in force and they were authorised by the approval to make or grant an offer, agreement or option which would or might require shares to be issued after the expiration of the approval.

(5) Section 186 shall apply to any resolution whereby an approval is given for the purposes of this section.

(6) Any issue of shares made by a company in contravention of this section shall be void and consideration given for the shares shall be recoverable accordingly.

(7) Any director who knowingly contravenes, or permits or authorises the contravention of, this section with respect to any issue of shares shall be liable to compensate the company and the person to whom the shares were issued for any loss, damages or costs which the company or that person may have sustained or incurred thereby; but no proceedings to recover any such loss, damages or costs shall be commenced after the expiration of 2 years from the date of the issue.

Loans to directors

162.—(1) A company (other than an exempt private company) shall not make a loan to a director of the company or of a company which by virtue of section 6 is deemed to be related to that company, or enter into any guarantee or provide any security in connection with a loan made to such a director by any other person but nothing in this section shall apply —

(*a*) subject to subsection (2), to anything done to provide such a director with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company;

(*b*) to provide a loan to such a director who is engaged in the full-time employment of the company or of a corporation that is deemed to be related to the company, as the case may be, for the purpose of purchasing or otherwise acquiring a home occupied or to be occupied by the director, except that not more than one such loan may be outstanding from the director at any time;

(*c*) to any loan made to such a director who is engaged in the full-time employment of the company or of a corporation that is deemed to be related to that company, as the case may be, where the company has at a general meeting approved of a scheme for the making of loans to employees of the company and the loan is in accordance with that scheme; or

(*d*) to any loan made to such director in the ordinary course of business of a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons if the activities of that company are

regulated by any written law relating to banking, finance companies or insurance or are subject to supervision by the Monetary Authority of Singapore.

[8/2003]

(2) Subsection (1)(*a*) or (*b*) shall not authorise the making of any loan, or the entering into any guarantee, or the provision of any security except —

(*a*) with the prior approval of the company given at a general meeting at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed; or

(*b*) on condition that, if the approval of the company is not given as aforesaid at or before the next following annual general meeting, the loan shall be repaid or the liability under the guarantee or security shall be discharged, as the case may be, within 6 months from the conclusion of that meeting.

(3) Where the approval of the company is not given as required by any such condition the directors authorising the making of the loan or the entering into the guarantee or the provision of the security shall be jointly and severally liable to indemnify the company against any loss arising therefrom.

(4) Where a company contravenes this section any director who authorises the making of any loan, the entering into of any guarantee or the providing of any security contrary to this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $20,000 or to imprisonment for a term not exceeding 2 years.

[15/84]

(5) Nothing in this section shall operate to prevent the company from recovering the amount of any loan or amount for which it becomes liable under any guarantee entered into or in respect of any security given contrary to this section.

(6) For the purpose of subsection (1), a reference to a director therein includes a reference to the director's spouse, son, adopted son, step-son, daughter, adopted daughter and step-daughter.

[15/84]

[UK, 1948, s. 190; Aust., 1961, s. 125]

Prohibition of loans to persons connected with directors of lending company

163.—(1) Subject to this section, it shall not be lawful for a company (other than an exempt private company) —

(*a*) to make a loan to another company; or

(*b*) to enter into any guarantee or provide any security in connection with a loan made to another company by a person other than the first-mentioned company,

if a director or directors of the first-mentioned company is or together are interested in 20% or more of the total number of equity shares in the other company (excluding treasury shares).

[10/74; 15/84; 13/87; 21/2005]

(2) Subsection (1) shall extend to apply to a loan, guarantee or security in connection with a loan made by a company (other than an exempt private company) to another company where such other company is incorporated outside Singapore, if a director or directors of the first-mentioned company —

(*a*) is or together are interested in 20% or more of the total number of equity shares in the other company (excluding treasury shares); or

(*b*) in a case where the other company does not have a share capital, exercises or together exercise control over the other company whether by reason of having the power to appoint directors or otherwise.

[15/84; 13/87; 21/2005]

(3) For the purposes of this section —

(*a*) where a company makes a loan to another company or gives a guarantee or provides security in connection with a loan made to another company, a director or directors of the first-mentioned company shall not be taken to have an interest in shares in that other company by reason only that the first-mentioned company has an interest in shares in that other company and a director or directors have an interest in shares in the first-mentioned company; and

(*b*) "interest in shares" has the meaning assigned to that expression in section 7.

[15/84]

(4) This section shall not apply —

(*a*) to anything done by a company where the other company (whether that company is incorporated in Singapore or otherwise) is its subsidiary or holding company or a subsidiary of its holding company; or

(*b*) to a company, whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, to anything done by the company in the ordinary course of that business if the activities of that company are regulated by any written law relating to banking, finance companies or insurance or are subject to supervision by the Monetary Authority of Singapore.

[15/84; 13/87]

(5) For the purposes of this section, an interest of a member of a director's family shall be treated as the interest of the director and the words "member of a director's family" shall include his spouse, son, adopted son, step-son, daughter, adopted daughter and step-daughter.

[15/84]

(6) Nothing in this section shall operate to prevent the recovery of any loan or the enforcement of any guarantee or security whether made or given by the company or any other person.

[15/84]

(7) Where a company contravenes this section, any director who authorises the making of any loan, the entering into of any guarantee or the providing of any security contrary to this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $20,000 or to imprisonment for a term not exceeding 2 years.

[15/84]

Register of director's shareholdings

164.—(1) A company shall keep a register showing with respect to each director of the company particulars of —

(*a*) shares in that company or in a related corporation, being shares of which the director is a registered holder or in which he has an interest and the nature and extent of that interest;

(*b*) debentures of or participatory interests made available by the company or a related

corporation which are held by the director or in which he has an interest and the nature and extent of that interest;

(*c*) rights or options of the director or of the director and another person or other persons in respect of the acquisition or disposal of shares in the company or a related corporation; and

(*d*) contracts to which the director is a party or under which he is entitled to a benefit, being contracts under which a person has a right to call for or to make delivery of shares in the company or in a related corporation.

[49/73]

(2) A company need not show, in its register with respect to a director, particulars of shares in a related corporation that is a wholly-owned subsidiary of the company or of another corporation.

[49/73]

(3) A company that is a wholly-owned subsidiary of another company shall be deemed to have complied with this section in relation to a director who is a director of that other company if the particulars required by this section to be shown in the register of the first-mentioned company with respect to the director are shown in the register of the second-mentioned company.

[49/73]

(4) For the purposes of subsections (2) and (3), a company is a wholly-owned subsidiary of another company if none of the members of the first-mentioned company is a person other than —

(*a*) the second-mentioned company;

(*b*) a nominee of the second-mentioned company;

(*c*) a subsidiary of the second-mentioned company being a subsidiary none of the members of which is a person other than the second-mentioned company or a nominee of the second-mentioned company; or

(*d*) a nominee of such a subsidiary.

[49/73]

(5) A company shall, within 3 days after receiving notice from a director under section 165(1)(*a*) of this Act or section 133(1)(*a*), (*b*), (*c*), (*d*) or (*e*) of the Securities and Futures Act (Cap. 289), enter in its register in relation to the director the particulars referred to in subsection (1) including the number and description of shares, debentures, participatory interests, rights, options and contracts to which the notice relates and in respect of shares, debentures, participatory interests, rights or options acquired or contracts entered into after he became a director —

(*a*) the price or other consideration for the transaction, if any, by reason of which an entry is required to be made under this section; and

(*b*) the date of —

(i) the agreement for the transaction or, if it is later, the completion of the transaction; or

(ii) where there was no transaction, the occurrence of the event by reason of which an entry is required to be made under this section.

[49/73]
[2/2009 wef 19/11/2012]

(6) A company shall, within 3 days after receiving a notice from a director under section 165(1)(*b*) of this Act or section 133(1)(*g*) (in respect of a change in the particulars of any matter referred to in section 133(1)(*a*) to (*e*)) of the Securities and Futures Act, enter in its register the particulars of the change referred to in the notice.

[49/73]
[2/2009 wef 19/11/2012]

(7) A company is not, by reason of anything done under this section, to be taken for any purpose to have notice of or to be put upon inquiry as to the right of a person or in relation to a share in debenture of or participatory interest made available by the company.

[49/73]

(8) A company shall, subject to this section, keep its register at the registered office of the company and the register shall be open for inspection by a member of the company without charge and by any other person on payment for each inspection of a sum of $3 or such lesser sum as the company requires.

[49/73]

(9) A person may request a company to furnish him with a copy of its register or any part thereof on payment in advance of a sum of $1 or such lesser sum as the company requires for every page or part thereof required to be copied and the company shall send the copy to that person within 21 days or such longer period as the Registrar thinks fit after the day on which the request is received by the company.

[49/73]

(10) The Registrar may by notice in writing require a company to send to him within such time as may be specified in the notice a copy of its register or any part thereof.

[49/73]

(11) A company shall produce its register at the commencement of each annual general meeting of the company and keep it open and accessible during the meeting to all persons attending the meeting.

[49/73]

(12) It is a defence to a prosecution for failing to comply with subsection (1) or (5) in respect of particulars relating to a director if the defendant proves that the failure was due to the failure of the director to comply with section 165 of this Act or (as the case may be) section 133 of the Securities and Futures Act (Cap. 289) with respect to those particulars.

[49/73]
[2/2009 wef 19/11/2012]

(13) In this section —

(*a*) a reference to a participatory interest is a reference to a unit in a collective investment scheme within the meaning of section 2 of the Securities and Futures Act (Cap. 289); and

(*b*) a reference to a person who holds or acquires shares, debentures or participatory interests or an interest in shares, debentures or participatory interests includes a reference to a person who under an option holds or acquires a right to acquire or dispose of a share, debenture or participatory interest or an interest in a share, debenture or participatory interest.

[49/73; 42/2001]

(14) In determining for the purposes of this section whether a person has an interest in a debenture or participatory interest, the provisions of section 7, except subsections (1) and (3) thereof, have effect and in applying those provisions a reference to a share shall be read as a reference to a debenture or participatory interest.

[49/73]

(15) For the purposes of the application of this section —

(*a*) a director of a company shall be deemed to hold or have an interest or a right in or over any shares or debentures if a wife or husband of the director (not being herself or himself a director thereof) holds or has an interest or a right in or over any shares or debentures or an infant son or infant daughter of that director (not being himself or herself a director) holds or has an interest in shares or debentures; and

(*b*) any contract, assignment or right of subscription exercised or made by or grant made to the wife or husband of a director of a company (not being herself or himself a director thereof) shall be deemed to have been entered into or exercised or made or, as the case may be, as having been made to the director; and so shall a contract, assignment or right of subscription entered into, exercised or made by or grant made to an infant son or infant daughter of a director of a company (not being himself or herself a director thereof).

[49/73]

(16) In subsection (15), "son" includes step-son and adopted son and "daughter" includes step-daughter and adopted daughter.

[49/73]

(17) 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 on conviction to a fine not exceeding $15,000 or to imprisonment for a term not exceeding 3 years and, in the case of a continuing offence, to a further fine of $1,000 for every day during which the offence continues after conviction.

[49/73; 15/84]

[Aust., 1961, s. 126]

Power to require disclosure of directors' emoluments

164A.—(1) If a company is served with a notice sent by or on behalf of —

(*a*) at least 10% of the total number of members of the company (excluding the company itself if it is registered as a member); or

(*b*) a member or members with at least 5% of the total number of issued shares of the company (excluding treasury shares),

requiring the emoluments and other benefits received by the directors of the company or of a subsidiary to be disclosed, the company shall —

(*c*) within 14 days or such longer period as the Registrar may allow, prepare or cause to be prepared and cause to be audited a statement showing the total amount of emoluments and other benefits paid to or received by each of the directors of the company and each director of a subsidiary; including any amount paid by way of salary, for the financial year immediately preceding the service of the notice;

(*d*) when the statement referred to in paragraph (*c*) has been audited, within 14 days send

a copy of the statement to all persons entitled to receive notice of general meetings of the company; and

(*e*) lay the statement before the next general meeting of the company held after the statement is audited.

[13/87; 21/2005]

(2) If default is made in complying with this section, the company and every director of the company shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000.

[Aust., 1961, s. 131]

General duty to make disclosure

165.—(1) A director of a company shall give notice in writing to the company —

(*a*) of such particulars relating to shares, debentures, participatory interests, rights, options and contracts as are necessary for the purposes of compliance by the first-mentioned company with section 164;

(*b*) of particulars of any change in respect of the particulars referred to in paragraph (*a*) of which notice has been given to the company including the consideration, if any, received as a result of the event giving rise to the change;

(*c*) of such events and matters affecting or relating to himself as are necessary for the purposes of compliance by the company with section 173 that are applicable in relation to him; and

(*d*) if he is a director of a public company or of a subsidiary of a public company of the date when he attained or will have attained the age of 70 years.

[49/73]

(2) A notice under subsection (1) shall be given —

(*a*) in the case of a notice under subsection (1)(*a*), within 2 business days after —

(i) the date on which the director became a director; or

(ii) the date on which the director became a registered holder of or acquired an interest in the shares, debentures, participatory interests, rights, options or contracts,

whichever last occurs;

(*b*) in the case of a notice under subsection (1)(*b*), within 2 business days after the occurrence of the event giving rise to the change referred to in that paragraph; and

(*c*) in the case of a notice under subsection (1)(*d*), within 2 business days after the date on which the director became a director.

[49/73; 13/87; 8/2003]

(3) A company shall, within 7 days after it receives a notice given under subsection (1), send a copy of the notice to each of the other directors of the company.

[49/73]

(4) It is a defence to a prosecution for failing to comply with subsection (1)(*a*) or (*b*) or with subsection (2) if the defendant proves that his failure was due to his not being aware of a fact or occurrence the existence of which was necessary to constitute the offence and that —

(*a*) he was not so aware on the date of the information or summons; or

(*b*) he became so aware less than 7 days before the date of the summons.

[49/73; 15/84]

(5) For the purposes of subsection (4), a person shall conclusively be presumed to have been aware at a particular time of a fact or occurrence —

(*a*) of which he would, if he had acted with reasonable diligence in the conduct of his affairs, have been aware at that time; or

(*b*) of which an employee or agent of the person, being an employee or agent having duties or acting in relation to his master's or principal's interest or interests in a share in or a debenture of or participatory interest issued by the company concerned, was aware or would, if he had acted with reasonable diligence in the conduct of his master's or principal's affairs, have been aware at that time.

[49/73]

(6) In this section —

(*a*) a reference to a participatory interest is a reference to a unit in a collective investment scheme within the meaning of section 2 of the Securities and Futures Act (Cap. 289); and

(*b*) a reference to a person who holds or acquires shares, debentures or participatory interests or an interest in shares, debentures or participatory interests includes a reference to a person who under an option holds or acquires a right to acquire a share, debenture, or participatory interest or an interest in a share, debenture or participatory interest.

[49/73; 42/2001]

(7) In determining for the purposes of this section whether a person has an interest in a debenture or participatory interest, the provisions of section 7, except subsections (1) and (3) thereof, have effect and in applying those provisions a reference to a share shall be read as a reference to a debenture or participatory interest.

[49/73]

(8) Nothing in section 164 or this section requires a company to enter in its register or requires a director to give notice to the company of matters that are shown in the register kept by the company in accordance with the repealed section 134* as in force immediately before 5th October 1973.

* Section 134 of the Companies Act (1970 Ed. (Cap. 185)).

[49/73]

(9) Any director who fails to comply with subsection (1) or (2) or any company that fails to comply with subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $15,000 or to imprisonment for a term not exceeding 3 years and, in the case of a continuing offence, to a further fine of $1,000 for every day during which the offence continues after conviction.

[49/73; 15/84]

[Aust., 1961, s. 127]

(10) Subsection (1)(*a*) and (*b*) shall not apply to a person —

(*a*) who is a director of a company all or any of the shares of which are listed for quotation on the official list of a securities exchange as defined in the Securities and

Futures Act; and

(*b*) who is required to make disclosure of the matters referred to in subsection (1)(*a*) and (*b*) of this section under section 133 of that Act.

[2/2009 wef 19/11/2012]

Duty of director to notify stock exchange of acquisition, etc., of its securities

166. [*Repealed by Act 2 of 2009 wef 19/11/2012*]

Prohibition of tax-free payments to directors

167. [*Repealed by Act 13 of 1987*]

Payments to director for loss of office, etc.

168.—(1) It shall not be lawful —

(*a*) for a company to make to any director any payment by way of compensation for loss of office as an officer of the company or of a subsidiary of the company or as consideration for or in connection with his retirement from any such office; or

(*b*) for any payment to be made to any director of a company in connection with the transfer of the whole or any part of the undertaking or property of the company,

unless particulars with respect to the proposed payment, including the amount thereof, have been disclosed to the members of the company and the proposal has been approved by the company in general meeting and when any such payment has been unlawfully made the amount received by the director shall be deemed to have been received by him in trust for the company.

(2) Where such a payment is to be made to a director in connection with the transfer to any person, as a result of an offer made to shareholders, of all or any of the shares in the company, that director shall 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, unless those particulars are furnished to the shareholders by virtue of any requirement of law relating to take-over offers or any requirement of the Take-over Code referred to in section 139 of the Securities and Futures Act (Cap. 289).

[42/2001]

(3) A director who fails to comply with subsection (2) and a person who has been properly required by a director to include in or send with any notice under this section the particulars required by that subsection and who fails to do so shall be guilty of an offence, and if the requirements of that subsection are not complied with any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any person who has sold his shares as a result of the offer made.

(4) If in connection with any such transfer 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 connection with his retirement from office.

As to payments to directors

(5) Any reference in this section to payments to any director of a company by way of compensation for loss of office or as consideration for or in connection with his retirement from office shall not include —

(*a*) any payment under an agreement entered into before 1st January 1967;

(*b*) any payment under an agreement particulars of which have been disclosed to and approved by special resolution of the company;

(*c*) any bona fide payment by way of damages for breach of contract;

(*d*) any bona fide payment by way of pension or lump sum payment in respect of past services, including any superannuation or retiring allowance, superannuation gratuity or similar payment, where the value or amount of the pension or payment, except in so far as it is attributable to contributions made by the director, does not exceed the total emoluments of the director in the 3 years immediately preceding his retirement or death; or

(*e*) any payment to a director pursuant to an agreement made between the company and him before he became a director of the company as the consideration or part of the consideration for the director agreeing to serve the company as a director.

(6) This section shall be in addition to and not in derogation of any rule of law requiring disclosure to be made with respect to any such payments or any other like payment.

(7) In this section, "director" includes any person who has at any time been a director of the company or of a corporation which is by virtue of section 6 deemed to be related to the company.

[UK, 1948, ss. 191-194; Aust., 1961, s. 129]

Provision and improvement of director's emoluments

169.—(1) A company shall not at any meeting or otherwise provide emoluments or improve emoluments for a director of a company in respect of his office as such unless the provision is approved by a resolution that is not related to other matters and any resolution passed in breach of this section shall be void.

[10/74; 13/87]

(2) In this section, "emoluments" in relation to a director includes fees and percentages, any sums paid by way of expenses allowance in so far as those sums are charged to income tax in Singapore, any contribution paid in respect of a director under any pension scheme and any benefits received by him otherwise than in cash in respect of his services as director.

Provisions as to assignment of office

170.—(1) If in the case of any public company provision is made by the articles or by any agreement entered into between any person and the company for empowering a director or manager of the company to assign his office as such to another person, any such assignment of office shall, notwithstanding anything in that provision, be of no effect until approved by a special resolution of the company.

(2) This section shall not be construed so as to prevent the appointment by a director, if authorised by the articles and subject thereto, of an alternate or substitute director to act for or

on behalf of the director during his inability for any time to act as director.
[UK, 1948, s. 204; Aust., 1961, s. 130]

Secretary

171.—(1) Every company shall have one or more secretaries each of whom shall be a natural person who has his principal or only place of residence in Singapore.

[13/87; 40/89]

(1A) It shall be the duty of the directors of a company to take all reasonable steps to secure that each secretary of the company is a person who appears to them to have the requisite knowledge and experience to discharge the functions of secretary of the company.

[8/2003]

(1AA) In addition, it shall be the duty of the directors of a public company to take all reasonable steps to secure that each secretary of the company is a person who —

(*a*) on 15th May 1987 held the office of secretary in that company and continued to hold that office on 15th May 2003;

(*b*) for at least 3 years in the period of 5 years immediately preceding his appointment as secretary, held the office of secretary of a company;

(*c*) is a qualified person under the Legal Profession Act (Cap. 161), a public accountant, a member of the Singapore Association of the Institute of Chartered Secretaries and Administrators, or a member of such other professional association as may be prescribed; or

(*d*) is, by virtue of such academic or professional qualifications as may be prescribed, capable of discharging the functions of secretary of the company.

[8/2003; 4/2004]

(1AB) The Registrar may require a private company to appoint a person who satisfies subsection (1AA)(*b*), (*c*) or (*d*) as its secretary if he is satisfied that the company has failed to comply with any provision of this Act with respect to the keeping of any register or other record.

[8/2003]

(1B) Any person who is appointed by the directors of a company as a secretary shall, at the time of his appointment, by himself or through a prescribed person authorised by him, file with the Registrar a declaration in the prescribed form that he consents to act as secretary and providing the prescribed particulars.

[12/2002; 8/2003]

(1C) A person to whom subsection (1AA)(*a*) applies who, after 15th May 1987, becomes a secretary of another company and is not qualified to act as secretary under subsection (1AA)(*b*), (*c*) and (*d*) shall not be regarded as being a person who is qualified to discharge the functions of secretary under this subsection.

[8/2003]

(1D) In this subsection and section 173, "secretary" includes an assistant or deputy secretary.

(1E) Where a director is the sole director of a company, he shall not act or be appointed as the secretary of the company.

[5/2004]

(2) Subsection (1) shall not operate to prevent a corporation which was acting as the secretary of a company immediately before 29th December 1967 from continuing to act as secretary of that company for a period of 12 months after that date.

[S 258/67]

(3) The secretary or secretaries shall be appointed by the directors and at least one of those secretaries shall be present at the registered office of the company by himself or his agent or clerk on the days and at the hours during which the registered office is to be accessible to the public.

(4) Anything required or authorised to be done by or in relation to the secretary may, if the office is vacant or for any other reason the secretary is not capable of acting, be done by or in relation to any assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by or in relation to any officer of the company authorised generally or specially in that behalf by the directors:

Provided that the office of secretary shall not be left vacant for more than 6 months at any one time.

(5) A provision requiring or authorising a thing to be done by or in relation to a director and the secretary shall not be satisfied by its being done by or in relation to the same person acting both as director and as, or in place of, the secretary.

[UK, 1948, s. 177-179; UK, 1985, s. 283; Aust., 1961, s. 132]

Provisions indemnifying directors or officers

172.—(1) Any provision, whether in the articles or in any contract with a company or otherwise, for exempting any officer or auditor of the company from, or indemnifying him against, any liability which by 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.

(2) This section shall not prevent a company —

(*a*) from purchasing and maintaining for any such officer insurance against any liability referred to in subsection (1); or

(*b*) from indemnifying such officer or auditor against any liability incurred by him —

(i) in defending any proceedings (whether civil or criminal) in which judgment is given in his favour or in which he is acquitted; or

(ii) in connection with any application under section 76A(13) or 391 or any other provision of this Act, in which relief is granted to him by the court.

[38/98; 8/2003]

[UK, 1948, s. 205; UK, 1985, s. 310 (3); Aust., 1961, s. 133]

Register of directors, managers, secretaries and auditors

173.—(1) Every company shall keep at its registered office a register of its directors, managers, secretaries and auditors.

[15/84; 13/87]

(2) The register shall —

(*a*) contain, with respect to each director, a signed copy of his consent to act as director

under this Act together with a prescribed statement that he is not disqualified to act as a director;

(*b*) specify his present full name, any former name, his usual residential address, his nationality and identification (if any); and

(*c*) contain documentary evidence (if any) of any change in his name.

[12/2002; 8/2003]

(3) Where a person is a director in one or more subsidiaries of the same holding company it shall be sufficient compliance with subsection (2) if it is disclosed that the person is the holder of one or more directorships in that group of companies and the group may be described by the name of the holding company with the addition of the word "Group".

(4) The register shall specify with respect to each manager, secretary and auditor his full name, identification and address.

[12/2002]

(4A) The register shall contain a signed copy of the consent of the secretary of the company to act as the secretary.

[12/2002]

(5) The register shall be open to the inspection of the Registrar and any member of the company without charge and of any other person on payment of $2, or such less sum as the company requires, for each inspection.

[12/2002]

(6) The company shall lodge with the Registrar —

(*a*) within one month after —

(i) a person becomes, or ceases to be, a director of the company; or

(ii) a person who is a director of the company becomes disqualified from acting as such by virtue of this Act or any other written law,

a return in the prescribed form notifying the Registrar of that fact and containing, with respect to that person, the particulars required to be specified in the register;

(*b*) [*Deleted by Act 12 of 2002*]

(*c*) within one month after a person becomes a manager, secretary or auditor of the company, a return in the prescribed form notifying the Registrar of that fact and specifying the full name and address of that person;

(*d*) within one month after a person ceases to be a manager, secretary or auditor of the company, a return in the prescribed form notifying the Registrar of that fact;

(*e*) [*Deleted by Act 28 of 1994*]

(*f*) within one month of any change in the name, identification or nationality of any director, manager or secretary, a notice in the prescribed form notifying the Registrar of the new name, identification or nationality of that person.

[13/87; 12/2002]

(6A) Any director of a company who becomes disqualified from acting as such by virtue of section 148 or 155 or who resigns from office may himself lodge with the Registrar the return referred to in subsection (6)(*a*) if he has reasonable cause to believe that the company will not lodge the return with the Registrar.

[12/2002]

(6B) Where the Registrar has reasonable cause to believe that a director of a company is no longer qualified to act as such by virtue of section 148 or 155, he may, either upon lodgment of a return referred to in subsection (6)(*a*) or on his own initiative, remove the name and other particulars of the director from any register kept by the Registrar under section 12.

[12/2002]

(7) Any director, manager or secretary of a company who has changed his residential address shall, within one month thereof —

(*a*) notify the company of the change; and

(*b*) subject to subsection (7A), lodge or cause to be lodged with the Registrar a notice in the prescribed form notifying the Registrar of his new residential address.

[28/94]

(7A) Where any director, manager or secretary of a company has made a report of a change of his residential address under section 8 of the National Registration Act (Cap. 201), he shall be deemed to have notified the Registrar of the change in compliance with subsection (7)(*b*).

[28/94]

(7B) If default is made by a company in complying with any of subsections (1) to (6), the company and every officer of the company who is in default shall each be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and also to a default penalty.

[28/94]

(7C) If default is made by any director, manager or secretary of a company in complying with subsection (7), he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and also to a default penalty.

[28/94]

(8) A certificate of the Registrar stating that from any return lodged with the Registrar pursuant to this section it appears that at any time specified in the certificate any person was a director, manager, secretary or auditor of a specified company shall in all courts and by all persons having power to take evidence for the purposes of this Act, be received as prima facie evidence of the facts stated therein and, for the purposes of this subsection, a person who appears from any return so lodged to be a director, manager, secretary or auditor of a company shall be deemed to continue as such until by a subsequent return so lodged or by a notification of change in the prescribed form so lodged it appears that he has ceased to be or becomes disqualified to act as such a director, manager, secretary or auditor.

[15/84; 12/2002]

(9) In this section —

"identification" means, in the case of any person issued with an identity card, the number of the identity card, in the case of a person not issued with an identity card, particulars of the passport or such other similar evidence of identification as is available, if any;

"director" includes an alternate, substitute or local director.

[UK, 1948, s. 200; Aust., 1961, s. 134]

Division 3 — Meetings and proceedings

Interpretation of this Division

173A. [*Repealed by Act 5 of 2004*]

Statutory meeting and statutory report

174.—(1) Every public company that is a limited company and has a share capital shall, within a period of not less than one month and not more than 3 months after the date at which it is entitled to commence business, hold a general meeting of the members of the company to be called the "statutory meeting".

(2) The directors shall at least 7 days before the day on which the meeting is to be held forward a report to be called the "statutory report" to every member of the company.

(3) The statutory report shall be certified by not less than 2 directors of the company and shall state —

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

(*b*) the total amount of cash received by the company in respect of all the shares allotted and so distinguished;

(*c*) an abstract of the receipts of the company and of the payments made thereout up to a date within 7 days of the date of the report exhibiting under distinctive headings the receipts from shares and debentures and other sources the payments made thereout and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses;

(*d*) the names and addresses and descriptions of the directors, trustees for holders of debentures, if any, auditors, if any, managers, if any, and secretaries of the company; and

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

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

(5) The directors shall cause a copy of the statutory report and the auditor's report, if any, to be lodged with the Registrar at least 7 days before the date of the statutory meeting.

(6) The directors shall cause a list showing the names and addresses of the members 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 during the continuance of the meeting.

(7) The members 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) The meeting may by ordinary resolution appoint a committee or committees of inquiry, and at any adjourned meeting a special resolution may be passed that the company be wound up if, notwithstanding any other provision of this Act, at least 7 days' notice of intention to propose the resolution has been given to every member of the company.

(10) In the event of any default in complying with this section every officer of the company who is in default and every director of the company who fails to take all reasonable steps to secure compliance with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

[15/84]

[UK, 1948, s. 130; Aust., 1961, s. 135]

Annual general meeting

175.—(1) A general meeting of every company to be called the "annual general meeting" shall in addition to any other meeting be held once in every calendar year and not more than 15 months after the holding of the last preceding annual general meeting, but so long as a company holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

[13/87]

(2) Notwithstanding subsection (1), the Registrar, on the application of the company, may, if for any special reason he thinks fit to do so, extend the period of 15 months or 18 months referred to in that subsection, notwithstanding that such period is so extended beyond the calendar year.

(3) Subject to notice being given to all persons entitled to receive notice of the meeting, a general meeting may be held at any time and the company may resolve that any meeting held or summoned to be held shall be the annual general meeting of the company.

(4) If default is made in holding an annual general meeting —

(*a*) the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and also to a default penalty; and

(*b*) the Court may on the application of any member order a general meeting to be called.

[UK, 1948, s. 131; Aust., 1961, s. 136]

Private company may dispense with annual general meetings

175A.—(1) A private company may, by resolution passed in accordance with subsection (2), dispense with the holding of annual general meetings.

[8/2003]

(2) Notwithstanding any other provision of this Act, a resolution referred to in subsection (1) shall only be treated as passed at a general meeting if it has been passed by all of such members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy present at the meeting.

[8/2003]

(3) A resolution under subsection (1) has effect for the year in which it is made and subsequent years, but does not affect any liability already incurred by reason of default in holding an annual general meeting.

[8/2003]

(4) In any year in which an annual general meeting would be required to be held but for this section, and in which no such meeting has been held, any member of the company may, by notice to the company not later than 3 months before the end of the year, require the holding of an annual general meeting in that year.

[8/2003]

(5) The power of a member under subsection (4) to require the holding of an annual general meeting is exercisable not only by the giving of a notice but also by the transmission to the company at such address as may for the time being be specified for the purpose by or on behalf of the company of an electronic communication containing the requirement.

[8/2003]

(6) If such a notice is given or electronic communication is transmitted, section 175(1) and (4) shall apply with respect to the calling of the meeting and the consequences of default.

[8/2003]

(7) A resolution referred to in subsection (1) shall cease to be in force if the company is converted to a public company.

[8/2003]

(8) If the resolution referred to in subsection (1) ceases to be in force, the company shall not be obliged under section 175 to hold an annual general meeting in that year if, at the time the resolution ceases to have effect, less than 3 months of the year remains.

[8/2003]

(9) Subsection (8) does not affect any obligation of the company to hold an annual general meeting in that year in pursuance of a notice given under subsection (4) or an electronic communication transmitted under subsection (5).

[8/2003]

(10) Unless the contrary intention appears —

(*a*) a reference in any provision of this Act to the doing of anything at an annual general meeting shall, in the case of a company that has dispensed with holding an annual general meeting in accordance with this section, be read as a reference to the doing of that thing by way of a resolution by written means under section 184A; and

(*b*) a reference in any provision of this Act to the date or conclusion of an annual general meeting of a company that has dispensed with holding an annual general meeting in accordance with this section shall, unless the meeting is held, be read as a reference to the date of expiry of the period within which the meeting is required by law to be held.

[8/2003]

(11) In this section, an address of a person includes any number or address used for electronic communication.

[5/2004]

[UK, 1985, s. 366A]

Convening of extraordinary general meeting on requisition

176.—(1) The directors of a company, notwithstanding anything in its articles, shall, on the requisition of members holding at the date of the deposit of the requisition not less than 10% of such of the paid-up capital as at the date of the deposit carries the right of voting at general meetings or, in the case of a company not having a share capital, of members representing not

less than 10% of the total voting rights of all members having at that date a right to vote at general meetings, immediately proceed duly to convene an extraordinary general meeting of the company to be held as soon as practicable but in any case not later than 2 months after the receipt by the company of the requisition.

(1A) For the purposes of subsection (1), any of the company's paid-up capital held as treasury shares shall be disregarded.

[21/2005]

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

(3) If the directors do not within 21 days after the date of the deposit of the requisition proceed to convene a meeting the requisitionists, or any of them representing more than 50% of the total voting rights of all of them, may themselves, in the same manner as nearly as possible as that in which meetings are to be convened by directors convene a meeting, but any meeting so convened shall not be held after the expiration of 3 months from that date.

(4) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors to convene a meeting shall be paid to the requisitionists by the company, and any sum so paid 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.

(5) A meeting at which a special resolution is to be proposed shall be deemed not to be duly convened by the directors if they do not give such notice thereof as is required by this Act in the case of special resolutions.

[UK, 1948, s. 132; UK, Treasury Shares, Sch., para. 19; Aust., 1961, s. 137]

Calling of meetings

177.—(1) Two or more members holding not less than 10% of the total number of issued shares of the company (excluding treasury shares) or, if the company has not a share capital, not less than 5% in number of the members of the company or such lesser number as is provided by the articles may call a meeting of the company.

[21/2005]

(2) A meeting of a company or of a class of members, other than a meeting for the passing of a special resolution, shall be called by notice in writing of not less than 14 days or such longer period as is provided in the articles.

(3) A meeting shall, notwithstanding that it is called by notice shorter than is required by subsection (2), be deemed to be duly called if it is so agreed —

(*a*) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; or

(*b*) in the case of any other meeting, by a majority in number of the members having a right to attend and vote thereat, being a majority which together holds not less than 95% of the total voting rights of all the members having a right to vote at that meeting.

[21/2005]

(4) So far as the articles do not make other provision in that behalf notice of every meeting

shall be served on every member having a right to attend and vote thereat in the manner in which notices are required to be served by Table A.

(5) [*Deleted by Act 40 of 1989*][*UK, 1948, ss. 133, 134; Aust., 1961, s. 138*]

Articles as to right to demand a poll

178.—(1) Any provision in a company's articles shall be void in so far as it would have the effect —

(*a*) of excluding the right to demand a poll at a general meeting on any question or matter other than the election of the chairman of the meeting or the adjournment of the meeting;

(*b*) of making ineffective a demand for a poll on any question or matter other than the election of the chairman of the meeting or the adjournment of the meeting that is made —

(i) by not less than 5 members having the right to vote at the meeting;

(ii) by a member or members representing not less than 10% of the total voting rights of all the members having the right to vote at the meeting; or

(iii) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than 10% of the total sum paid up on all the shares conferring that right; or

(*c*) of requiring the instrument appointing a proxy or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy to be received by the company or any other person more than 48 hours before a meeting or adjourned meeting in order that the appointment may be effective thereat.

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

(3) A person entitled to vote on a poll at a meeting shall be deemed to be a person entitled to vote for the purposes of this Act.
[UK, 1948, s. 137; Aust., 1961, s. 139]

Quorum, chairman, voting, etc., at meetings

179.—(1) So far as the articles do not make other provision in that behalf and subject to section 64 —

(*a*) 2 members of the company personally present shall form a quorum;

(*b*) any member elected by the members present at a meeting may be chairman thereof;

(*c*) in the case of a company having a share capital —

(i) on a show of hands, each member who is personally present and entitled to vote shall have one vote; and

(ii) on a poll, each member shall have one vote in respect of each share held by

him and where all or part of the share capital consists of stock or units of stock each member shall have one vote in respect of the stock or units of stock held by him which is or are or were originally equivalent to one share; and

(*d*) in the case of a company not having a share capital every member shall have one vote.

(2) On a poll taken at a meeting a person entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

(3) A corporation may by resolution of its directors or other governing body —

(*a*) if it is a member of a company, authorise such person as it thinks fit to act as its representative either at a particular meeting or at all meetings of the company or of any class of members; or

(*b*) if it is a creditor, including a holder of debentures, of a company, authorise such person as it thinks fit to act as its representative either at a particular meeting or at all meetings of any creditors of the company,

and a person so authorised shall, in accordance with his authority and until his authority is revoked by the corporation, be entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if it were an individual member, creditor or holder of debentures of the company.

(4) Where —

(*a*) a person present at a meeting is authorised to act as the representative of a corporation at the meeting by virtue of an authority given by the corporation under subsection (3); and

(*b*) the person is not otherwise entitled to be present at the meeting,

the corporation shall, for the purposes of subsection (1), be deemed to be personally present at the meeting.

(5) Subject to section 41(8) and (9), a certificate under the seal of the corporation shall be prima facie evidence of the appointment or of the revocation of the appointment, as the case may be, of a representative pursuant to subsection (3).

[13/87]

(6) Where a holding company is beneficially entitled to the whole of the issued shares of a subsidiary and a minute is signed by a representative of the holding company authorised pursuant to subsection (3) stating that any act, matter, or thing, or any ordinary or special resolution, required by this Act or by the memorandum or articles of the subsidiary to be made, performed, or passed by or at an ordinary general meeting or an extraordinary general meeting of the subsidiary has been made, performed, or passed, that act, matter, thing, or resolution shall, for all purposes, be deemed to have been duly made, performed, or passed by or at an ordinary general meeting, or as the case requires, by or at an extraordinary general meeting of the subsidiary.

(7) Where by or under any provision of this Act any notice, copy of a resolution or other document relating to any matter is required to be lodged by a company with the Registrar, and a minute referred to in subsection (6) is signed by the representative in pursuance of that subsection and the minute relates to such a matter the company shall within one month after the

signing of the minute lodge a copy thereof with the Registrar.

(8) For the purposes of this section, any reference to a member of a company does not include the company itself where it is such a member by virtue of its holding shares as treasury shares.

[21/2005]

[UK, 1948, s. 139; Aust., 1961, s. 140]

As to member's rights at meetings

180.—(1) Subject to subsection (2), every member shall, notwithstanding any provision in the memorandum or articles, have a right to attend any general meeting of the company and to speak and vote on any resolution before the meeting except that the company's articles may provide that a member shall not be entitled to vote unless all calls or other sums personally payable by him in respect of shares in the company have been paid.

(2) Notwithstanding subsection (1), the articles may provide that holders of preference shares shall not have the right to vote at a general meeting of the company except that any preference shares issued after 15th August 1984 shall carry the right to attend any general meeting and in a poll thereat to at least one vote in respect of each such share held —

(*a*) during such period as the preferential dividend or any part thereof remains in arrear and unpaid, such period starting from a date not more than 12 months, or such lesser period as the articles may provide, after the due date of the dividend;

(*b*) upon any resolution which varies the rights attached to such shares; or

(*c*) upon any resolution for the winding up of the company.

[15/84; S 205/84]

(3) For the purposes of subsection (2), a dividend shall be deemed to be due on the date appointed in the articles for the payment of the dividend for any year or other period, or if no such date is appointed, upon the day immediately following the expiration of the year or other period and whether or not such dividend shall have been earned or declared.

Proxies

181.—(1) A member of a company entitled to attend and vote at a meeting of the company, or at a meeting of any class of members of the company, shall be entitled to appoint another person or persons, whether a member or not, as his proxy to attend and vote instead of the member at the meeting and a proxy appointed to attend and vote instead of a member shall also have the same right as the member to speak at the meeting, but unless the articles otherwise provide —

(*a*) a proxy shall not be entitled to vote except on a poll;

(*b*) a member shall not be entitled to appoint more than 2 proxies to attend and vote at the same meeting; and

(*c*) where a member appoints 2 proxies the appointments shall be invalid unless he specifies the proportions of his holdings to be represented by each proxy.

(2) In every notice calling a meeting of a company or a meeting of any class of members of a company there shall appear with reasonable prominence a statement as to the rights of the member to appoint proxies to attend and vote instead of the member, and that a proxy need not also be a member; and if default is made in complying with this subsection as respects any

meeting, every officer of the company who is in default shall be guilty of an offence.

(3) Any person who authorises or permits an invitation to appoint as proxy a person or one of a number of persons specified in the invitation to be issued at the company's expense to some only of the members entitled to be sent a notice of the meeting and to vote thereat by proxy shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000.

[15/84]

(4) No person shall be guilty of an offence under subsection (3) by reason only of the issue to a member at his request of a form of appointment naming the proxy or a list of persons willing to act as proxies if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(5) Any person who authorises or permits an invitation to appoint as proxy a person or one of a number of persons specified in the invitation to be issued or circulated shall be guilty of an offence unless the invitation is accompanied by a form of proxy which shall entitle the member to direct the proxy to vote either for or against the resolution.

[UK, 1948, s. 136; Aust., 1961, s. 141]

Power of Court to order meeting

182. If for any reason it is impracticable to call a meeting in any manner in which meetings may be called or to conduct the meeting in the manner prescribed by the articles or this Act, the Court may, either of its own motion or on the application of any director or of any member who would be entitled to vote at the meeting or of the personal representative of any such member, order a meeting to be called, held and conducted in such manner as the Court thinks fit, and may give such ancillary or consequential directions as it thinks expedient, including a direction that one member present in person or by proxy shall be deemed to constitute a meeting or that the personal representative of any deceased member may exercise all or any of the powers that the deceased member could have exercised if he were present at the meeting.

[UK, 1948, s. 135; Aust., 1961, s. 142]

Circulation of members' resolutions, etc.

183.—(1) Subject to this section, a company shall on the requisition of such number of members of the company as is specified in subsection (2) and, unless the company otherwise resolves, at the expense of the requisitionists —

(*a*) give to members of the company entitled to receive notice of the next annual general meeting notice of any resolution which may properly be moved and is intended to be moved at that meeting or (if the resolution is proposed to be passed by written means under section 184A) for which agreement is sought; and

(*b*) circulate to members entitled to have notice of any general meeting sent to them any statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

[8/2003]

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

(*a*) any number of members representing not less than 5% of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or

(*b*) not less than 100 members holding shares in the company on which there has been paid up an average sum, per member, of not less than $500.

(3) Subject to subsection (3A), notice of a resolution referred to in subsection (1) shall be given, and any statement so referred to shall be circulated, to members of the company entitled to have notice of the meeting sent to them by serving on each member, in any manner permitted for service of the notice of the meeting, a copy of the resolution and statement.

[8/2003]

(3A) Where the resolution is proposed to be passed by written means under section 184A, the notice of the resolution and statement shall be given and circulated to members of the company entitled to have notice of the meeting sent to them by serving on each member —

(*a*) a copy of the resolution and statement; and

(*b*) a notification that formal agreement to the resolution is being sought under section 184A.

[8/2003; 5/2004]

(3B) Notice of the resolution shall be given to any other member of the company by serving on him notice of the general effect of the resolution in any manner permitted for giving him notice of meetings of the company.

[8/2003]

(3C) Except where the resolution is proposed to be passed by written means under section 184A, the copy of the resolution referred to in subsection (3) shall be served, or notice of the general effect of the resolution referred to in subsection (3B) shall be given, as the case may be, in the same manner and, so far as practicable, at the same time as notice of the meeting and, where it is not practicable for it to be served or given at that time, it shall be served or given as soon as practicable thereafter.

[8/2003]

(4) Subject to subsection (4A), a company shall not be bound under this section to give notice of any resolution or to circulate any statement unless —

(*a*) a copy of the requisition signed by the requisitionists, or 2 or more copies which between them contain the signatures of all the requisitionists, is deposited at the registered office of the company —

(i) in the case of a requisition requiring notice of a resolution, not less than 6 weeks before the meeting; and

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

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

but if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date 6 weeks or less after the copy has been deposited, the copy though not deposited within the time required by this subsection shall be deemed to have been properly deposited for the purposes thereof.

[8/2003]

(4A) A company shall not be bound under this section to give notice of any resolution which is proposed to be passed by written means under section 184A, or to circulate any statement relating thereto, unless —

(*a*) the requisition setting out the text of the resolution and the statement is received by a director of the company in legible form or a permitted alternative form; and

(*b*) the notice states that formal agreement to the resolution is sought under section 184A.

[8/2003]

(4B) Where the requisition under subsection (4A)(*a*) requests that the date of its receipt by a company be notified to a specified person, the directors shall, without delay after it is first received by a director in legible form or a permitted alternative form, notify that person of the date when it was first so received.

[8/2003]

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

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

(7) In the event of any 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 on conviction to a fine not exceeding $5,000.

[15/84]

(8) For the purposes of this section, something is "in legible form or a permitted alternative form" if, and only if, it is sent or otherwise supplied —

(*a*) in a form (such as a paper document) that is legible before being sent or otherwise supplied and does not change form during that process; or

(*b*) in another form that —

(i) is currently agreed between the company and the person as a form in which the thing may be sent or otherwise supplied to the company; and

(ii) is such that documents sent or supplied in that form can (where particular conditions are met) be received in legible form or be made legible following receipt in non-legible form.

[UK, 1948, s. 140; Aust., 1961, s. 143]

[5/2004]

Special resolutions

184.—(1) A resolution shall be a special resolution when it has been passed by a majority of not less than three-fourths of such members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy present at a general meeting of which —

(*a*) in the case of a private company, not less than 14 days' written notice; or

(*b*) in the case of a public company, not less than 21 days' written notice,

specifying the intention to propose the resolution as a special resolution has been duly given.

[8/2003]

(2) Notwithstanding subsection (1), if it so agreed by a majority in number of the members having the right to attend and vote at the meeting, being a majority which together holds not less than 95% of the total voting rights of all the members having a right to vote at that meeting, a resolution may be proposed and passed as a special resolution at a meeting of which written notice of a period less than that required under subsection (1) has been given.

[8/2003; 21/2005]

(3) At any meeting at which a special resolution is submitted 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 a special resolution is submitted a poll shall be deemed 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 is specified in the articles, but it shall not in any case be necessary for more than 5 members to make the demand;

(*b*) if no such provision is made by the articles, by 3 members so entitled, or by one or 2 members so entitled, if —

(i) that member holds or those 2 members together hold not less than 10% of the total number of paid-up shares of the company (excluding treasury shares); or

(ii) that member represents or those 2 members together represent not less than 10% of the total voting rights of all the members having a right to vote at that meeting.

[21/2005]

(4A) For the purposes of subsection (4), any reference to a member does not include a reference to a company itself where it is registered as a member.

[21/2005]

(5) In computing the majority on a poll demanded on the question that a special resolution be passed reference shall be had to the number of votes cast for and against the resolution and to the number of votes to which each member is entitled by this Act or 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 shall be deemed to be duly held when the notice is given and the meeting held in the manner provided by this Act or by the articles.

(7) Any extraordinary resolution, duly and appropriately passed before 29th December 1967 shall for the purposes of this Act be treated as a special resolution.

[S 258/67]

(8) Where in the case of a company incorporated before 29th December 1967 any matter is required or permitted to be done by extraordinary resolution that matter may be done by special resolution.

[UK, 1948, s. 141; Aust., 1961, s. 144]

Passing of resolutions by written means

184A.—(1) Notwithstanding any other provision of this Act, a private company may pass any resolution by written means in accordance with the provisions of this section and sections 184B to 184F.

[8/2003]

(2) Subsection (1) shall not apply to a resolution referred to in section 175A(1) or a resolution for which special notice is required.

[8/2003]

(3) A special resolution is passed by written means if the resolution indicates that it is a special resolution and if it has been formally agreed on any date by one or more members of the company who on that date represent —

(*a*) at least 75%; or

(*b*) if the memorandum or articles of the company require a greater majority for that resolution, that greater majority,

of the total voting rights of all the members who on that date would have the right to vote on that resolution at a general meeting of the company.

[8/2003]

(4) An ordinary resolution is passed by written means if the resolution does not indicate that it is a special resolution and if it has been formally agreed on any date by one or more members of the company who on that date represent —

(*a*) a majority; or

(*b*) if the memorandum or articles of the company require a greater majority for that resolution, that greater majority,

of the total voting rights of all the members who on that date would have the right to vote on that resolution at a general meeting of the company.

[8/2003]

(4A) A resolution referred to in section 76(9B)(*e*) is passed by written means if the resolution indicates that it is a resolution referred to in that provision and if it has been formally agreed on any date by all the members of the company who on that date would have the right to vote on that resolution at a general meeting of the company.

[21/2005]

(5) For the purposes of this section, a resolution of a company is formally agreed by a member if —

(*a*) the company receives from the member (or his proxy if this is allowed) a document that —

(i) is given to the company in legible form or a permitted alternative form;

(ii) indicates the member's agreement (or agreement on his behalf) to the resolution; and

(iii) includes the text of the resolution or otherwise makes clear that it is that resolution that is being agreed to; and

(*b*) the member (or his proxy) had a legible text of the resolution before giving that document.

[8/2003]

(6) Nothing in subsection (3), (4) or (4A) shall be construed as requiring the requisite number of members to formally agree to the resolution on a single day.

[8/2003; 21/2005]

(6A) For the purposes of this section, something is "in legible form or a permitted alternative form" if, and only if, it is sent or otherwise supplied —

(*a*) in a form (such as a paper document) that is legible before being sent or otherwise supplied and does not change form during that process; or

(*b*) in another form that —

(i) is currently agreed between the company and the person as a form in which the thing may be sent or otherwise supplied to the company; and

(ii) is such that documents sent or supplied in that form can (where particular conditions are met) be received in legible form or be made legible following receipt in non-legible form.

[5/2004]

(7) Any reference in this Act or any other law to the passing or making of a resolution, or the passing or making of a resolution at a meeting, includes a reference to the passing of the resolution by written means in accordance with this section.

[8/2003]

(8) Any reference in this Act or any other law to the doing of anything at a general meeting of a company includes a reference to the passing of a resolution authorising the doing of that thing by written means in accordance with this section.

[8/2003]

[UK, Bill, 2002, Clause 170]

Requirements for passing of resolutions by written means

184B.—(1) A resolution of a private company may only be passed by written means if —

(*a*) either —

(i) agreement to the resolution was first sought by the directors of the company in accordance with section 184C; or

(ii) a requisition for that resolution was first given to the company in accordance with section 183 and, by reason of that notice, the documents referred to in section 183(3A) in respect of the resolution were served on members of the company in accordance with section 183(3A);

(*b*) the memorandum and articles of the company do not prohibit the passing of resolutions (either generally or for the purpose in question) by written means; and

(*c*) all conditions in the company's memorandum and articles relating to the passing of the resolution by written means are met.

[8/2003; 5/2004]

(2) Any resolution that is passed in contravention of subsection (1) shall be invalid.

[8/2003]

[UK, Bill, 2002, Clause 171]

Where directors seek agreement to resolution by written means

184C.—(1) The directors of a private company who wish to seek agreement to a resolution of the company and for it to be passed by written means shall send to each member, having the right to vote on that resolution at a general meeting, a copy of the text of the resolution.

[5/2004]

(2) As far as practicable, the directors shall comply with subsection (1) as respects every member at the same time and without delay.

[8/2003]

(3) Without prejudice to any other means of complying with subsections (1) and (2), the directors shall have complied with those subsections if they secure that the same paper document containing the text of the resolution is sent without delay to each member in turn.

[8/2003]

(4) Subject to section 184D, if the resolution is passed before the directors have complied with subsection (1) as respects every member, that fact shall not affect the validity of the resolution or any obligation already incurred by the directors under subsections (1) and (2).

[8/2003]

[UK, Bill, 2002, Clause 172]

Members may require general meeting for resolution

184D.—(1) Any member or members of a private company representing at least 5% of the total voting rights of all the members having the right to vote on a resolution at a general meeting of the company may, within 7 days after —

(*a*) the text of the resolution has been sent to him or them in accordance with section 184C; or

(*b*) the documents referred to in section 183(3A) in respect of the resolution have been served on him or them,

as the case may be, give notice to the company requiring that a general meeting be convened for that resolution.

[8/2003; 5/2004]

(2) Where notice is given under subsection (1) —

(*a*) the resolution is invalid even though it may have in the meantime been passed in accordance with section 184A; and

(*b*) the directors shall proceed to convene a general meeting for the resolution.

[8/2003]

Company's duty to notify members that resolution passed by written means

184E.—(1) Where a resolution of a private company is passed by written means, the company shall —

(*a*) notify every member that it has been passed; and

(*b*) do so within 15 days from the earliest date on which a director or secretary of the company is aware that it has been passed.

[8/2003]

(2) Non-compliance with this section shall not render the resolution invalid.

[8/2003]

[UK, Bill, 2002, Clause 173]

Recording of resolutions passed by written means

184F.—(1) Where a resolution of a private company is passed by written means, the company shall cause a record of the resolution, and the indication of each member's agreement (or agreement on his behalf) to it, to be entered in a book in the same way as minutes of proceedings of a general meeting of the company.

[8/2003]

(2) Non-compliance with subsection (1) shall not render the resolution invalid.

[8/2003]

(3) Any such record, if purporting to be signed by a director or the secretary of the company, is evidence of the proceedings in passing the resolution.

[8/2003]

(4) Where a record is made in accordance with this section, then, until the contrary is proved, the requirements of this Act with respect to those proceedings shall be deemed to have been complied with.

[8/2003]

(5) Section 189 applies in relation to a record made in accordance with this section as it applies in relation to minutes of proceedings of a general meeting.

[8/2003]

[UK, 1985, s. 382A]

Resolutions of one member companies

184G.—(1) Notwithstanding anything in this Act, a company that has only one member may pass a resolution by the member recording the resolution and signing the record.

[5/2004]

(2) If this Act requires information or a document relating to the resolution to be lodged with the Registrar, that requirement is satisfied by lodging the information or document with the resolution that is passed.

[5/2004]

[Aust., 2001, s. 249B]

Resolution requiring special notice

185. Where by this Act special notice is required of a resolution, the resolution shall not be effective unless notice of the intention to move it has been given to the company not less than 28 days before the meeting at which it is moved, and the company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice thereof, in any manner allowed by the articles, not less than 14 days before the meeting, but if after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date 28 days or less after the notice has been given, the notice, although not given to the company within the time required by this section, shall be deemed to be properly given.

[UK, 1948, s. 142; Aust., 1961, s. 145]

Registration and copies of certain resolutions

186.—(1) A copy of —

(*a*) every special resolution; and

(*b*) every resolution which effectively binds any class of shareholders whether agreed to

by all the members of that class or not,

shall, except where otherwise expressly provided by this Act within one month after the passing or making thereof, be lodged by the company with the Registrar.

[12/2002; 8/2003]

(2) Where articles have not been registered a printed copy of every resolution to which this section applies shall be forwarded to any member at his request on payment of $1 or such less sum as the company directs.

[8/2003]

(3) In the event of any default in complying 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 on conviction to a fine not exceeding $1,000 and also to a default penalty.

[15/84]

(4) In the event of any default in complying with subsection (2) the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine of $50 for each copy in respect of which default is made.

[15/84]

[UK, 1948, s. 143; Aust., 1961, s. 146]

Resolutions at adjourned meetings

187. Where a resolution is passed at an adjourned meeting of a company or of holders of any class of shares or of directors the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed and not on any earlier date.

[UK, 1948, s. 144; Aust., 1961, s. 147]

Minutes of proceedings

188.—(1) Every company shall cause —

(*a*) minutes of all proceedings of general meetings and of meetings of its directors and of its managers, if any, to be entered in books kept for that purpose within one month of the date upon which the relevant meeting was held; and

(*b*) those minutes to be signed by the chairman of the meeting at which the proceedings were had or by the chairman of the next succeeding meeting.

(2) Any minutes so entered that purports to be signed as provided in subsection (1) shall be evidence of the proceedings to which they relate, unless the contrary is proved.

[5/2004]

(3) Where minutes have been so entered and signed, then, until the contrary is proved —

(*a*) the meeting shall be deemed to have been duly held and convened;

(*b*) all proceedings had thereat shall be deemed to have been duly had; and

(*c*) all appointments of officers or liquidators made thereat shall be deemed to be valid.

(3A) Every company shall keep minute books in which it shall cause to be entered the following matters:

(*a*) if the company has only one director —

(i) the passing of resolutions by that director; and

(ii) the making of declarations by that director;

(*b*) resolutions passed by written means under section 184A,

within one month of the passing or making of each resolution or declaration.

[5/2004]

(3B) The company shall ensure that minutes of the passing of a resolution referred to in subsection (3A)(*b*) are signed by a director within a reasonable time after the resolution is passed.

[5/2004]

(3C) The director of a company with only one director who has passed a resolution or made a declaration shall sign the minutes thereof within a reasonable time after the resolution is passed or the declaration is made.

[5/2004]

(3D) Minutes entered in accordance with subsection (3A) and purportedly signed in accordance with subsection (3B) or (3C) (as the case may be) shall be evidence of the resolution or declaration to which they relate, unless the contrary is proved.

[5/2004]

(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 on conviction to a fine not exceeding $2,000 and also to a default penalty.

[15/84]

[UK, 1948, s. 145; Aust., 1961, s. 148; Aust., 2001, s. 251A]

Inspection of minute books

189.—(1) The books referred to in section 188(1) and (3A) shall be kept by the company at the registered office or the principal place of business in Singapore of the company, and shall be open to the inspection of any member without charge.

[5/2004]

(2) Any member shall be entitled to be furnished within 14 days after he has made a request in writing in that behalf to the company with a copy of any minutes specified in section 188(1) or (3A) at a charge not exceeding $1 for every page thereof.

[15/84; 5/2004]

(2A) Subsection (1) shall not apply to books containing minutes of proceedings of meetings of a company's directors and of its managers, or (as the case may be) books containing minutes of the passing of resolutions and the making of declarations by the director of a company that has only one director; and subsection (2) shall not apply to any of those minutes.

[28/2004]

(3) If any copy required under this section is not so furnished the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $400 and also to a default penalty.

[15/84]

[UK, 1948, s. 146; Aust., 1961, s. 149]

Division 4 — Register of members

Register and index of members

190.—(1) Every company shall keep a register of its members and enter therein —

(*a*) the names and addresses 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, if any, or by the number, if any, of the certificate evidencing the member's holding and of the amount paid or agreed to be considered as paid on the shares of each member;

(*b*) the date at which the name of each person was entered in the register as a member;

(*c*) the date at which any person who ceased to be a member during the previous 7 years so ceased to be a member; and

(*d*) in the case of a company having a share capital, the date of every allotment of shares to members and the number of shares comprised in each allotment.

(2) Notwithstanding anything in subsection (1), where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the company shall alter the register to show the amount of stock or number of stock units held by each member instead of the number of shares and the particulars relating to shares specified in subsection (1)(*a*).

(2A) Where a company purchases one or more of its own shares or stocks in circumstances in which section 76H applies —

(*a*) the requirements of subsections (1)(*a*), (*b*) and (*c*) and (2) shall be complied with unless the company cancels all of the shares or stocks immediately after the purchase in accordance with section 76K(1); but

(*b*) any share or stock which is so cancelled shall be disregarded for the purposes of subsections (1)(*a*) and (2).

[21/2005]

(3) Notwithstanding anything in subsection (1), a company may keep the names and particulars relating to persons who have ceased to be members of the company separately and the names and particulars relating to former members need not be supplied to any person who applies for a copy of the register unless he specifically requests the names and particulars of former members.

(4) The register of members shall be prima facie evidence of any matters inserted therein as required or authorised by this Act.

Index of members of company

(5) Every company having more than 50 members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index in convenient form of the names of the members and shall, within 14 days after the date on which any alteration is made in the register of members, make any necessary alteration in the index.

(6) The 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.

(7) 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 on conviction to a fine not exceeding $1,000 and also to a default penalty.

[15/84]

[UK, 1948, ss. 110, 118; UK, Treasury Shares, Sch., para. 18; Aust., 1961, s. 151]

Where register to be kept

191.—(1) The register of members and index, if any, shall be kept at the registered office of the company, but —

(*a*) if the work of making them up is done at another office of the company in Singapore they may be kept at that other office; or

(*b*) if the company arranges with some other person to make up the register and index, if any, on its behalf they may be kept at the office of that other person at which the work is done if that office is in Singapore.

(2) Every company shall, within 14 days after the register and index, if any, are first kept at a place other than the registered office, lodge with the Registrar notice of the place where the register and index, if any, are kept and shall, within 14 days after any change in the place at which the register and index, if any, are kept, lodge with the Registrar notice of the change.

(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 on conviction to a fine not exceeding $1,000 and also to a default penalty.

[15/84]

[UK, 1948, s. 110; Aust., 1961, s. 152]

Inspection and closing of register

192.—(1) A company may close the register of members or any class of members for one or more periods not exceeding 30 days in the aggregate in any calendar year.

[5/2004]

(2) The register and index shall be open to the inspection of any member without charge and of any other person on payment for each inspection of $1 or such less sum as the company requires.

(3) Any member or other person may request the company to furnish him with a copy of the register, or of any part thereof, but only so far as it relates to names, addresses, number of shares held and amounts paid on shares, on payment in advance of $1 or such less sum as the company requires for every page thereof required to be copied and the company shall cause any copy so requested by any person to be sent to that person within a period of 21 days or within such further period as the Registrar considers reasonable in the circumstances commencing on the day next after the day on which the request is received by the company.

[15/84]

(4) If any copy so requested is not sent within the period prescribed by subsection (3), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $400 and also to a default penalty.

[15/84]

[UK, 1948, s. 115; Aust., 1961, s. 153]

Consequences of default by agent

193. Where, by virtue of section 191(1)(*b*), the register of members is kept at the office of some person other than the company, and by reason of any default of his the company fails to comply with section 191(1) or (2) or with section 192 or with any requirements of this Act as to the production of the register, that other person shall be liable to the same penalties as if he were an officer of the company who was in default, and the power of the Court under section 399 shall extend to the making of orders against that other person and his officers and employees.

[UK, 1948, s. 114; Aust., 1961, s. 154]

Power of Court to rectify register

194.—(1) If —

(*a*) the name of any person is without sufficient cause entered in or omitted from the register; or

(*b*) default is made or unnecessary delay takes place in entering in the register the fact of any person having ceased to be a member,

the person aggrieved or any member or the company may apply to the Court for rectification of the register, and the Court may refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party to the application.

(2) On any application under subsection (1), the Court may decide —

(*a*) any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members or between members or alleged members on the one hand and the company on the other hand; and

(*b*) generally, any question necessary or expedient to be decided for the rectification of the register.

(3) The Court when making an order for rectification of the register shall by its order direct a notice of the rectification to be so lodged.

(4) No application for the rectification of a register in respect of an entry which was made in the register more than 30 years before the date of the application shall be entertained by the Court.

[UK, 1948, s. 116; Aust., 1961, s. 155]

Limitation of liability of trustee, etc., registered as holder of shares

195.—(1) Any trustee, executor or administrator of the estate of any deceased person who was registered in a register or branch register kept in Singapore as the holder of a share in any corporation may become registered as the holder of that share as trustee, executor or administrator of that estate and shall in respect of that share be subject to the same liabilities and no more as he would have been subject to if the share had remained registered in the name of the deceased person.

(2) Any trustee, executor or administrator of the estate of any deceased person who was beneficially entitled to a share in any corporation being a share registered in a register or branch register kept in Singapore may with the consent of the corporation and of the registered holder of that share become registered as the holder of the share as trustee, executor or administrator of that estate and shall in respect of the share be subject to the same liabilities and no more as he would have been subject to if the share had been registered in the name of the deceased person.

(3) Shares in a corporation registered in a register or branch register kept in Singapore and held by a trustee in respect of a particular trust shall at the request of the trustee be marked in the register or branch register in such a way as to identify them as being held in respect of the trust.

(4) Subject to this section, no notice of any trust expressed, implied or constructive shall be

entered in a register or branch register or be receivable by the Registrar and no liabilities shall be affected by anything done in pursuance of subsection (1), (2) or (3) or pursuant to the law of any other place which corresponds to this section and the corporation concerned shall not be affected by notice of any trust by anything so done.

[UK, 1948, s. 117; Aust., 1961, s. 156]

Branch registers

196.—(1) A company having a share capital may cause to be kept in any place outside Singapore a branch register of members which shall be deemed to be part of the company's register of members.

(2) The company shall lodge with the Registrar notice of the situation of the office where any branch register is kept and of any change in its situation, and if it is discontinued of its discontinuance, and any such notice shall be lodged within one month after the opening of the office or of the change or discontinuance, as the case may be.

(3) A branch register shall be kept in the same manner in which the principal register is by this Act required to be kept.

(4) The company shall transmit to the office at which its principal register is kept a copy of every entry in its branch register as soon as possible after the entry is made, and shall cause to be kept at that office duly entered up from time to time a duplicate of its branch register, which shall for all purposes of this Act be deemed to be part of the principal register.

(5) Subject to 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.

(6) A company may discontinue a branch register and thereupon all entries in that register shall be transferred to some other branch register kept by the company in the same place or to the principal register.

(7) This section shall apply to all companies incorporated in Singapore.

(8) If by virtue of the law in force in any other country any corporation incorporated under that law keeps in Singapore a branch register of its members, the Minister may by order declare that the provisions of this Act relating to inspection, place of keeping and rectification of registers of members shall, subject to any modifications specified in the order, apply to and in relation to any such branch register kept in Singapore as they apply to and in relation to the registers of companies under this Act and thereupon those provisions shall apply accordingly.

[13/87]

(9) If default is made in complying with this section, the company and every officer of the company who is in default and every person who, pursuant to section 191, has arranged to make up the principal register, and who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

[15/84]

[UK, 1948, ss. 119-123; Aust., 1961, s. 157]

Division 5 — Annual return

Annual return by company having a share capital

197.—(1) Every company having a share capital shall lodge a return with the Registrar containing the particulars referred to in the Eighth Schedule and accompanied by such copies of documents as may be prescribed.

[12/2002]

(2) The return under subsection (1) shall be in accordance with the prescribed form or as near thereto as the circumstances admit.

[12/2002]

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

(4) The annual return shall be lodged with the Registrar within one month or in the case of a company keeping pursuant to its articles a branch register in any place outside Singapore within 2 months after the annual general meeting.

[12/2002]

[UK, 1948, s. 124; Aust., 1961, ss. 158, 159]

Annual return by company not having a share capital

(5) A company not having a share capital shall, within one month after each annual general meeting of the company, lodge with the Registrar a return which shall be in accordance with the prescribed form or as near thereto as the circumstances admit.

[12/2002]

(6) [*Deleted by Act 12 of 2002*]

(7) If a company fails to comply 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 on conviction to a fine not exceeding $5,000 and also to a default penalty.

[15/84; 13/87]

[UK, 1948, s. 125; Aust., 1961, s. 159]

Exemption from filing list of members with annual return for certain public companies

198. [*Repealed by Act 12 of 2002*]

PART VI

ACCOUNTS AND AUDIT

Division 1 — Accounts

Accounting records and systems of control

199.—(1) Every company and the directors and managers thereof shall cause to be kept such accounting and other records as will sufficiently explain the transactions and financial position of the company and enable true and fair profit and loss accounts and balance-sheets and any documents required to be attached thereto to be prepared from time to time, and shall cause those records to be kept in such manner as to enable them to be conveniently and properly audited.

[40/89]

(2) The company shall retain the records referred to in subsection (1) for a period of not less than 5 years from the end of the financial year in which the transactions or operations to which those records relate are completed.

[2/2007 wef 01/03/2007]

(2A) Every public company and every subsidiary of a public company shall devise and maintain a system of internal accounting controls sufficient to provide a reasonable assurance that —

(*a*) assets are safeguarded against loss from unauthorised use or disposition; and

(*b*) transactions are properly authorised and that they are recorded as necessary to permit the preparation of true and fair profit and loss accounts and balance-sheets and to maintain accountability of assets.

[40/89]

(3) The records referred to in subsection (1) 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.

(4) If accounting and other records are kept by the company at a place outside Singapore there shall be sent to and kept at a place in Singapore and be at all times open to inspection by the directors such statements and returns with respect to the business dealt with in the records so kept as will enable to be prepared true and fair profit and loss accounts and balance-sheets and any documents required to be attached thereto.

(5) The Court may in any particular case order that the accounting and other records of a company be open to inspection by a public accountant acting for a director, but only upon an undertaking in writing given to the Court that information acquired by the public accountant during his inspection shall not be disclosed by him except to that director.

[5/2004]

(6) 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 on conviction to a fine not exceeding $2,000 or to imprisonment for a term not exceeding 3 months and also to a default penalty.

[15/84]

[UK, 1948, s. 147; Aust., 1961, s. 161A]

As to accounting periods of companies within the same group

200.—(1) Subject to subsections (11) and (12), the directors of every holding company that is not a foreign company shall take such steps as are necessary to ensure that —

(*a*) within 2 years after 29th December 1967, the financial years of each of its subsidiaries coincide with the financial year of the holding company; and

(*b*) within 2 years after any corporation becomes a subsidiary of the holding company, the financial year of that corporation coincides with the financial year of the holding company.

[S 258/67]

(2) Where the financial year of a holding company that is not a foreign company and that of each of its subsidiaries coincide, the directors of the holding company shall at all times take such steps as are necessary to ensure that, without the consent of the Registrar, the financial year of the holding company or any of its subsidiaries is not altered so that all such financial

years do not coincide.

(2A) Notwithstanding subsection (1) or (2), the financial year of a subsidiary which is a foreign company shall end on a date which is —

(*a*) not later than the financial year of its holding company; and

(*b*) not earlier than 2 months before the end of the financial year of its holding company, or such other earlier date as the Registrar may, on an application in writing by the directors of the holding company, approve.

[36/2000]

(3) Where the directors of the holding company are of the opinion that there is good reason why the financial year of any of its subsidiaries should not coincide with the financial year of the holding company, the directors may apply in writing to the Registrar for an order authorising any subsidiary to continue to have or to adopt (as the case requires) a financial year which does not coincide with that of the holding company.

(4) The application shall be supported by a statement by the directors of the holding company of their reasons for seeking the order.

(5) The Registrar may require the directors who make an application under this section to supply such information relating to the operation of the holding company and of any corporation that is deemed by virtue of section 6 to be related to the holding company as he thinks necessary for the purpose of determining the application.

(6) The Registrar may at the expense of the holding company of which the applicants are directors request any public accountant to investigate and report on the application.

[5/2004]

(7) The Registrar may rely upon any report obtained pursuant to subsection (6) from the public accountant.

[5/2004]

(8) The Registrar may make an order granting or refusing the application or granting the application subject to such limitations, terms or conditions as he thinks fit and shall serve the order on the holding company.

(9) Where the applicants are aggrieved by any order made by the Registrar, the applicants may within 2 months after the service of the order upon the holding company appeal against the order to the Minister.

(10) The Minister shall determine the appeal and in determining the appeal may make any order that the Registrar had power to make on the original application and may exercise any of the powers that the Registrar might have exercised in relation to the original application.

(11) Where the directors of a holding company have applied to the Registrar for an order authorising any subsidiary to continue to have a financial year which does not coincide with that of the holding company, the operation of subsection (1) shall be suspended in relation to that subsidiary until the determination of the application and of any appeal arising out of the application.

(12) Where an order is made authorising any subsidiary to have a financial year which does not coincide with that of the holding company, compliance with the terms of the order of the Registrar, or where there has been an appeal, compliance with the terms of any order made on the determination of the appeal shall be deemed to be a compliance with subsection (1) in

relation to that subsidiary but where an application for such an order and the appeal, if any, arising out of that application are refused, the time within which the directors of the holding company are required to comply with subsection (1) in relation to that subsidiary shall be deemed to be the period of 12 months after the date upon which the order of the Registrar is served on the holding company or the period of 12 months after the determination of the appeal, as the case may be.

(13) Where the directors of a holding company have applied to the Registrar for an order authorising any of its subsidiaries to continue to have or to adopt a financial year which does not coincide with that of the holding company and the application and the appeal, if any, arising out of that application, have been refused, the directors of the holding company shall not make a similar application with respect to that subsidiary within 3 years after the refusal of the application or where there is an appeal after the determination of that appeal unless the Registrar is satisfied that there has been a substantial change in the relevant facts or circumstances since the refusal of the former application or the determination of the appeal, as the case may be.

[Aust., 1961, s. 161B]

200A. [*Repealed by Act 39/2007 wef 01/11/2007*]

Accounts, consolidated accounts and directors' report

201.—(1) The directors of every company shall, at a date not later than 18 months after the incorporation of the company and subsequently at least once in every calendar year at intervals of not more than 15 months, lay before the company at its annual general meeting a profit and loss account for the period since the preceding account (or in the case of the first account, since the incorporation of the company) made up to a date —

(*a*) in the case of a public company listed or quoted on a securities exchange in Singapore, not more than 4* months before the date of the meeting;

* The Minister has specified the period of "4 months" in substitution of the period of "5 months" referred to in section 201(1)(*a*) (S 684/2002 — 1st January 2003).

(*b*) in the case of any other company, not more than 6 months before the date of the meeting.

[36/2000; 42/2001; S 684/2002]

(1A) Subject to subsections (14) to (14C), the profit and loss account referred to in subsection (1) shall comply with the requirements of the Accounting Standards, and give a true and fair view of the profit and loss of the company for the period of accounting as shown in the accounting and other records of the company.

[36/2000; 12/2002]

(1B) The Minister may, by order published in the *Gazette*, specify such other period in substitution of the period referred to in subsection (1)(*a*) or (*b*).

[36/2000]

(2) Notwithstanding subsection (1), the Registrar on application by the company, if for any special reason he thinks fit to do so, may extend the periods of 18 months and 15 months referred to in that subsection and with respect to any year extend the period referred to in subsection (1)(*a*) or (*b*), notwithstanding that that period is so extended beyond the calendar year.

[36/2000]

(3) Subject to subsections (14) to (14C), the directors of every company shall cause to be made out, and to be laid before the company at its annual general meeting with the profit and loss account required by subsection (1) a balance-sheet as at the date to which the profit and loss account is made up being a balance-sheet that complies with the requirements of the Accounting Standards, and gives a true and fair view of the state of affairs of the company as at the end of the period to which it relates.

[13/87; 12/2002]

(3A) Subject to subsections (14) to (14C), the directors of a company that is a holding company at the end of its financial year need not comply with subsections (1) and (3) but must cause to be made out and laid before the company at its annual general meeting —

(*a*) consolidated accounts dealing with the profit or loss and the state of affairs of the company and its subsidiaries for the period beginning from the date the preceding accounts were made up to (or, in the case of first accounts, since the incorporation of the company) and ending on a date —

(i) in a case where the holding company is a public company listed or quoted on a stock exchange in Singapore, not more than 4 months before the date of the meeting; or

(ii) in any other case, not more than 6 months before the date of the meeting; and

(*b*) a balance-sheet dealing with the state of affairs of the holding company at the end of its financial year,

each of which complies with the requirements of the Accounting Standards and gives a true and fair view of the matters referred to in paragraph (*a*) or (*b*), as the case may be, so far as it concerns members of the holding company.

[12/2002; S 213/2003]

(3B) Subsections (1B) and (2) shall, with the necessary modifications, apply to the periods referred to in subsection (3A)(*a*)(i) and (ii) as they apply to the periods referred to in subsection (1)(*a*) and (*b*).

[12/2002]

(3BA) Subsection (3A) does not apply to any company in relation to which consolidated accounts are not required under the Accounting Standards, and, for the avoidance of doubt, subsections (1) and (3) shall apply to that company.

[5/2004]

(3C) The directors shall (before the profit and loss account and balance-sheet referred to in subsections (1), (3) and (3A)(*b*) are made out) take reasonable steps —

(*a*) to ascertain what action has been taken in relation to the writing off of bad debts and the making of provisions for doubtful debts and to cause all known bad debts to be written off and adequate provision to be made for doubtful debts;

(*b*) to ascertain whether any current assets (other than current assets to which paragraph (*a*) applies) are unlikely to realise in the ordinary course of business their value as shown in the accounting records of the company and, if so, to cause —

(i) those assets to be written down to an amount which they might be expected so to realise; or

(ii) adequate provision to be made for the difference between the amount of the

value as so shown and the amount that they might be expected so to realise; and

(*c*) to ascertain whether any non-current asset is shown in the books of the company at an amount which, having regard to its value to the company as a going concern, exceeds the amount which would be recoverable over its useful life or on its disposal and (unless adequate provision for writing down that asset is made) to cause to be included in the accounts such information and explanations as will prevent the accounts from being misleading by reason of the overstatement of the amount of that asset.

[13/87; 12/2002]

(4) The accounts referred to in subsection (4B) shall be duly audited before they are laid before the company at its annual general meeting as required by this section, and the auditor's report required by section 207 shall be attached to or endorsed upon those accounts.

[5/2004]

(4A) The directors of the company shall take reasonable steps to ensure that the accounts referred to in subsection (4B) are audited as required by this Part not less than 14 days before the annual general meeting of the company and shall cause to be attached to those accounts the auditor's report that is furnished to the directors under section 207(1A).

[5/2004]

(4B) In subsections (4) and (4A), "accounts", in relation to a company, means —

(*a*) if the company is not one to which subsection (3A) applies, the profit and loss account and balance-sheet of the company required to be laid before the company at its annual general meeting under subsections (1) and (3); or

(*b*) if the company is one to which subsection (3A) applies, the consolidated accounts of the company and its subsidiaries, and the balance-sheet of the company required to be laid before the company at its annual general meeting under subsection (3A).

[5/2004]

(5) The directors of a company shall cause to be attached to every balance-sheet made out under subsection (3) or (3A)(*b*) a report made in accordance with a resolution of the directors and signed by not less than 2 of the directors with respect to the profit or loss of the company for the financial year and the state of the company's affairs as at the end of the financial year.

[62/70; 49/73; 13/87; 12/2002]

(6) The report to which subsection (5) relates shall state with appropriate details —

(*a*) the names of the directors in office at the date of the report;

(*b*) [*Deleted by Act 12 of 2002*]

(*c*) [*Deleted by Act 12 of 2002*]

(*d*) [*Deleted by Act 12 of 2002*]

(*e*) [*Deleted by Act 12 of 2002*]

(*f*) whether at the end of that financial year, there subsist arrangements to which the company is a party, being arrangements whose objects are, or one of whose objects is, to enable directors of the company to acquire benefits by means of the acquisition of shares in, or debentures of, the company or any other body corporate, or there have, at any time in that year, subsisted such arrangements as aforesaid to which the

company was a party, and if so the report shall contain a statement explaining the effect of the arrangements and giving the names of the persons who at any time in that year were directors of the company and held, or whose nominees held, shares or debentures acquired in pursuance of the arrangements; and

(*g*) as respects each person who, at the end of the financial year, was a director of the company, whether or not (according to the register kept by the company for the purposes of section 164 relating to the obligation of a director of a company to notify it of his interests in shares in, or debentures of, the company and of every other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company) he was, at the end of that year, interested in shares in, or debentures of, the company or any other such body corporate and, if he was, the number and amount of shares in, and debentures of, each body (specifying it) in which, according to that register, he was then interested and whether or not, according to that register, he was, at the beginning of that year (or, if he was not then a director, when he became a director), interested in shares in, or debentures of, the company or any other such body corporate and, if he was, the number and amount of shares in, and debentures of, each body (specifying it) in which, according to that register, he was interested at the beginning of that year or, as the case may be, when he became a director.

(*h*) [*Deleted by Act 12 of 2002*]

(*i*) [*Deleted by Act 12 of 2002*]

(*j*) [*Deleted by Act 12 of 2002*]

(*k*) [*Deleted by Act 12 of 2002*]

(*l*) [*Deleted by Act 12 of 2002*]

(*m*) [*Deleted by Act 12 of 2002*]

(*n*) [*Deleted by Act 12 of 2002*]

(*o*) [*Deleted by Act 12 of 2002*]

(*p*) [*Deleted by Act 12 of 2002*]

(*q*) [*Deleted by Act 12 of 2002*]

[62/70; 12/2002]

(6A) The directors of a holding company shall cause to be attached to all consolidated accounts made out under subsection (3A), a report made, in accordance with a resolution of the directors, and signed by not less than 2 of them with respect to the profit or loss, and the state of affairs, of the group of companies of the holding company as at the end of the financial year of the holding company, stating —

(*a*) the names of the directors of the holding company in office at the date of the report;

(*b*) [*Deleted by Act 12 of 2002*]

(*c*) [*Deleted by Act 12 of 2002*]

(*d*) [*Deleted by Act 12 of 2002*]

(*e*) [*Deleted by Act 12 of 2002*]

(*f*) [*Deleted by Act 12 of 2002*]

(*g*) whether at the end of that financial year, there subsist arrangements to which the holding company is a party, being arrangements whose objects are, or one of whose objects is, to enable directors of the holding company to acquire benefits by means of the acquisition of shares in, or debentures of, the company or any other body corporate, or there have, at any time in that year, subsisted such arrangements as aforesaid to which the holding company was a party, and if so the report shall contain a statement explaining the effect of the arrangements and giving the names of the persons who at any time in that year were directors of the holding company and held, or whose nominees held, shares or debentures acquired in pursuance of the arrangements; and

(*h*) as respects each person who, at the end of the financial year, was a director of the holding company, whether or not (according to the register kept by the company for the purposes of section 164 relating to the obligation of a director of a company to notify it of his interests in shares in, or debentures of, the company and of every other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company) he was, at the end of that year, interested in shares in, or debentures of, the holding company or any other such body corporate and, if he was, the number and amount of shares in, and debentures of, each body (specifying it) in which, according to that register, he was then interested and whether or not, according to that register, he was, at the beginning of that year (or, if he was not then a director, when he became a director), interested in shares in, or debentures of, the holding company or any other such body corporate and, if he was, the number and amount of shares in, and debentures of, each body (specifying it) in which, according to that register, he was interested at the beginning of that year or, as the case may be, when he became a director.

(*i*) [*Deleted by Act 12 of 2002*]

(*j*) [*Deleted by Act 12 of 2002*]

(*k*) [*Deleted by Act 12 of 2002*]

(*l*) [*Deleted by Act 12 of 2002*]

(*m*) [*Deleted by Act 12 of 2002*]

(*n*) [*Deleted by Act 12 of 2002*]

(*o*) [*Deleted by Act 12 of 2002*]

(*p*) [*Deleted by Act 12 of 2002*]

(*q*) [*Deleted by Act 12 of 2002*]

(*r*) [*Deleted by Act 12 of 2002*]

[13/87; 12/2002]

(7) The reports referred to in subsections (5) and (6A) shall also contain such additional information as the Minister may prescribe, being information which the Minister considers necessary to facilitate an understanding by members of the company or holding company, as the case may be, of the business of the company or group of companies of the holding company, as the case may be.

[5/2004]

(7A) For the avoidance of doubt, the additional information referred to in subsection (7) need not relate to the profit or loss or the state of affairs of the company or group of companies of the holding company referred to in subsection (5) or (6A).

[5/2004]

(8) The directors of a company shall state in the report whether since the end of the previous financial year a director of the company has received or become entitled to receive a benefit (other than a benefit included in the aggregate amount of emoluments received or due and receivable by the directors shown in the accounts or, if the company is a holding company, the consolidated accounts in accordance with the Accounting Standards or the fixed salary of a full-time employee of the company) by reason of a contract made by the company or a related corporation with the director or with a firm of which he is a member, or with a company in which he has a substantial financial interest and, if so, the general nature of the benefit.

[62/70; 13/87; 12/2002]

(9) Every statement, report or other document relating to the affairs of a company or any of its subsidiaries attached to, or included with, a report of the directors laid before the company at its general meeting or sent to the members under section 203 (not being a statement, report or document required by this Act to be laid before the company in general meeting) shall, for the purposes of section 401 be deemed to be part of that last-mentioned report.

[62/70]

(10) Where at the end of a financial year a company is the subsidiary of another corporation, the directors of the company shall state in, or in a note as a statement annexed to, the company accounts laid before the company at its annual general meeting the name of the corporation which is its ultimate holding company.

[62/70; 15/84; 13/87]

(11) Where any option has been granted by a company, other than a holding company for which consolidated accounts are required during the period covered by the profit and loss account to take up unissued shares of a company, the report required by subsection (5) shall state —

(*a*) [*Deleted by Act 22 of 1993*]

(*b*) the number and class of shares in respect of which the option has been granted;

(*c*) the date of expiration of the option;

(*d*) the basis upon which the option may be exercised; and

(*e*) whether the person to whom the option has been granted has any right to participate by virtue of the option in any share issue of any other company.

[13/87; 22/93]

(11A) Where any of the particulars required by subsection (11) have been stated in a previous report, they may be stated by reference to that report.

[13/87]

(11B) Where a holding company or any of its subsidiaries has at any time granted to a person an option to have shares issued to him in the company or subsidiary, the directors of the holding company shall state in the report made under subsection (6A) the name of the corporation in respect of the shares in which the option was granted and the other particulars required under subsections (11) and (12).

[13/87]

(12) Each report required by subsections (5) and (6A) shall specify —

(*a*) particulars of shares issued during the period to which the report relates by virtue of the exercise of options to take up unissued shares of the company, whether granted before or during that period; and

(*b*) the number and class of unissued shares of the company under option as at the end of that period, the price, or method of fixing the price, of issue of those shares, the date of expiration of the option and the rights, if any, of the persons to whom the options have been granted to participate by virtue of the options in any share issue of any other company.

[49/73]

(13) [*Deleted by Act 22 of 1993*]

(14) The accounts or consolidated accounts of a company need not comply with any requirement of the Accounting Standards for the purposes of subsection (1), (3) or (3A), if the company has obtained the approval of the Registrar to such non-compliance.

[12/2002]

(14A) Where accounts or consolidated accounts prepared in accordance with any requirement of the Accounting Standards for the purposes of subsection (1), (3) or (3A) would not give a true and fair view of any matter required by this section to be dealt with in the accounts or consolidated accounts, the accounts or consolidated accounts need not comply with that requirement to the extent that this is necessary for them to give a true and fair view of the matter.

[12/2002]

(14B) In the event of any non-compliance with a requirement of the Accounting Standards referred to in subsection (14A), there shall be included in the accounts or consolidated accounts, as the case may be —

(*a*) a statement by the auditor of the company that he agrees that such non-compliance is necessary for the accounts or consolidated accounts, as the case may be, to give a true and fair view of the matter concerned;

(*b*) particulars of the departure, the reason therefor and its effect, if any; and

(*c*) such further information and explanations as will give a true and fair view of that matter.

[12/2002]

(14C) The Minister may, by order published in the *Gazette*, in respect of companies of a specified class or description, substitute other accounting standards for the Accounting Standards, and the provisions of this section and sections 207 and 209A shall apply accordingly in respect of such companies.

[12/2002]

(15) Every balance-sheet and profit and loss account laid before a company in general meeting (including any consolidated balance-sheet and consolidated profit and loss account annexed to the balance-sheet of a holding company) shall be accompanied, before the auditor reports on the accounts under this Part, by a statement signed on behalf of the directors by 2 directors of the company, stating whether in their opinion —

(*a*) the profit and loss account and, where applicable, the consolidated profit and loss account, is or are drawn up so as to give a true and fair view of the results of the

business of the company and, if applicable, of all the companies the accounts of which are dealt with in the consolidated profit and loss account for the period covered by the account or accounts;

(*b*) the balance-sheet and, where applicable, the consolidated balance-sheet, is or are drawn up so as to exhibit a true and fair view of the state of affairs of the company and, if applicable, of all the companies the affairs of which are dealt with in the consolidated balance-sheet as at the end of that period; and

(*c*) at the date of the statement there are reasonable grounds to believe that the company will be able to pay its debts as and when they fall due.

[12/2002]

(16) [*Deleted by Act 13 of 1987*]

(17) Any document (other than a balance-sheet prepared in accordance with this Act) or advertisement published, issued or circulated by or on behalf of a company (other than a banking corporation) shall not contain any direct or indirect representation that the company has any reserve unless the representation is accompanied —

(*a*) if the reserve is invested outside the business of the company — by a statement showing the manner in which and the security upon which it is invested; or

(*b*) if the reserve is being used in the business of the company — by a statement to the effect that the reserve is being so used.

(18) To the extent that any company registered or licensed under the Insurance Act (Cap. 142) is required to prepare balance-sheets, revenue accounts and profit and loss accounts in the form prescribed by that Act, the company shall be deemed to have complied with the requirements of this section (other than subsections (1) to (3C)) if its —

(*a*) balance-sheet; and

(*b*) profit and loss account or (if it is a holding company) consolidated accounts,

are prepared in accordance with that Act.

[12/2002]
[Act 11 of 2013 wef 18/04/2013]

(19) The provisions of this Act relating to the form and content of the report of the directors and the annual balance-sheet and profit and loss account shall apply to a banking corporation with such modifications and exceptions as are determined either generally or in any particular case by the Monetary Authority of Singapore established under section 3 of the Monetary Authority of Singapore Act (Cap. 186).

(20) In respect of a company that is registered as a charity or approved as an institution of a public character under the Charities Act (Cap. 37), the requirements of this section as to the form and content of a company's accounts or consolidated accounts being in compliance with the Accounting Standards shall apply subject to any modification prescribed under section 13(1)(*f*) of that Act in respect of such a company.

[34/2010 wef 01/03/2011]

Consolidated accounts not to be issued, etc., until receipt of accounts of subsidiaries

201A. [*Repealed by Act 5 of 2004*]

Audit committees

201B.—(1) Every listed company shall have an audit committee.

[5/2004]

(2) An audit committee shall be appointed by the directors from among their number (pursuant to a resolution of the board of directors) and shall be composed of 3 or more members of whom a majority shall not be —

(*a*) executive directors of the company or any related corporation;

(*b*) a spouse, parent, brother, sister, son or adopted son or daughter or adopted daughter of an executive director of the company or of any related corporation; or

(*c*) any person having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the functions of an audit committee.

[5/2004]

(3) The members of an audit committee shall elect a chairman from among their number who is not an executive director or employee of the company or any related corporation.

(4) If a member of an audit committee resigns, dies or for any other reason ceases to be a member with the result that the number of members is reduced below 3, the board of directors shall, within 3 months of that event, appoint such number of new members as may be required to make up the minimum number of 3 members.

(5) The functions of an audit committee shall be —

(*a*) to review —

(i) with the auditor, the audit plan;

(ii) with the auditor, his evaluation of the system of internal accounting controls;

(iii) with the auditor, his audit report;

(iv) the assistance given by the company's officers to the auditor;

(v) the scope and results of the internal audit procedures; and

(vi) the balance-sheet and profit and loss account of the company and, if it is a holding company, the consolidated balance-sheet and profit and loss account, submitted to it by the company or the holding company, and thereafter to submit them to the directors of the company or the holding company; and

(*b*) to nominate a person or persons as auditor, notwithstanding anything contained in the articles or under section 205,

together with such other functions as may be agreed to by the audit committee and the board of directors.

(6) The auditor has the right to appear and be heard at any meeting of the audit committee and shall appear before the committee when required to do so by the committee.

(7) Upon the request of the auditor, the chairman of the audit committee shall convene a meeting of the committee to consider any matters the auditor believes should be brought to the attention of the directors or shareholders.

(8) Each audit committee may regulate its own procedure and in particular the calling of meetings, the notice to be given of such meetings, the voting and proceedings thereat, the keeping of minutes and the custody, production and inspection of such minutes.

(9) Where the directors of a company or of a holding company are required to make a report under section 201(5) or section 201(6A) and the company is a listed company, the directors shall describe in the report the nature and extent of the functions performed by the audit committee pursuant to subsection (5).

(10) In this section, "listed company" means a company that is incorporated in Singapore and has been admitted to the official list of a securities exchange in Singapore and has not been removed from the official list.

[5/2004]

(11) Any reference in this section to a director who is not an executive director of a company is a reference to a director who is not an employee of, and does not hold any other office of profit in, the company or in any related corporation of that company in conjunction with his office of director and his membership of any audit committee, and any reference to an executive director shall be read accordingly.

[5/2004]

Directors need not lay accounts before company if resolution under section 175A in force

201C. Subject to section 203(1), while a resolution by a private company under section 175A is in force —

(*a*) the directors of the company need not comply with the requirement in section 201 to lay before the company at its annual general meeting accounts or consolidated accounts of the company; and

(*b*) the reference in section 207(1) to accounts required to be laid before the company in general meeting shall be read as a reference to the documents required to be sent to persons entitled to receive notice of general meetings of the company under section 203(1).

[8/2003]

Relief from requirements as to form and content of accounts and reports

202.—(1) The directors of a company may apply to the Registrar in writing for an order relieving them from any requirement of this Act relating to the form and content of accounts or consolidated accounts (other than a requirement of the Accounting Standards) or to the form and content of the report required by section 201(6) and (6A) and the Registrar may make such an order either unconditionally or on condition that the directors comply with such other requirements relating to the form and content of the accounts or consolidated accounts or report as the Registrar thinks fit to impose.

[62/70; 13/87; 12/2002]

(2) The Registrar may, where he considers it appropriate, make an order in respect of a specified class of companies relieving the directors of a company in that class from compliance with any specified requirements of this Act relating to the form and content of accounts or consolidated accounts (other than a requirement of the Accounting Standards) or to the form and content of the report required by section 201(6) and (6A) and the order may be made either unconditionally or on condition that the directors of the company comply with such other requirements relating to the form and content of accounts or consolidated accounts or report as

the Registrar thinks fit to impose.

[12/2002]

(3) The Registrar shall not make an order under subsection (1) unless he is of the opinion that compliance with the requirements of this Act would render the accounts or consolidated accounts or report, as the case may be, misleading or inappropriate to the circumstances of the company or would impose unreasonable burdens on the company or any officer of the company.

(4) The Registrar may make an order under subsection (1) which may be limited to a specific period and may from time to time either on application by the directors or without any such application (in which case the Registrar shall give to the directors an opportunity of being heard) revoke or suspend the operation of any such order.

Members of company entitled to balance-sheet, etc.

203.—(1) A copy of every profit and loss account and balance-sheet of a company or, in the case of a holding company, a copy of the consolidated accounts and balance-sheet (including every document required by law to be attached thereto), which is duly audited and which (or which, but for section 201C) is to be laid before the company in general meeting accompanied by a copy of the auditor's report thereon shall —

(*a*) not less than 14 days before the date of the meeting; or

(*b*) if a resolution under section 175A is in force, not less than 28 days before the end of the period allowed for the laying of those documents,

be sent to all persons entitled to receive notice of general meetings of the company.

[8/2003]

(2) Any member of a company (whether he is or is not entitled to have sent to him copies of the profit and loss accounts and balance-sheets, or consolidated accounts and balance-sheet) to whom copies have not been sent and any holder of a debenture shall, on a request being made by him to the company, be furnished by the company without charge with a copy of the last profit and loss account and balance-sheet of the company, or a copy of the consolidated accounts and balance-sheet, as the case may be (including every document required by this Act to be attached thereto) together with a copy of the auditor's report thereon.

[12/2002]

(3) If default is made in complying with subsection (1) or (2), the company and every officer of the company who is in default shall, unless it is proved that the member or holder of a debenture in question has already made a request for and been furnished with a copy of the accounts or consolidated accounts and all documents referred to in subsection (1) or (2), be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and also to a default penalty.

[15/84]

(4) In a case referred to in subsection (1)(*b*), any member or auditor of the company may, by notice to the company not later than 28 days from the day on which the documents referred to in subsection (1) were sent out, require that a general meeting be held for the purpose of laying those documents before the company.

[8/2003]

(5) Section 175A(5) shall apply, with the necessary modifications, to the giving of a notice under subsection (4).

[8/2003]

(6) The directors of the company shall, within 21 days from the date of giving of the notice referred to in subsection (4), convene a meeting for the purpose referred to in that subsection.

[8/2003]

(7) If default is made in convening the meeting under subsection (6) —

(*a*) each director in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000; and

(*b*) the Court may, on application of the member or auditor, order a general meeting to be called.

[8/2003]

[UK, 1948, s. 158; Aust., 1961, s. 164]

Provision of summary financial statement to members

203A.—(1) Notwithstanding section 203 and anything in its memorandum or articles of association, a listed public company may, in such cases as may be specified by regulations and provided all the conditions so specified are complied with, send a summary financial statement instead of copies of the documents referred to in section 203(1) to members of the company.

[22/95]

(2) Where a public company sends to its members a summary financial statement under subsection (1), any member of the company and any holder of a debenture entitled to be furnished by the company with a copy of the documents referred to in section 203(2) may instead request for a summary financial statement.

[22/95]

(3) A summary financial statement need not be sent to any member of the company who does not wish to receive the statement.

[22/95]

(4) Copies of the documents referred to in section 203(1) shall be sent to any member of the company who wishes to receive them.

[22/95]

(5) The summary financial statement shall be derived from the company's annual accounts and the directors' report and shall be in such form and contain such information as may be specified by regulations.

[22/95]

(6) Every summary financial statement shall —

(*a*) state that it is only a summary of information in the company's annual accounts and the directors' report; and

(*b*) contain a statement by the company's auditors of their opinion as to whether the summary financial statement is consistent with the accounts and the report and complies with the requirements of this section and any regulations made under subsection (9).

[22/95]

(7) If default is made in complying with this section or any regulations made under subsection (9), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and also to a default penalty.

[22/95]

(8) For the purpose of subsection (1), "listed" means has been admitted to the official list of a securities exchange in Singapore and has not been removed from that list.

[22/95; 42/2001]

(9) The Minister may make regulations to give effect to this section, including making provision as to the manner in which it is to be ascertained whether a member of the company wishes to receive copies of the documents referred to in section 203(1) or does not wish to receive the summary financial statement under this section.

[22/95]

Penalty

204.—(1) If any director of a company fails to comply with section 201(1A), (3), (3A) or (15), he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000.

[5/2004]

(1A) If any director of a company —

(*a*) fails to comply with any provision of this Division (other than section 201(1A), (3), (3A) and (15));

(*b*) fails to take all reasonable steps to secure compliance by the company with any such provision; or

(*c*) has by his own wilful act been the cause of any default by the company of any such provision,

he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years.

[5/2004]

(2) In any proceedings against a person for failure to take all reasonable steps to comply with, or to secure compliance with, the preceding provisions of this Division relating to the form and content of the accounts of a company or consolidated accounts of a holding company by reason of an omission from the accounts or consolidated accounts, it is a defence to prove that the omission was not intentional and that the information omitted was immaterial and did not affect the giving of a true and fair view of the matters required by section 201 to be dealt with in the accounts or consolidated accounts, as the case may be.

(3) If an offence under this section is committed with intent to defraud creditors of the company or creditors of any other person or for a fraudulent purpose, the offender shall be liable on conviction —

(*a*) in the case of an offence under subsection (1), to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 3 years or to both; or

(*b*) in the case of an offence under subsection (1A), to a fine not exceeding $15,000 or to imprisonment for a term not exceeding 3 years or to both.

[5/2004]

(4) A person shall not be sentenced to imprisonment for any offence under this section unless in the opinion of the Court dealing with the case the offence was committed wilfully.

[UK, 1948, s. 147 (4); Aust., 1961, s. 163]

Division 2 — Audit

Appointment and remuneration of auditors

205.—(1) The directors of a company shall, within 3 months after incorporation of the company, appoint a person or persons to be the auditor or auditors of the company, and any auditor or auditors so appointed shall, subject to this section, hold office until the conclusion of the first annual general meeting.

[15/84]

(2) A company shall at each annual general meeting of the company appoint a person or persons to be the auditor or auditors of the company, and any auditor or auditors so appointed shall, subject to this section, hold office until the conclusion of the next annual general meeting of the company.

(3) Subject to subsections (7) and (8), the directors of a company may appoint a public accountant to fill any casual vacancy in the office of auditor of the company, but while such a vacancy continues the surviving or continuing auditor or auditors, if any, may act.

[5/2004]

(4) An auditor of a company may be removed from office by resolution of the company at a general meeting of which special notice has been given, but not otherwise.

(5) Where special notice of a resolution to remove an auditor is received by a company —

(*a*) it shall immediately send a copy of the notice to the auditor concerned and to the Registrar; and

(*b*) the auditor may, within 7 days after the receipt by him of the copy of the notice, make representations in writing to the company (not exceeding a reasonable length) and request that, prior to the meeting at which the resolution is to be considered, a copy of the representations be sent by the company to every member of the company to whom notice of the meeting is sent.

(6) Unless the Registrar on the application of the company otherwise orders, the company shall send a copy of the representations as so requested and the auditor may, without prejudice to his right to be heard orally, require that the representations be read out at the meeting.

(7) Where an auditor of a company is removed from office in pursuance of subsection (4) at a general meeting of the company —

(*a*) the company may, at the meeting, by a resolution passed by a majority of not less than three-fourths of such members of the company as being entitled to do so vote in person or, where proxies are allowed, by proxy immediately appoint another person nominated at the meeting as auditor; or

(*b*) the meeting may be adjourned to a date not earlier than 20 days and not later than 30 days after the meeting and the company may, by ordinary resolution, appoint another person as auditor, being a person notice of whose nomination as auditor has, at least 10 days before the resumption of the adjourned meeting, been received by the company.

(8) A company shall, immediately after the removal of an auditor from office in pursuance of subsection (4), give notice in writing of the removal to the Registrar and, if the company does not appoint another auditor under subsection (7), the Registrar shall appoint an auditor.

(9) An auditor appointed in pursuance of subsection (7) or (8) shall, subject to this section, hold office until the conclusion of the next annual general meeting of the company.

(10) If the directors do not appoint an auditor or auditors as required by this section, the Registrar may on the application in writing of any member of the company make the appointment.

[15/84]

(11) Subject to subsection (7), a person shall not be capable of being appointed auditor of a company at an annual general meeting unless he held office as auditor of the company immediately before the meeting or notice of his nomination as auditor was given to the company by a member of the company not less than 21 days before the meeting.

(12) Where notice of nomination of a person as an auditor of a company is received by the company whether for appointment at an adjourned meeting under subsection (7) or at an annual general meeting, the company shall, not less than 7 days before the adjourned meeting or the annual general meeting, send a copy of the notice to the person nominated, to each auditor, if any, of the company and to each person entitled to receive notice of general meetings of the company.

(12A) Where a resolution under section 175A is in force and the auditor or auditors of the company is or are to be appointed by a resolution by written means under section 184A by virtue of section 175A(10), references in subsections (11) and (12) to the date of an annual general meeting shall be read as references to the time —

(*a*) agreement to that resolution is sought in accordance with section 184C; or

(*b*) documents referred to in section 183(3A) in respect of the resolution are served or made accessible in accordance with section 183(3A),

as the case may be.

[8/2003]

(13) If, after notice of nomination of a person as an auditor of a company has been given to the company, the annual general meeting of the company is called for a date 21 days or less after the notice has been given, subsection (11) shall not apply in relation to the person and, if the annual general meeting is called for a date not more than 7 days after the notice has been given and a copy of the notice is, at the time notice of the meeting is given, sent to each person to whom, under subsection (12), it is required to be sent, the company shall be deemed to have complied with that subsection in relation to the notice.

(14) An auditor of a company may resign —

(*a*) if he is not the sole auditor of the company; or

(*b*) at a general meeting of the company,

but not otherwise.

(15) If an auditor gives notice in writing to the directors of the company that he desires to resign, the directors shall call a general meeting of the company as soon as is practicable for the purpose of appointing an auditor in place of the auditor who desires to resign and on the appointment of another auditor the resignation shall take effect.

(16) The fees and expenses of an auditor of a company —

(*a*) in the case of an auditor appointed by the company at a general meeting — shall be

fixed by the company in general meeting or, if so authorised by the members at the last preceding annual general meeting, by the directors; and

(*b*) in the case of an auditor appointed by the directors or by the Registrar — may be fixed by the directors or by the Registrar, as the case may be, and, if not so fixed, shall be fixed as provided in paragraph (*a*) as if the auditor had been appointed by the company.

(17) If default is made in complying with this section, the company and every director of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000.

[15/84]

[UK, 1948, ss. 159-161; Aust., 1961, ss. 166, 166A, 166B]

Certain companies exempt from obligation to appoint auditors

205A.—(1) Notwithstanding section 205, a company which is exempt from audit requirements under section 205B or 205C, and its directors shall be exempt from section 205(1) or (2), as the case may be.

[8/2003]

(2) Where a company ceases to be so exempt, the company shall appoint a person or persons to be auditor or auditors of the company at any time before the next annual general meeting; and the auditors so appointed shall hold office until the conclusion of that meeting.

[8/2003]

(3) If default is made in complying with subsection (2), the company and every director of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000.

[8/2003]

[UK, 1985, s. 388A]

Dormant company exempt from audit requirements

205B.—(1) A company shall be exempt from audit requirements if —

(*a*) it has been dormant from the time of its formation; or

(*b*) it has been dormant since the end of the previous financial year.

[8/2003]

(2) A company is dormant during a period in which no accounting transaction occurs; and the company ceases to be dormant on the occurrence of such a transaction.

[8/2003]

(3) For the purpose of subsection (2), there shall be disregarded transactions of a company arising from any of the following:

(*a*) the taking of shares in the company by a subscriber to the memorandum in pursuance of an undertaking of his in the memorandum;

(*b*) the appointment of a secretary of the company under section 171;

(*c*) the appointment of an auditor under section 205;

(*d*) the maintenance of a registered office under sections 142, 143 and 144;

(*e*) the keeping of registers and books under sections 88, 131, 173, 189 and 191;

(*f*) the payment of any fee specified in the Second Schedule or an amount of any fine or default penalty paid to the Registrar under section 409(4);

(*g*) such other matter as may be prescribed.

[8/2003]

(4) Where a company is, at the end of a financial year, exempt from audit requirements under subsection (1) —

(*a*) the copies of the profit and loss accounts and balance-sheet, or consolidated accounts and balance-sheet of the company to be sent under section 203 need not be audited;

(*b*) section 203 has effect with the omission of any reference to the auditor's report or a copy of the report;

(*c*) copies of an auditor's report need not be laid before the company in a general meeting; and

(*d*) the annual return of the company to be lodged with the Registrar shall be accompanied by a statement by the directors —

(i) that the company is a company referred to in subsection (1)(*a*) or (*b*) as at the end of the financial year;

(ii) that no notice has been received under subsection (6) in relation to that financial year; and

(iii) as to whether the accounting and other records required by this Act to be kept by the company have been kept in accordance with section 199.

[8/2003]

(5) Where a company which is exempt from audit requirements under subsection (1) ceases to be dormant, it shall thereupon cease to be so exempt; but it shall remain so exempt in relation to accounts for the financial year in which it was dormant throughout.

[8/2003]

(6) Any member or members holding not less than 5% of the total number of issued shares of the company (excluding treasury shares) or any class of those shares (excluding treasury shares), or not less than 5% of the total number of members of the company (excluding the company itself if it is registered as a member) may, by notice in writing to the company during a financial year but not later than one month before the end of that year, require the company to obtain an audit of its accounts for that year.

[21/2005]

(7) Where a notice is given under subsection (6), the company is not entitled to the exemption under subsection (1) in respect of the financial year to which the notice relates.

[8/2003]

(8) In this section, "accounting transaction" means a transaction the accounting or other record of which is required to be kept under section 199(1).

[8/2003]

[UK, 1985, ss. 249B, 250]

Exempt private company exempt from audit requirements

205C.—(1) An exempt private company shall be exempt from audit requirements in respect of a financial year if its revenue in that year does not exceed the prescribed amount.

[8/2003]

(2) For a period which is an exempt private company's financial year but is less than 12 calendar months, the prescribed amount shall be proportionately adjusted.

[8/2003]

(3) Section 205B(4), (6) and (7) shall apply, with the necessary modifications, to an exempt private company so exempt.

[8/2003]

(4) In this section —

"prescribed amount" means the amount prescribed by the Minister for the purposes of this section;

"revenue" has the meaning given to that word in the Accounting Standards, subject to such modifications as the Minister may prescribe.

[8/2003]

Registrar may require company exempt from audit requirements to lodge audited accounts

205D. Notwithstanding sections 205B and 205C, the Registrar may, if he is satisfied that there has been a breach of any provision of section 199 or 201 or that it is otherwise in the public interest to do so, by notice in writing to a company exempt under either of those sections, require that company to lodge with him, within such time as may be specified in that notice —

(*a*) its accounts duly audited by the auditor or auditors of the company or, where none has been appointed, an auditor or auditors to be appointed by the directors of the company for this purpose; and

(*b*) an auditor's report referred to in section 207 in relation to those accounts prepared by the auditor or auditors of the company.

[8/2003]

Auditors' remuneration

206.—(1) If a company is served with a notice sent by or on behalf of —

(*a*) at least 5% of the total number of members of the company; or

(*b*) the holders in aggregate of not less than 5% of the total number of issued shares of the company (excluding treasury shares),

requiring particulars of all emoluments paid to or receivable by the auditor of the company or any person who is a partner or employer or employee of the auditor, by or from the company or any subsidiary in respect of services other than auditing services rendered to the company, the company shall immediately —

(*c*) prepare or cause to be prepared a statement showing particulars of all emoluments paid to the auditor or other person and of the services in respect of which the payments have been made for the financial year immediately preceding the service of such notice;

(*d*) forward a copy of the statement to all persons entitled to receive notice of general meetings of the company; and

(*e*) lay such statement before the company in general meeting.

[21/2005]

(1A) Without prejudice to subsection (1), a public company shall, under prescribed circumstances, undertake a review of the fees, expenses and emoluments of its auditor to determine whether the independence of the auditor has been compromised, and the outcome of the review shall be sent to all persons entitled to receive notice of general meetings of the company.

[5/2004]

(2) If default is made in complying with this section, the company and every director of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000.

[15/84]

[Aust., 1961, s. 166]

Powers and duties of auditors as to reports on accounts

207.—(1) An auditor of a company shall report to the members on the accounts required to be laid before the company in general meeting and on the company's accounting and other records relating to those accounts and if it is a holding company for which consolidated accounts are prepared shall also report to the members on the consolidated accounts.

[49/73; 13/87]

(1A) A report by an auditor of a company under subsection (1) shall be furnished by the auditor to the directors of the company in sufficient time to enable the company to comply with the requirements of section 203(1) in relation to that report but no offence shall be committed by an auditor under this subsection if the directors have not submitted the accounts for audit as required under this Part in sufficient time, having regard to the complexity of the accounts, for the auditor to make his report.

[13/87]

(2) An auditor shall, in a report under this section, state —

(*a*) whether the accounts and, if the company is a holding company for which consolidated accounts are prepared, the consolidated accounts are in his opinion —

(i) in compliance with the requirements of the Accounting Standards and give a true and fair view of the matters required by section 201 to be dealt with in the accounts and, as the case may be, the consolidated accounts; and

(ii) in accordance with this Act so as in the case of a balance-sheet to give a true and fair view of the company's affairs and in the case of a profit and loss account to give a true and fair view of the company's profit or loss;

(*aa*) if the accounts or consolidated accounts do not comply with any requirement of the Accounting Standards and the approval of the Registrar under section 201(14) to such non-compliance has not been obtained, whether such non-compliance is, in the opinion of the auditor, necessary for the accounts or consolidated accounts to give a true and fair view of any matter required by section 201 to be dealt with in them;

(*b*) whether the accounting and other records required by this Act to be kept by the company and, if it is a holding company, by the subsidiaries other than those of which he has not acted as auditor have been, in his opinion, properly kept in accordance with this Act;

(*c*) [*Deleted by Act 5 of 2004*]

(*d*) any defect or irregularity in the accounts or consolidated accounts and any matter not set out in the accounts or consolidated accounts without regard to which a true and fair view of the matters dealt with by the accounts or consolidated accounts would not be obtained; and

(*e*) if he is not satisfied as to any matter referred to in paragraph (*a*), (*aa*) or (*b*), his reasons for not being so satisfied.

[12/2002; 5/2004]

(3) It is the duty of an auditor of a company to form an opinion as to each of the following matters:

(*a*) whether he has obtained all the information and explanations that he required;

(*b*) whether proper accounting and other records, excluding registers, have been kept by the company as required by this Act;

(*c*) whether the returns received from branch offices of the company are adequate;

(*d*) whether the procedures and methods used by a holding company or a subsidiary in arriving at the amounts taken into any consolidated accounts were appropriate to the circumstances of the consolidation; and

(*e*) where consolidated accounts are prepared otherwise than as one set of consolidated accounts for the group, whether he agrees with the reasons for preparing them in the form in which they are prepared, as given by the directors in the accounts,

and he shall state in his report particulars of any deficiency, failure or short-coming in respect of any matter referred to in this subsection.

[13/87; 12/2002]

(4) An auditor shall not be required to form an opinion in his report as to whether the accounting and other records of subsidiaries (which are not incorporated in Singapore) of a Singapore holding company have been kept in accordance with this Act.

[15/84]

(5) An auditor of a company has a right of access at all times to the accounting and other records, including registers, of the company, and is entitled to require from any officer of the company and any auditor of a related company such information and explanations as he desires for the purposes of audit.

(6) An auditor of a holding company for which consolidated accounts are required has a right of access at all times to the accounting and other records, including registers, of any subsidiary, and is entitled to require from any officer or auditor of any subsidiary, at the expense of the holding company, such information and explanations in relation to the affairs of the subsidiary as he requires for the purpose of reporting on the consolidated accounts.

(7) The auditor's report shall be attached to or endorsed on the accounts or consolidated accounts and shall, if any member so requires, be read before the company in general meeting and shall be open to inspection by any member at any reasonable time.

(8) An auditor of a company or his agent authorised by him in writing for the purpose is entitled to attend any general meeting of the company and to receive all notices of, and other communications relating to, any general meeting which a member is entitled to receive, and to be heard at any general meeting which he attends on any part of the business of the meeting which concerns the auditor in his capacity as auditor.

(9) If an auditor, in the course of the performance of his duties as auditor of a company, is satisfied that —

(*a*) there has been a breach or non-observance of any of the provisions of this Act; and

(*b*) the circumstances are such that in his opinion the matter has not been or will not be adequately dealt with by comment in his report on the accounts or consolidated accounts or by bringing the matter to the notice of the directors of the company or, if the company is a subsidiary, of the directors of its holding company,

he shall immediately report the matter in writing to the Registrar.

(9A) Notwithstanding subsection (9), if an auditor of a public company or a subsidiary of a public company, in the course of the performance of his duties as auditor, has reason to believe that a serious offence involving fraud or dishonesty is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Minister.

[40/89]

(9B) No duty to which an auditor of a company may be subject shall be regarded as having been contravened by reason of his reporting the matter referred to in subsection (9A) in good faith to the Minister.

[40/89]

(9C) An auditor who is under a legal duty under any other written law to make a report to the Monetary Authority of Singapore in relation to an offence involving fraud or dishonesty that he becomes aware in the course of the performance of his duties as auditor, shall not be required to make a report to the Minister under subsection (9A) if he has already made a report in relation to the same offence under that written law to the Monetary Authority of Singapore.

[40/89]

(9D) In subsection (9A), "a serious offence involving fraud or dishonesty" means —

(*a*) an offence that is punishable by imprisonment for a term that is not less than 2 years; and

(*b*) the value of the property obtained or likely to be obtained from the commission of such an offence is not less than $20,000.

[40/89]

(10) An officer of a corporation who refuses or fails without lawful excuse to allow an auditor of the corporation or an auditor of a corporation who refuses or fails without lawful excuse to allow an auditor of its holding company access, in accordance with this section, to any accounting and other records, including registers, of the corporation in his custody or control, or to give any information or explanation as and when required under this section, or otherwise hinders, obstructs or delays an auditor in the performance of his duties or the exercise of his powers, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $4,000.

[15/84]

[Aust., 1961, s. 167]

Auditors and other persons to enjoy qualified privilege in certain circumstances

208.—(1) An auditor shall not, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of any statement which he makes in the course of his duties as auditor, whether the statement is made orally or in writing.

[49/73]

(2) A person shall not, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of the publication of any document prepared by an auditor in the course of his duties and required by this Act to be lodged with the Registrar.

(3) This section does not limit or affect any other right, privilege or immunity that an auditor or other person has as defendant in an action for defamation.

[49/73]

Duties of auditors to trustee for debenture holders

209.—(1) The auditor of a borrowing corporation shall within 7 days after furnishing the corporation with any balance-sheet or profit and loss account or any report, certificate or other document which he is required by this Act or by the debentures or trust deed to give to the corporation, send by post to every trustee for the holders of debentures of the borrowing corporation a copy thereof.

(2) Where, in the performance of his duties as auditor of a borrowing corporation, the auditor becomes aware of any matter which is in his opinion relevant to the exercise and performance of the powers and duties imposed by this Act or by any trust deed upon any trustee for the holders of debentures of the corporation, he shall, within 7 days after so becoming aware of the matter, send by post a report in writing on such matter to the borrowing corporation and a copy thereof to the trustee.

(3) If any person fails to comply with subsection (2), he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

[15/84]

[Aust., 1961, s. 167A]

Interpretation

209A. In this Part, unless the contrary intention appears —

"consolidated accounts", in relation to a holding company, means —

(*a*) a set of consolidated accounts for the group of companies of that holding company; or

(*b*) the accounts or consolidated accounts prepared in compliance with the Accounting Standards;

"group of companies", in relation to a holding company, means the holding company and the corporations that are subsidiaries of the holding company;

"holding company" means a corporation that is the holding company of another corporation;

"profit or loss" means —

(*a*) in relation to a corporation that is not a holding company — the profit or loss resulting from operations of that corporation;

(*b*) in relation to a corporation that is a holding company of a group of companies for which consolidated accounts are required — the profit or loss resulting from operations of that corporation;

(*c*) in relation to a corporation referred to in paragraph (*b*) and its subsidiaries — the profit or loss resulting from operations of the group of companies of which the corporation is the holding company; and

(*d*) in relation to a corporation that is a holding company of a group of companies for which consolidated accounts are not required — the profit or loss resulting from operations of that corporation.

[13/87; 12/2002]

Application of amendments made to sections 201 to 204 and 207 and new sections 201A and 209A

209B. *[*Repealed by Act 5 of 2004*]

* This section was section 42 of the Companies (Amendment) Act 1987 (Act 13 of 1987).

PART VII

ARRANGEMENTS, RECONSTRUCTIONS AND AMALGAMATIONS

Power to compromise with creditors and members

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

(2) A meeting held pursuant to an order of the Court made under subsection (1) may be adjourned from time to time if the resolution for adjournment is approved by a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members present and voting either in person or by proxy at the meeting.

(3) If a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members present and voting either in person or by proxy at the meeting or the adjourned meeting agrees to any compromise or arrangement, the compromise or arrangement shall, if approved by order of the Court, be binding on all the creditors or 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.

(3A) Where the company is a banking corporation or licensed insurer, as the case may be, the Monetary Authority of Singapore established under the Monetary Authority of Singapore Act (Cap. 186) shall have the same powers and rights as a creditor of the company under the Companies Act including the right to appear and be heard before a Court in any proceedings under this section, but shall not have the right to vote at any meeting summoned under this section.

[16/2011 wef 01/05/2011]
[1/2007 wef 31/03/2007]
[Act 11 of 2013 wef 18/04/2013]

(4) Subject to subsection (4A), the Court may grant its approval to a compromise or

arrangement subject to such alterations or conditions as it thinks just.

[1/2007 wef 31/03/2007]

(4A) The Court shall not approve any compromise or arrangement which has been proposed for the purposes of or in connection with any scheme referred to in section 212(1) under which the whole or any part of the undertaking or the property of a banking corporation incorporated in Singapore or licensed insurer incorporated in Singapore is to be transferred, unless the Minister charged with the responsibility for banking or insurance matters, as the case may be, has consented to the compromise or arrangement or has certified that his consent is not required.

[16/2011 wef 01/05/2011]
[Act 11 of 2013 wef 18/04/2013]

(5) An order under subsection (3) shall have no effect until a copy of the order is lodged with the Registrar, and upon being so lodged, the order shall take effect on and from the date of lodgment or such earlier date as the Court may determine and as may be specified in the order.

[12/2002]

(6) Subject to subsection (7), a copy of every order made under subsection (3) 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, to every copy so issued of the instrument constituting or defining the constitution of the company.

(7) The Court may, by order, exempt a company from compliance with the requirements of subsection (6) or determine the period during which the company shall so comply.

(8) Where any such compromise or arrangement (whether or not for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any 2 or more companies) has been proposed, the directors of the company shall —

(*a*) if a meeting of the members of the company by resolution so directs, instruct such accountants or solicitors or both as are named in the resolution to report on the proposals and forward their report or reports to the directors as soon as possible; and

(*b*) make such report or reports available at the registered office of the company for inspection by the shareholders and creditors of the company at least 7 days before the date of any meeting ordered by the Court to be summoned as provided in subsection (1).

(9) Every company which makes default in complying with subsection (6) or (8) and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000.

[15/84]

Power of Court to restrain proceedings

(10) Where no order has been made or resolution passed for the winding up of a company and any such compromise or arrangement has been proposed between the company and its creditors or any class of such creditors, the Court may, in addition to any of its powers, on the application in a summary way of the company or of any member or creditor of the company restrain further proceedings in any action or proceeding against the company except by leave of the Court and subject to such terms as the Court imposes.

(11) In this section —

"arrangement" includes a reorganisation of the share capital of a company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both these methods;

"company" means any corporation or society liable to be wound up under this Act.

[UK, 1948, s. 206; Aust., 1961, s. 181]

Information as to compromise with creditors and members

211.—(1) Where a meeting is summoned under section 210, there shall —

(*a*) with every notice summoning the meeting which is sent to a creditor or member, be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors, whether as directors or as members or as creditors of the company or otherwise, and the effect thereon of the compromise or arrangement in so far as it is different from the effect on the like interests of other persons; and

(*b*) in every notice summoning the meeting which is given by advertisement, be included either such a statement or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement.

(2) Where the compromise or arrangement affects the rights of debenture holders, the statement shall give the like explanation with respect to the trustee for the debenture holders as, under subsection (1), a statement is required to give with respect to the directors.

(3) Where a notice given by advertisement includes a notification that copies of such a statement can be obtained, every creditor or member entitled to attend the meeting shall on making application in the manner indicated by the notice be furnished by the company free of charge with a copy of the statement.

(4) Each director and each trustee for debenture holders shall give notice to the company of such matters relating to himself as may be necessary for the purposes of this section within 7 days of the receipt of a request in writing for information as to such matters.

(5) Where default is made in complying with any requirement 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 on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months.

[15/84]

(6) For the purpose of subsection (5), the liquidator of the company and any trustee for debenture holders shall be deemed to be an officer of the company.

(7) Notwithstanding subsection (5), a person shall not be liable under that subsection if he shows that the default was due to the refusal of any other person, being a director or trustee for debenture holders, to supply the necessary particulars as to his interests.

[UK, 1948, s. 207; Aust., 1961, s. 182]

Approval of compromise or arrangement by Court

212.—(1) Where an application is made to the Court under this Part for the approval of a compromise or arrangement and it is shown to the Court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of

any company or companies or the amalgamation of any 2 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 (referred to in this section as the transferor company) is to be transferred to another company (referred to in this section as the transferee company), the Court may, subject to subsection (1A), either by the order approving the compromise or arrangement or by any subsequent order provide 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 the 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 the transferor company;

(*d*) the dissolution, without winding up, of the transferor company;

(*e*) the provision to be made for any persons who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement;

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

[1/2007 wef 31/03/2007]

(1A) Without prejudice to section 210(4A), the Court shall not make any order providing for the transfer of the whole or any part of the undertaking or the property of a banking corporation incorporated in Singapore or licensed insurer incorporated in Singapore unless the Minister charged with the responsibility for banking or insurance matters, as the case may be, has consented to the transfer or has certified that his consent is not required.

[16/2011 wef 01/05/2011]
[Act 11 of 2013 wef 18/04/2013]

(2) Where an order made under this section provides for the transfer of property or liabilities, then by virtue of the order that property shall be transferred to and vest in, and those liabilities shall be transferred to and become the liabilities of, the transferee company, free in the case of any particular property if the order so directs, 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 lodge within 7 days of the making of the order —

(*a*) a copy of the order with the Registrar; and

(*b*) where the order relates to land, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land,

and every company which makes default in complying with this section and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 and also to a default penalty.

[15/84; 12/2002]

(4) No vesting order, referred to in this section, shall have any effect or operation in transferring or otherwise vesting land until the appropriate entries are made with respect to the vesting of that land by the appropriate authority.

(5) In this section —

"liabilities" includes duties;

"property" includes property, rights and powers of every description.

(6) Notwithstanding section 210(11), "company" in this section does not include any company other than a company as defined in section 4.

[UK, 1948, s. 208; Aust., 1961, s. 183]

Take-over offers

213. [*Repealed by S 675/2001*]

Variation of take-over offers

214. [*Repealed by S 675/2001*]

Power to acquire shares of shareholders dissenting from scheme or contract approved by 90% majority

215.—(1) Where a scheme or contract involving the transfer of all of the shares or all of the shares in any particular class in a company (referred to in this section as the transferor company) to another company or corporation (referred to in this section as the transferee company) has, within 4 months after the making of the offer in that behalf by the transferee company, been approved as to the shares or as to each class of shares whose transfer is involved by the holders of not less than 90% of the total number of those shares (excluding treasury shares) or of the shares of that class (other than shares already held at the date of the offer by the transferee company, and excluding any shares in the company held as treasury shares), the transferee company may at any time within 2 months, after the offer has been so approved, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares; and when 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 or within 14 days of a statement being supplied to a dissenting shareholder pursuant to subsection (2) (whichever is the later) the Court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms which, under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee company or if the offer contained 2 or more alternative sets of terms upon the terms which were specified in the offer as being applicable to dissenting shareholders.

[15/84; 8/2003; 21/2005]

(2) Where a transferee company has given notice to any dissenting shareholder that it desires to acquire his shares, the dissenting shareholder shall be entitled to require the company by a demand in writing served on that company, within one month from the date on which the notice was given, to supply him with a statement in writing of the names and addresses of all other dissenting shareholders as shown in the register of members, and the transferee company shall not be entitled or bound to acquire the shares of the dissenting shareholders until 14 days after the posting of the statement of such names and addresses to the dissenting shareholder.

(3) Where, in pursuance of any such scheme or contract, shares in a company are transferred to another company or its nominee and those shares together with any other shares in the first-mentioned company held by the transferee company at the date of the transfer comprise or include 90% of the total number of the shares (excluding treasury shares) in the first-mentioned

company or of any class of those shares, then —

(*a*) the transferee company shall within one month from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement) give notice of that fact in the prescribed manner to the holders of the remaining shares or of the remaining shares of that class who have not assented to the scheme or contract; and

(*b*) any such holder may within 3 months from the giving of the notice to him require the transferee company to acquire the shares in question,

and where a shareholder gives notice under paragraph (*b*) with respect to any shares, the transferee company shall be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to it, or on such other terms as are agreed or as the Court on the application of either the transferee company or the shareholder thinks fit to order.

[8/2003; 21/2005]

(4) Where a notice has been given by the transferee company under subsection (1) and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, after the expiration of one month after the date on which the notice has been given or, after 14 days after a statement has been supplied to a dissenting shareholder pursuant to subsection (2) or if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company together with an instrument of transfer executed, on behalf of the shareholder by any person appointed by the transferee company, and on its own behalf by the transferee company, and pay, allot 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.

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

(6) Where any consideration other than cash is held in trust by a company for any person under this section, it may, after the expiration of 2 years and shall before the expiration of 10 years from the date on which such consideration was allotted or transferred to it, transfer such consideration to the Official Receiver.

(7) The Official Receiver shall sell or dispose of any consideration so received in such manner as he thinks fit and shall deal with the proceeds of such sale or disposal as if it were moneys paid to him in pursuance of section 322.

(8) In this section, 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.

(9) For the purposes of this section, shares held or acquired —

(*a*) by a nominee on behalf of the transferee company; or

(*b*) by a related corporation of the transferee company or by a nominee of that related

corporation,

shall be treated as held or acquired by the transferee company.

[8/2003]

(10) The reference in subsection (1) to shares already held by the transferee company includes a reference to shares which the transferee company has contracted to acquire but that shall not be construed as including shares which are the subject of a contract binding the holder thereof to accept the offer when it is made, being a contract entered into by the holder for no consideration and under seal or for no consideration other than a promise by the transferee company to make the offer.

[8/2003]

(11) Where, during the period within which an offer for the transfer of shares to the transferee company can be approved, the transferee company acquires or contracts to acquire any of the shares whose transfer is involved but otherwise than by virtue of the approval of the offer, then, if —

(*a*) the consideration for which the shares are acquired or contracted to be acquired (referred to in this subsection as the acquisition consideration) does not at that time exceed the consideration specified in the terms of the offer; or

(*b*) those terms are subsequently revised so that when the revision is announced the acquisition consideration, at the time referred to in paragraph (*a*), no longer exceeds the consideration specified in those terms,

the transferee company shall be treated for the purposes of this section as having acquired or contracted to acquire those shares by virtue of the approval of the offer.

[8/2003]

[UK, 1948, s. 209; UK, 1985, ss. 428, 429; Aust., 1961, s. 185; HK, s. 168]

Amalgamations

215A. Without prejudice to section 212 and any other law relating to the merger or amalgamation of companies, 2 or more companies may amalgamate and continue as one company, which may be one of the amalgamating companies or a new company, in accordance with sections 215B to 215G, where applicable.

[21/2005]

[NZ, 1993, s. 219; NZ LRC, s. 188]

Amalgamation proposal

215B.—(1) An amalgamation proposal shall contain the terms of an amalgamation under section 215A and, in particular —

(*a*) the name of the amalgamated company;

(*b*) the registered office of the amalgamated company;

(*c*) the full name and residential address of every director of the amalgamated company;

(*d*) the share structure of the amalgamated company, specifying —

(i) the number of shares of the amalgamated company;

(ii) the rights, privileges, limitations and conditions attached to each share of the amalgamated company; and

(iii) whether the shares are transferable or non-transferable and, if transferable, whether their transfer is subject to any condition or limitation;

(*e*) a copy of the memorandum of the amalgamated company;

(*f*) the manner in which the shares of each amalgamating company are to be converted into shares of the amalgamated company;

(*g*) if shares of an amalgamating company are not to be converted into shares of the amalgamated company, the consideration that the holders of those shares are to receive instead of shares of the amalgamated company;

(*h*) any payment to be made to any member or director of an amalgamating company, other than a payment of the kind described in paragraph (*g*); and

(*i*) details of any arrangement necessary to complete the amalgamation and to provide for the subsequent management and operation of the amalgamated company.

[21/2005]

(2) An amalgamation proposal may specify the date on which the amalgamation is intended to become effective.

[21/2005]

(3) If shares of one of the amalgamating companies are held by or on behalf of another of the amalgamating companies, the amalgamation proposal —

(*a*) shall provide for the cancellation of those shares without payment or the provision of other consideration when the amalgamation becomes effective; and

(*b*) shall not provide for the conversion of those shares into shares of the amalgamated company.

[21/2005]

(4) A cancellation of shares under this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

[21/2005]

(5) For the purposes of subsection (1)(*a*), the name of the amalgamated company may be —

(*a*) the name of one of the amalgamating companies; or

(*b*) a new name that has been reserved under section 27(12).

[21/2005]

[NZ, 1993, s. 220; NZ LRC, s. 189]

Manner of approving amalgamation proposal

215C.—(1) An amalgamation proposal shall be approved —

(*a*) subject to the memorandum of each amalgamating company, by the members of each amalgamating company by special resolution at a general meeting; and

(*b*) by any other person, where any provision in the amalgamation proposal would, if contained in any amendment to the memorandum of an amalgamating company or otherwise proposed in relation to that company, require the approval of that person.

[21/2005]

(2) The board of directors of each amalgamating company shall, before the general meeting referred to in subsection (1)(*a*) —

(*a*) resolve that the amalgamation is in the best interest of the amalgamating company;

(*b*) make a solvency statement in relation to the amalgamating company in accordance with section 215I; and

(*c*) make a solvency statement in relation to the amalgamated company in accordance with section 215J.

[21/2005]

(3) Every director who votes in favour of the resolution and the making of the statements referred to in subsection (2) shall sign a declaration stating —

(*a*) that, in his opinion, the conditions specified in subsection (2)(*a*), section 215I(1)(*a*) and (*b*) (in relation to the amalgamating company) and section 215J(1)(*a*) and (*b*) (in relation to the amalgamated company) are satisfied; and

(*b*) the grounds for that opinion.

[21/2005]

(4) The board of directors of each amalgamating company shall send to every member of the amalgamating company, not less than 21 days before the general meeting referred to in subsection (1)(*a*) —

(*a*) a copy of the amalgamation proposal;

(*b*) a copy of the declarations given by the directors under subsection (3);

(*c*) a statement of any material interests of the directors, whether in that capacity or otherwise; and

(*d*) such further information and explanation as may be necessary to enable a reasonable member of the amalgamating company to understand the nature and implications, for the amalgamating company and its members, of the proposed amalgamation.

[21/2005]

(5) The directors of each amalgamating company shall, not less than 21 days before the general meeting referred to in subsection (1)(*a*) —

(*a*) send a copy of the amalgamation proposal to every secured creditor of the amalgamating company; and

(*b*) cause to be published in at least one daily English newspaper circulating generally in Singapore a notice of the proposed amalgamation, including a statement that —

(i) copies of the amalgamation proposal are available for inspection by any member or creditor of an amalgamating company at the registered offices of the amalgamating companies and at such other place as may be specified in the notice during ordinary business hours; and

(ii) a member or creditor of an amalgamating company is entitled to be supplied free of charge with a copy of the amalgamation proposal upon request to an amalgamating company.

[21/2005]

(6) Any director who contravenes subsection (3) shall be guilty of an offence.

[21/2005]

[NZ, 1993, s. 221; NZ LRC, s. 190]

Short form amalgamation

215D.—(1) A company (referred to in this subsection as the amalgamating holding company) and one or more of its wholly-owned subsidiaries (referred to in this subsection as the amalgamating subsidiary company) may amalgamate and continue as one company, being the amalgamated holding company, without complying with sections 215B and 215C if the members of each amalgamating company, by special resolution at a general meeting, resolve to approve an amalgamation of the amalgamating companies on the terms that —

(*a*) the shares of each amalgamating subsidiary company will be cancelled without any payment or any other consideration;

(*b*) the memorandum of the amalgamated company will be the same as the memorandum of the amalgamating holding company;

(*c*) the directors of the amalgamating holding company and every amalgamating subsidiary company are satisfied that the amalgamated company will be able to pay its debts as they fall due during the period of 12 months immediately after the date on which the amalgamation is to become effective; and

(*d*) the person or persons named in the resolution will be the director or directors, respectively, of the amalgamated company.

[21/2005]

(2) Two or more wholly-owned subsidiary companies of the same corporation may amalgamate and continue as one company without complying with sections 215B and 215C if the members of each amalgamating company, by special resolution at a general meeting, resolve to approve an amalgamation of the amalgamating companies on the terms that —

(*a*) the shares of all but one of the amalgamating companies will be cancelled without payment or other consideration;

(*b*) the memorandum of the amalgamated company will be the same as the memorandum of the amalgamating company whose shares are not cancelled;

(*c*) the directors of every amalgamating company are satisfied that the amalgamated company will be able to pay its debts as they fall due during the period of 12 months immediately after the date on which the amalgamation is to become effective; and

(*d*) the person or persons named in the resolution will be the director or directors, respectively, of the amalgamated company.

[21/2005]

(3) The directors of each amalgamating company shall, not less than 21 days before the general meeting referred to in subsection (1) or (2), as the case may be, give written notice of the proposed amalgamation to every secured creditor of the amalgamating company.

[21/2005]

(4) The resolution referred to in subsection (1) or (2), as the case may be, shall be deemed to be an amalgamation proposal that has been approved.

[21/2005]

(5) The board of directors of each amalgamating company shall, before the date of the general meeting referred to in subsection (1) or (2), as the case may be, make a solvency statement in relation to the amalgamated company in accordance with section 215J.

[21/2005]

(6) Every director who votes in favour of the making of the solvency statement referred to in subsection (5) shall sign a declaration stating —

(*a*) that, in his opinion, the conditions specified in section 215J(1)(*a*) and (*b*) are satisfied; and

(*b*) the grounds for that opinion.

[21/2005]

(7) Any director who contravenes subsection (6) shall be guilty of an offence.

[21/2005]

(8) A cancellation of shares under this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

[21/2005]

[NZ, 1993, s. 222; NZ LRC, s. 191]

Registration of amalgamation

215E.—(1) For the purpose of effecting an amalgamation, the following documents shall be filed with the Registrar, in the prescribed form with such particulars as may be required in the form, together with payment of the prescribed fee:

(*a*) the amalgamation proposal that has been approved;

(*b*) any declaration required under section 215C or 215D, as the case may be;

(*c*) a declaration signed by the directors of each amalgamating company stating that the amalgamation has been approved in accordance with this Act and the memorandum of the amalgamating company;

(*d*) where the amalgamated company is a new company or the amalgamation proposal provides for a change of the name of the amalgamated company, a copy of any notice or other documentary evidence that the name which it is proposed to be registered or the proposed new name, as the case may be, has been reserved under section 27(12); and

(*e*) a declaration signed by the directors, or proposed directors, of the amalgamated company stating that, where the proportion of the claims of the creditors of the amalgamated company in relation to the value of the assets of the amalgamated company is greater than the proportion of the claims of the creditors of an amalgamating company in relation to the value of the assets of the amalgamating company, no creditor will be prejudiced by that fact.

[21/2005]

(2) Where the amalgamated company is a new company —

(*a*) section 19(1)(*a*) and (*c*) shall be deemed to have been complied with if, and only if, subsection (1) has been complied with; and

(*b*) the reference to a person named in the articles as a director or the secretary of the proposed company in section 19(2)(*b*) includes a reference to a proposed director of the amalgamated company.

[21/2005]

[NZ, 1993, s. 223; NZ LRC, s. 192]

Notice of amalgamation, etc.

215F.—(1) Upon the receipt of the relevant documents and fees, the Registrar shall —

(*a*) if the amalgamated company is the same as one of the amalgamating companies, issue a notice of amalgamation in such form as the Registrar may determine; or

(*b*) if the amalgamated company is a new company, issue a notice of amalgamation in such form as the Registrar may determine together with the notice of incorporation under section 19(4).

[21/2005]

(2) Where an amalgamation proposal specifies a date on which the amalgamation is intended to become effective, and that date is the same as or later than the date on which the Registrar receives the relevant documents and fees referred to in subsection (1), the notice of amalgamation and any notice of incorporation issued by the Registrar shall be expressed to have effect on the date specified in the amalgamation proposal.

[21/2005]

(3) The Registrar shall, as soon as practicable after the effective date of an amalgamation, remove the amalgamating companies, other than the amalgamated company, from the register.

[21/2005]

(4) Upon the application of the amalgamated company and payment of the prescribed fee, the Registrar shall issue to the amalgamated company a certificate of confirmation of amalgamation under his hand and seal.

[21/2005]

[NZ, 1993, s. 224; NZ LRC, s. 193]

Effect of amalgamations

215G. On the date shown in a notice of amalgamation —

(*a*) the amalgamation shall be effective;

(*b*) the amalgamated company shall have the name specified in the amalgamation proposal;

(*c*) all the property, rights and privileges of each of the amalgamating companies shall be transferred to and vest in the amalgamated company;

(*d*) all the liabilities and obligations of each of the amalgamating companies shall be transferred to and become the liabilities and obligations of the amalgamated company;

(*e*) all proceedings pending by or against any amalgamating company may be continued by or against the amalgamated company;

(*f*) any conviction, ruling, order or judgment in favour of or against an amalgamating company may be enforced by or against the amalgamated company; and

(*g*) the shares and rights of the members in the amalgamating companies shall be converted into the shares and rights provided for in the amalgamation proposal.

[21/2005]

[NZ, 1993, s. 225; NZ LRC, s. 194]

Power of Court in certain cases

215H.—(1) If the Court is satisfied that giving effect to an amalgamation proposal would unfairly prejudice a member or creditor of an amalgamating company or a person to whom an

amalgamating company is under an obligation, it may, on the application of that person made at any time before the date on which the amalgamation becomes effective, make any order it thinks fit in relation to the amalgamation proposal, and may, without limiting the generality of this subsection, make an order —

(*a*) directing that effect must not be given to the amalgamation proposal;

(*b*) modifying the amalgamation proposal in such manner as may be specified in the order; or

(*c*) directing the amalgamating company or its board of directors to reconsider the amalgamation proposal or any part thereof.

[21/2005]

(2) An order may be made under subsection (1) on such terms or conditions as the Court thinks fit.

[21/2005]

[NZ, 1993, s. 226; NZ LRC, s. 194A]

Solvency statement in relation to amalgamating company and offence for making false statement

215I.—(1) For the purposes of section 215C(2)(*b*), "solvency statement", in relation to an amalgamating company, means a statement by the board of directors of the amalgamating company that it has formed the opinion —

(*a*) that, as regards the amalgamating company's situation at the date of the statement, there is no ground on which the amalgamating company could then be found to be unable to pay its debts; and

(*b*) that, at the date of the statement, the value of the amalgamating company's assets is not less than the value of its liabilities (including contingent liabilities),

being a statement which complies with subsection (2).

[21/2005]

(2) The solvency statement —

(*a*) if the amalgamating company is exempt from audit requirements under section 205B or 205C, shall be in the form of a statutory declaration; or

(*b*) if the amalgamating company is not such a company, shall be in the form of a statutory declaration or shall be accompanied by a report from its auditor that he has inquired into the affairs of the amalgamating company and is of the opinion that the statement is not unreasonable given all the circumstances.

[21/2005]

(3) In forming an opinion for the purposes of subsection (1)(*a*) and (*b*), the directors shall take into account all liabilities of the amalgamating company (including contingent liabilities).

[21/2005]

(4) In determining, for the purposes of subsection (1)(*b*), whether the value of the amalgamating company's assets is or will become less than the value of its liabilities (including contingent liabilities), the board of directors of the amalgamating company —

(*a*) shall have regard to —

(i) the most recent financial statements of the amalgamating company that

comply with section 201(1A), (3) and (3A), as the case may be; and

(ii) all other circumstances that the directors know or ought to know affect, or may affect, the value of the amalgamating company's assets and the value of the amalgamating company's liabilities (including contingent liabilities); and

(*b*) may rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances.

[21/2005]

(5) In determining, for the purposes of subsection (4), the value of a contingent liability, the board of directors of the amalgamating company may take into account —

(*a*) the likelihood of the contingency occurring; and

(*b*) any claim the amalgamating company is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.

[21/2005]

(6) Any director of an amalgamating company who votes in favour of or otherwise causes a solvency statement under this section to be made without having reasonable grounds for the opinions expressed in it shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 3 years or to both.

[21/2005]

[Companies, s. 76F (4) to (6)]

Solvency statement in relation to amalgamated company and offence for making false statement

215J.—(1) For the purposes of sections 215C(2)(*c*) and 215D(5), "solvency statement", in relation to an amalgamated company, means a statutory declaration by the board of directors of each amalgamating company that it has formed the opinion —

(*a*) that the amalgamated company will be able to pay its debts as they fall due during the period of 12 months immediately after the date on which the amalgamation is to become effective; and

(*b*) that the value of the amalgamated company's assets will not be less than the value of its liabilities (including contingent liabilities).

[21/2005]

(2) In forming an opinion for the purposes of subsection (1)(*a*) and (*b*), the directors shall take into account all liabilities of the amalgamated company (including contingent liabilities).

[21/2005]

(3) In determining, for the purposes of subsection (1)(*b*), whether the value of the amalgamated company's assets will become less than the value of its liabilities (including contingent liabilities), the board of directors of each amalgamating company —

(*a*) shall have regard to —

(i) the most recent financial statements of the amalgamating company and the other amalgamating companies that comply with section 201(1A), (3) and (3A), as the case may be; and

(ii) all other circumstances that the directors know or ought to know affect, or may affect, the value of the amalgamated company's assets and the value of

the amalgamated company's liabilities (including contingent liabilities); and

(*b*) may rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances.

[21/2005]

(4) In determining, for the purposes of subsection (3), the value of a contingent liability, the board of directors of each amalgamating company may take into account —

(*a*) the likelihood of the contingency occurring; and

(*b*) any claim the amalgamated company is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.

[21/2005]

(5) Any director of an amalgamating company who votes in favour of or otherwise causes a solvency statement under this section to be made without having reasonable grounds for the opinions expressed in it shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 3 years or to both.

[21/2005]

[UK, Bill, 2002, Clause 63; Companies, s. 76F (4) to (6)]

Personal remedies in cases of oppression or injustice

216.—(1) Any member or holder of a debenture of a company or, in the case of a declared company under Part IX, the Minister may apply to the Court for an order under this section on the ground —

(*a*) that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or holders of debentures including himself or in disregard of his or their interests as members, shareholders or holders of debentures of the company; or

(*b*) that some act of the company has been done or is threatened or that some resolution of the members, holders of debentures or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the members or holders of debentures (including himself).

[13/87; 22/93]

(2) If on such application the Court is of the opinion that either of such grounds is established the Court may, with a view to bringing to an end or remedying the matters complained of, make such order as it thinks fit and, without prejudice to the generality of the foregoing, the order may —

(*a*) direct or prohibit any act or cancel or vary any transaction or resolution;

(*b*) regulate the conduct of the affairs of the company in future;

(*c*) authorise civil proceedings to be brought in the name of or on behalf of the company by such person or persons and on such terms as the Court may direct;

(*d*) provide for the purchase of the shares or debentures of the company by other members or holders of debentures of the company or by the company itself;

(*e*) in the case of a purchase of shares by the company provide for a reduction accordingly of the company's capital; or

(*f*) provide that the company be wound up.

[15/84]

(3) Where an order that the company be wound up is made pursuant to subsection (2)(*f*), the provisions of this Act relating to winding up of a company shall, with such adaptations as are necessary, apply as if the order had been made upon an application duly made to the Court by the company.

[42/2005]

(4) Where an order under this section makes any alteration in or addition to any company's memorandum or articles, then, notwithstanding anything in any other provision of this Act, but subject to the provisions of the order, the company concerned shall not have power, without the leave of the Court, to make any further alteration in or addition to the memorandum or articles inconsistent with the provisions of the order; but subject to the foregoing provisions of this subsection the alterations or additions made by the order shall be of the same effect as if duly made by resolution of the company.

(5) A copy of any order made under this section shall be lodged by the applicant with the Registrar within 14 days after the making of the order.

[12/2002]

(6) Any person who fails to comply with subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

[15/84]

(7) This section shall apply to a person who is not a member of a company but to whom shares in the company have been transmitted by operation of law as it applies to members of a company; and references to a member or members shall be construed accordingly.

[15/84; 13/87]

[UK, 1948, s. 210; Aust., 1961, s. 186]

Derivative or representative actions

216A.—(1) In this section and section 216B —

"company" means a company other than a company that is listed on the securities exchange in Singapore;

"complainant" means —

(*a*) any member of a company;

(*b*) the Minister, in the case of a declared company under Part IX; or

(*c*) any other person who, in the discretion of the Court, is a proper person to make an application under this section.

[22/93; 42/2001]

(2) Subject to subsection (3), a complainant may apply to the Court for leave to bring an action in the name and on behalf of the company or intervene in an action to which the company is a party for the purpose of prosecuting, defending or discontinuing the action on behalf of the company.

[22/93]

(3) No action may be brought and no intervention in an action may be made under subsection (2) unless the Court is satisfied that —

(*a*) the complainant has given 14 days' notice to the directors of the company of his intention to apply to the Court under subsection (2) if the directors of the company do

not bring, diligently prosecute or defend or discontinue the action;

(*b*) the complainant is acting in good faith; and

(*c*) it appears to be prima facie in the interests of the company that the action be brought, prosecuted, defended or discontinued.

[22/93]

(4) Where a complainant on an application can establish to the satisfaction of the Court that it is not expedient to give notice as required in subsection (3)(*a*), the Court may make such interim order as it thinks fit pending the complainant giving notice as required.

[22/93]

(5) In granting leave under this section, the Court may make such orders or interim orders as it thinks fit in the interests of justice, including (but not limited to) the following:

(*a*) an order authorising the complainant or any other person to control the conduct of the action;

(*b*) an order giving directions for the conduct of the action; and

(*c*) an order requiring the company to pay reasonable legal fees and disbursements incurred by the complainant in connection with the action.

[22/93]

(6) Where the action has been commenced or is to be brought in the State Courts, an application for leave under subsection (2) shall be made in a District Court.

[22/93]

[Canada, 1985, ss. 238-240]

[Act 5 of 2014 wef 07/03/2014]

Evidence of shareholders' approval not decisive — Court approval to discontinue action under section 216A

216B.—(1) An application made or an action brought or intervened in under section 216A shall not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to the company has been or may be approved by the members of the company, but evidence of approval by the members may be taken into account by the Court in making an order under section 216A.

[22/93]

(2) An application made or an action brought or intervened in under section 216A shall not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the Court given upon such terms as the Court thinks fit and, if the Court determines that the interest of any complainant may be substantially affected by such stay, discontinuance, settlement or dismissal, the Court may order any party to the application or action to give notice to the complainant.

[22/93]

(3) In an application made or an action brought or intervened in under section 216A, the Court may at any time order the company to pay to the complainant interim costs, including legal fees and disbursements, but the complainant may be accountable for such interim costs upon final disposition of the application or action.

[22/93]

[Canada, 1985, s. 242]

PART VIII

RECEIVERS AND MANAGERS

Disqualification for appointment as receiver

217.—(1) The following shall not be qualified to be appointed and shall not act as receiver of the property of a company:

(*a*) a corporation;

(*b*) an undischarged bankrupt;

(*c*) a mortgagee of any property of the company, an auditor of the company or a director, secretary or employee of the company or of any corporation which is a mortgagee of the property of the company; and

(*d*) any person who is neither an approved liquidator nor the Official Receiver.

[15/84]

(2) Nothing in subsection (1)(*a*) or (*d*) shall apply to any corporation authorised by any written law to act as receiver of the property of a company.

(3) Nothing in this section shall disqualify a person from acting as receiver of the property of a company if acting under an appointment validly made before 29th December 1967.

[S 258/67]

[UK, 1948, ss. 366, 367; Aust., 1961, s. 187]

Liability of receiver

218.—(1) Any receiver or other authorised person entering into possession of any assets of a company for the purpose of enforcing any charge shall, notwithstanding any agreement to the contrary, but without prejudice to his rights against the company or any other person, be liable for debts incurred by him in the course of the receivership or possession for services rendered, goods purchased or property hired, leased, used or occupied.

(2) Subsection (1) shall not be so construed as to constitute the person entitled to the charge a mortgagee in possession.

Application for directions

(3) A receiver or manager of the property of a company may apply to the Court for directions in relation to any matter arising in connection with the performance of his functions.

(4) Where a receiver or manager has been appointed to enforce any charge for the benefit of holders of debentures of the company, any such debenture holder may apply to the Court for directions in relation to any matter arising in connection with the performance of the functions of the receiver or manager.

[UK, 1948, s. 369; Aust., 1961, s. 188]

Power of Court to fix remuneration of receivers or managers

219.—(1) The Court may, on application by the liquidator of a company, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the company.

(2) The power of the Court shall, where no previous order has been made with respect thereto —

(*a*) extend to fixing the remuneration for any period before the making of the order or the application therefor;

(*b*) be exercisable notwithstanding that the receiver or manager has died or ceased to act before the making of the order or the application therefor; and

(*c*) where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that fixed for that period, extend to requiring him or his personal representatives to account for the excess or such part thereof as may be specified in the order.

(3) The power conferred by subsection (2)(*c*) shall not be exercised as respects any period before the making of the application for the order unless in the opinion of the Court there are special circumstances making it proper for the power to be so exercised.

(4) The Court may from time to time, on an application made either by the liquidator or by the receiver or manager, vary or amend an order made under this section.
[UK, 1948, s. 371; Aust., 1961, s. 189]

Appointment of liquidator as receiver

220. 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 liquidator may be so appointed.
[UK, 1948, s. 368; Aust., 1961, s. 190]

Notification of appointment of receiver

221.—(1) If any person obtains an order for the appointment of a receiver or manager of the property of a company or of the property in Singapore of any other corporation, or appoints such a receiver or manager under any powers contained in any instrument, he shall within 7 days after he has obtained the order or made the appointment lodge notice of the fact with the Registrar.

(2) Where any person appointed as receiver or manager of the property of a company or other corporation under the powers contained in any instrument ceases to act as such, he shall within 7 days thereafter lodge with the Registrar notice to that effect.

(3) Every person who makes default in complying with the requirements of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

[15/84]

[UK, 1948, s. 102; Aust., 1961, s. 191]

Statement that receiver appointed

222.—(1) Where a receiver or manager of the property of a corporation has been appointed, every invoice order for goods or business letter issued by or on behalf of the corporation or the receiver or manager or the liquidator of the corporation, being a document on or in which the name of the corporation appears, shall contain a statement immediately following the name of the corporation that a receiver or manager has been appointed.

(2) If default is made in complying with this section, the corporation and every officer and every liquidator of the corporation and every receiver or manager who knowingly and wilfully authorises or permits the default shall be guilty of an offence.

[UK, 1948, s. 370; Aust., 1961, s. 192]

Provisions as to information where receiver or manager appointed

223.—(1) Where a receiver or manager of the property of a company (referred to in this section and in section 224 as the receiver) is appointed —

(*a*) the receiver shall immediately send notice to the company of his appointment;

(*b*) there shall, within 14 days after receipt of the notice, or such longer period as may be allowed by the Court or by the receiver, be made out and submitted to the receiver in accordance with section 224 a statement in the prescribed form as to the affairs of the company; and

(*c*) the receiver shall within one month after receipt of the statement —

(i) lodge with the Registrar, a copy of the statement and of any comments he sees fit to make thereon;

(ii) send to the company, a copy of any such comments as aforesaid, or if he does not see fit to make any comment, a notice to that effect; and

(iii) where the receiver is appointed by or on behalf of the holders of debentures of the company, send to the trustees, if any, for those holders, a copy of the statement and his comments thereon.

(2) Subsection (1) shall not apply in relation to the appointment of a receiver or manager to act with an existing receiver or manager or in place of a receiver or manager dying or ceasing to act, except that, where that subsection applies to a receiver or manager who dies or ceases to act before that subsection has been fully complied with, the references in paragraphs (*b*) and (*c*) thereof to the receiver shall (subject to subsection (3)) include references to his successor and to any continuing receiver or manager.

(3) Where the company is being wound up, this section and section 224 shall apply notwithstanding that the receiver or manager and the liquidator are the same person, but with any necessary modifications arising from that fact.

(4) If any person makes default in complying with any of the requirements of this section, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 and also to a default penalty.

[15/84]

[UK, 1948, s. 372; Aust., 1961, s. 193]

Special provisions as to statement submitted to receiver

224.—(1) The statement as to the affairs of a company required by section 223 to be submitted to the receiver shall show as at the date of the receiver's appointment the particulars of the company's assets, debts and liabilities, the names and addresses of its creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be prescribed.

(2) The statement shall be submitted by, and be verified by affidavit of, one or more of the persons who were at the date of the receiver's appointment the directors of the company and by the person who was at that date the secretary of the company, or by such of the persons, hereafter in this subsection mentioned, as the receiver may require to submit and verify the

statement, that is to say —

(*a*) persons who are or have been officers;

(*b*) persons who have taken part in the formation of the company at any time within one year before the date of the receiver's appointment;

(*c*) persons who are in the employment of the company, or have been in the employment of the company within that year, and are in the opinion of the receiver capable of giving the information required;

(*d*) persons who are or have been, within that year, officers of, or in the employment of, a corporation which is, or within that year was, an officer of the company to which the statement relates.

(3) Any person making the statement and affidavit shall be allowed and shall be paid by the receiver (or his successor) out of his receipts, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the receiver (or his successor) may consider reasonable, subject to an appeal to the Court.

(4) If any person makes default in complying with the requirements of this section, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

[15/84]

(5) References in this section to the receiver's successor shall include a continuing receiver or manager.

[UK, 1948, s. 373; Aust., 1961, s. 194]

Lodging of accounts of receivers and managers

225.—(1) Every receiver or manager of the property of a company or of the property in Singapore of any other corporation shall —

(*a*) within one month after the expiration of the period of 6 months from the date of his appointment and of every subsequent period of 6 months and within one month after he ceases to act as receiver or manager, lodge with the Registrar a detailed account in the prescribed form showing —

(i) his receipts and his payments during each period of 6 months, or, where he ceases to act as receiver or manager, during the period from the end of the period to which the last preceding account related or from the date of his appointment, as the case may be, up to the date of his so ceasing;

(ii) the aggregate amount of those receipts and payments during all preceding periods since his appointment; and

(iii) where he has been appointed pursuant to the powers contained in any instrument, the amount owing under that instrument at the time of his appointment, in the case of the first account, and at the expiration of every 6 months after his appointment and, where he has ceased to act as receiver or manager at the date of his so ceasing, and his estimate of the total value of all assets of the company or other corporation which are subject to that instrument; and

(*b*) before lodging such account, verify by affidavit all accounts and statements referred

to therein.

(2) The Registrar may, of his own motion or on the application of the company or other corporation or a creditor, cause the accounts to be audited by a public accountant appointed by the Registrar and for the purpose of the audit the receiver or manager shall furnish the auditor with such vouchers and information as he requires and the auditor may at any time require the production of and inspect any books of account kept by the receiver or manager or any document or other records relating thereto.

[5/2004]

(3) Where the Registrar causes the accounts to be audited upon the request of the company or other corporation or a creditor, he may require the applicant to give security for the payment of the cost of the audit.

(4) The costs of an audit under subsection (2) shall be fixed by the Registrar and be paid by the receiver unless the Registrar otherwise determines.

(5) Every receiver or manager who makes default in complying with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

[15/84]

[UK, 1948, s. 374; Aust., 1961, s. 195]

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

226.—(1) Where a receiver is appointed on behalf of the holders of any debentures of a company secured by a floating charge or possession is taken by or on behalf of debenture holders of any property comprised in or subject to a floating charge, then, if the company is not at the time in the course of being wound up, debts which in every winding up are preferential debts and are due by way of wages, salary, retrenchment benefit or ex gratia payment, vacation leave or superannuation or provident fund payments and any amount which in a winding up is payable in pursuance of section 328(4) or (6) shall be paid out of any assets coming to the hands of the receiver or other person taking possession in priority to any claim for principal or interest in respect of the debentures and shall be paid in the same order of priority as is prescribed by that section in respect of those debts and amounts.

[22/93]

(1A) In subsection (1), "floating charge" means a charge which, as created, was a floating charge.

[22/93]

(2) For the purposes of subsection (1), the references in section 328(1), (*c*), (*d*), (*e*), (*f*) and (*g*) to the commencement of the winding up shall be read as a reference to the date of the appointment of the receiver or of possession being taken as aforesaid, as the case requires.

(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.

[UK, 1948, s. 94; Aust., 1961, s. 196]

Enforcement of duty of receiver, etc., to make returns

227.—(1) If any receiver or manager of the property of a company who has made default in making or lodging any return, account or other document or in giving any notice required by law fails to make good the default within 14 days after the service on him by any member or

creditor of the company or trustee for debenture holders of a notice requiring him to do so, the Court may, on an application made for the purpose by the person who has given the notice, make an order directing him to make good the default within such time as is specified in the order.

(2) If it appears that any receiver or manager of the property of a company has misapplied or retained or become liable or accountable for any money or property of the company or been guilty of any misfeasance or breach of trust or duty in relation to the company, the Court may on the application of any creditor or contributory or of the liquidator examine into the conduct of such receiver or manager and compel him to repay or restore the money or property or any part thereof 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 or duty as the Court thinks just.

(3) This section shall have effect notwithstanding that the offence is one for which the offender is criminally liable.

[UK, 1948, s. 375; Aust., 1961, s. 197]

PART VIIIA

JUDICIAL MANAGEMENT

Application to Court for a company to be placed under judicial management and for appointment of a judicial manager

227A. Where a company or where a creditor or creditors of the company consider that —

(*a*) the company is or will be unable to pay its debts; and

(*b*) there is a reasonable probability of rehabilitating the company or of preserving all or part of its business as a going concern or that otherwise the interests of creditors would be better served than by resorting to a winding up,

an application may be made to the Court under section 227B for an order that the company should be placed under the judicial management of a judicial manager.

[13/87]

Power of Court to make a judicial management order and appoint a judicial manager

227B.—(1) Where a company or its directors (pursuant to a resolution of its members or the board of directors) or a creditor or creditors (including any contingent or prospective creditor or creditors or all or any of those parties, together or separately), pursuant to section 227A, makes an application (referred to in this section as an application for a judicial management order) for an order that the company should be placed under the judicial management of a judicial manager, the Court may make a judicial management order in relation to the company if, and only if, —

(*a*) it is satisfied that the company is or will be unable to pay its debts; and

(*b*) it considers that the making of the order would be likely to achieve one or more of the following purposes, namely:

(i) the survival of the company, or the whole or part of its undertaking as a going concern;

(ii) the approval under section 210 of a compromise or arrangement between the company and any such persons as are mentioned in that section;

(iii) a more advantageous realisation of the company's assets would be effected than on a winding up.

[13/87; 42/2005]

(2) Any judicial management order made under subsection (1) shall direct that during the period in which the order is in force the affairs, business and property of the company shall be managed by a judicial manager appointed for the purpose by the Court; and such an order shall specify the purpose or purposes for whose achievement the order is made.

[13/87]

(3) (*a*) In any application for a judicial management order under subsection (1), the applicant shall nominate a person who is a public accountant, who is not the auditor of the company, to act as a judicial manager.

(*b*) The Court may reject the nomination of the applicant and appoint another person in his stead.

(*c*) Where a nomination is made by the company, a majority in number and value of the creditors (including contingent or prospective creditors) may be heard in opposition to the nomination and the Court may, if satisfied as to the value of the creditors' claims and as to the grounds of opposition, invite the creditors to nominate a person in his stead and, if it sees fit, adopt their nomination.

(*d*) Nothing in this subsection shall prevent the Minister from himself nominating a person to act as a judicial manager if he considers that the public interest so requires and in such a case the Minister may be heard in support of his nomination and for this purpose may be represented.

(*e*) Notwithstanding paragraph (*a*), where a person is appointed by the Court or nominated by the Minister to act as a judicial manager that person need not be a public accountant.

[13/87; 5/2004]

(4) When an application for a judicial management order is made to the Court, notice of the application —

(*a*) shall be published in the *Gazette* and in an English and Chinese local daily newspaper and a copy thereof sent to the Registrar; and

(*b*) shall be given —

(i) to the company, in a case where a creditor is the applicant; and

(ii) to any person who has appointed or is or may be entitled to appoint a receiver and manager of the whole (or substantially the whole) of a company's property under the terms of any debentures of a company secured by a floating charge or by a floating charge and one or more fixed charges. In the case of any such floating charge created by an instrument before 15th May 1987, it shall be deemed to contain a power to appoint a receiver and manager in the event that an application under this section is made for the appointment of a judicial manager with the result that the holder of that floating charge shall, in accordance with this paragraph, be given notice of the application.

[13/87; 42/2005]

(5) Subject to subsection (10), the Court shall dismiss an application for a judicial management order if it is satisfied that —

(*a*) a receiver and manager referred to in subsection (4) has been or will be appointed; or

(*b*) the making of the order is opposed by a person who has appointed or is entitled to appoint such a receiver and manager.

[13/87]

(6) On hearing the application for a judicial management order, the Court may dismiss the application or adjourn the hearing conditionally or unconditionally or make an interim order or any other order that it thinks fit.

[42/2005]

(7) A judicial management order shall not be made in relation to a company —

(*a*) after the company has gone into liquidation;

(*b*) where the company is a bank licensed under the Banking Act (Cap. 19) or is a finance company licensed under the Finance Companies Act (Cap. 108); or

(*c*) where the company is an insurance company licensed under the Insurance Act (Cap. 142).

[13/87]
[Act 11 of 2013 wef 18/04/2013]

(8) A judicial management order shall, unless it is otherwise discharged, remain in force for a period of 180 days from the date of the making of the order but the Court may, on application of a judicial manager, increase this period subject to such terms as the Court may impose.

[13/87]

(9) The costs and expenses of any unsuccessful application for a judicial management order made under this section shall, unless the Court otherwise orders, be borne by the applicant and, if the Court considers that the application is frivolous or vexatious, it may make such orders, as it thinks just and equitable, to redress any injustice that may have resulted.

[42/2005]

(10) Nothing in this section shall preclude a Court —

(*a*) from making a judicial management order and appointing a judicial manager if it considers the public interest so requires; or

(*b*) from appointing, after the making of an application for a judicial management order and on the application of the person applying for the judicial management order, an interim judicial manager, pending the making of a judicial management order, and such interim judicial manager may, if the Court sees fit, be the person nominated in the application for a judicial management order. The interim judicial manager so appointed may exercise such functions, powers and duties as the Court may specify in the order.

[13/87; 42/2005]

(11) For the purposes of this Part, "property" in relation to a company includes money, goods, things in action and every description of property, whether real or personal, and whether in Singapore or elsewhere, and also obligations and every description of interest whether present or future or vested or contingent arising out of, or incidental to, property.

[13/87]

(12) The definition in section 254(2) of "inability to pay debts" shall apply for the purposes

of this section as it applies for the purposes of Division 2 of Part X.

[13/87]

Effect of application for a judicial management order

227C. During the period beginning with the making of an application for a judicial management order and ending with the making of such an order or the dismissal of the application —

(*a*) no resolution shall be passed or order made for the winding up of the company;

(*b*) no steps shall be taken to enforce any charge on or security over the company's property or to repossess any goods in the company's possession under any hire-purchase agreement, chattels leasing agreement or retention of title agreement, except with leave of the Court and subject to such terms as the Court may impose; and

(*c*) no other proceedings and no execution or other legal process shall be commenced or continued and no distress may be levied against the company or its property except with leave of the Court and subject to such terms as the Court may impose.

[13/87; 42/2005]

Effect of judicial management order

227D.—(1) On the making of a judicial management order —

(*a*) any receiver or receiver and manager shall vacate office; and

(*b*) any application for the winding up of the company shall be dismissed.

[13/87; 42/2005]

(2) Where any receiver and manager has vacated office under subsection (1)(*a*) —

(*a*) his remuneration and any expenses properly incurred by him; and

(*b*) any indemnity to which he is entitled out of the assets of the company,

shall be charged on and, subject to subsection (4), paid out of any property which was in his custody or under his control at the time in priority to any security held by the person by or on whose behalf he was appointed.

[13/87]

(3) Neither a receiver nor a receiver and manager of a company who vacates office under subsection (1)(*a*) shall be required on or after so vacating office to take steps to comply with any duty imposed on him by section 226.

[13/87]

(4) During the period for which a judicial management order is in force —

(*a*) no resolution shall be passed or order made for the winding up of the company;

(*b*) no receiver and manager of the kind referred to in section 227B(4) of the company shall be appointed;

(*c*) no other proceedings and no execution or other legal process shall be commenced or continued and no distress may be levied against the company or its property except with the consent of the judicial manager or with leave of the Court and (where the Court gives leave) subject to such terms as the Court may impose; and

(*d*) no steps shall be taken to enforce security over the company's property or to

repossess any goods under any hire-purchase agreement, chattels leasing agreement or retention of title agreement except with the consent of the judicial manager or with leave of the Court and (where the Court gives leave) subject to such terms as the Court may impose.

[13/87]

Notification of judicial management order

227E.—(1) Every invoice, order for goods or business letter which, at a time when a judicial management order is in force in relation to a company, is issued by or on behalf of the company or the judicial manager, being a document on or in which the company's name appears, shall contain a statement that the affairs, business and property of the company are being managed by the judicial manager.

[13/87]

(2) If default is made in complying with this section, the company, the judicial manager and any officer of the company who knowingly and wilfully authorises or permits the default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 and also to a default penalty.

[13/87]

Vacancy in appointment of judicial manager

227F. If a vacancy occurs by death, resignation or otherwise in the office of a judicial manager of a company, the Court may, on the application of the company or any creditor or creditors of the company or the Minister, by order, fill the vacancy.

[13/87]

General powers and duties of judicial manager

227G.—(1) On the making of a judicial management order, the judicial manager shall take into his custody or under his control all the property to which the company is or appears to be entitled.

[13/87]

(2) During the period for which a judicial management order is in force, all powers conferred and duties imposed on the directors by this Act or by the memorandum or articles of association of the company shall be exercised and performed by the judicial manager and not by the directors; but nothing in this subsection shall require the judicial manager to call any meetings of the company.

[13/87]

(3) The judicial manager of a company —

(*a*) shall do all such things as may be necessary for the management of the affairs, business and property of the company; and

(*b*) shall do all such other things as the Court may by order sanction.

[13/87]

(4) Without prejudice to the generality of subsection (3)(*a*), the powers conferred by that subsection shall include the powers specified in the Eleventh Schedule.

[13/87]

(5) The judicial manager may apply to the Court for directions in relation to any particular matter arising in connection with the carrying out of his functions.

[13/87]

(6) Nothing in this section shall be taken as authorising the judicial manager of a company to make any payment towards discharging any debt to which the company was subject on the making of the judicial management order unless —

(*a*) the making of the payment is sanctioned by the Court or the payment is made in pursuance of a compromise or arrangement so sanctioned; or

(*b*) the payment is made towards discharging sums secured by a security or payable under a hire-purchase agreement, chattels leasing agreement or retention of title agreement to which section 227H(2), (5) and (6) applies.

[13/87]

(7) The judicial manager of a company may, if he thinks fit, at any time summon a meeting of the company's creditors; and the judicial manager shall summon such a meeting if he is directed to do so by the Court.

[13/87]

(8) Any alteration in the company's memorandum or articles made by virtue of an order under subsection (3)(*b*) is of the same effect as if duly made by resolution of the company, and the provisions of this Act apply to the memorandum or articles as so altered accordingly.

[13/87]

(9) An office copy of an order under subsection (3)(*b*) sanctioning the alteration of the company's memorandum or articles shall, within 14 days from the making of the order, be delivered by the judicial manager to the Registrar.

[13/87]

(10) A person dealing with the judicial manager of a company in good faith and for value shall not be concerned to inquire whether the judicial manager is acting within his powers.

[13/87]

Power to deal with charged property, etc.

227H.—(1) The judicial manager of a company may dispose of or otherwise exercise his powers in relation to any property of the company which is subject to a security to which this subsection applies as if the property were not subject to the security.

[13/87]

(2) Where, on application by the judicial manager of a company, the Court is satisfied that the disposal (with or without other assets) —

(*a*) of any property of the company subject to a security to which this subsection applies; or

(*b*) of any goods under a hire-purchase agreement, chattels leasing agreement or retention of title agreement,

would be likely to promote one or more of the purposes specified in the judicial management order, the Court may by order authorise the judicial manager to dispose of the property as if it were not subject to the security or to dispose of the goods as if all rights of the owner under the hire-purchase agreement, chattels leasing agreement or retention of title agreement were vested in the company.

[13/87]

(3) Subsection (1) applies to any security which, as created, was a floating charge and

subsection (2) applies to any other security.

[13/87]

(4) Where any property is disposed of under subsection (1), the holder of the security shall have the same priority in respect of any property of the company directly or indirectly representing the property disposed of as he would have had in respect of the property subject to the security.

[13/87]

(5) It shall be a condition of an order made under subsection (2) that the net proceeds of the disposal shall be applied towards discharging the sums secured by the security or payable under the hire-purchase agreement, chattels leasing agreement or retention of title agreement and where the net proceeds of the disposal are less than the sums secured by the security or payable under any of those agreements, the holder of the security or the owner of the goods, as the case may be, may prove on a winding up for any balance due to him.

[13/87]

(6) Where a condition imposed in pursuance of subsection (5) relates to 2 or more securities, that condition shall require the net proceeds of the disposal to be applied towards discharging the sums secured by those securities in the order of their priorities.

[13/87]

(7) (*a*) A copy of an order made under subsection (2) shall, within 14 days after the making of the order, be sent by the judicial manager to the Registrar.

(*b*) Seven days' notice of an application by the judicial manager to the Court to dispose of property subject to a security under subsection (2) shall be given to the holder of the security or to the owner of the goods which are subject to any of the agreements mentioned in that subsection and the holder or the owner, as the case may be, may oppose the disposal of the property.

[13/87; 12/2002]

(8) If the judicial manager, without reasonable excuse, fails to comply with subsection (7), he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and also to a default penalty.

[13/87]

(9) For the purposes of sections 227C and 227D and this section —

"chattels leasing agreement" means an agreement for the bailment of goods which is capable of subsisting for more than 3 months;

"hire-purchase agreement" means a hire-purchase agreement as defined in section 2 of the Hire-Purchase Act (Cap. 125);

"retention of title agreement" means an agreement for the sale of goods to a company, being an agreement —

(*a*) which does not constitute a charge on the goods; but

(*b*) under which, if the seller is not paid and the company is wound up, the seller will have priority over all other creditors of the company as respects the goods or any property representing the goods.

[13/87]

(10) Nothing in this section shall be regarded as prejudicing an application to the Court under section 227R.

[13/87]

Agency and liability for contracts

227I.—(1) The judicial manager of a company —

(*a*) shall be deemed to be the agent of the company;

(*b*) shall be personally liable on any contract, including any contract of employment, entered into or adopted by him in the carrying out of his functions (except in so far as the contract or a notice under subsection (2) otherwise provides); and

(*c*) shall be entitled to be indemnified in respect of that liability, and to have his remuneration and expenses defrayed, out of the property of the company which is in his custody or under his control in priority to all other debts except those subject to a security to which section 227H(2) applies.

[13/87]

(2) Where a contract entered into by the company is adopted by the judicial manager, he may, by notice given to the other party, disclaim any personal liability under that contract.

[13/87]

(3) For the purposes of this section, the judicial manager is not to be taken to have adopted a contract entered into by the company by reason of anything done or omitted to be done within 28 days after the making of the judicial management order.

[13/87]

(4) Nothing in this section shall —

(*a*) limit the right of a judicial manager to seek an indemnity from any other person in respect of contracts entered into by him that are approved by the Court; or

(*b*) make the judicial manager personally liable for payment of rent under leases held by the company at the time of his appointment.

[13/87]

Vacation of office and release

227J.—(1) The judicial manager of a company may at any time be removed from office by order of the Court and may, with leave of the Court and subject to such conditions as the Court may impose, resign his office by giving notice of his resignation to the Court.

[13/87]

(2) The judicial manager of a company shall vacate office if —

(*a*) being a public accountant at the time of his appointment, he ceases to be a public accountant; or

(*b*) the judicial management order is discharged.

[13/87; 5/2004]

(3) Where at any time a person ceases to be a judicial manager of a company whether by virtue of this section or by reason of his death —

(*a*) any sums payable in respect of any debts or liabilities incurred while he was a judicial manager under contracts entered into by him in the carrying out of his functions; and

(*b*) any remuneration and expenses properly incurred by him,

shall be charged on and paid out of the property of the company in his custody or under his control in priority to all other debts, except those subject to a security to which section 227H(2) applies.

[13/87]

(4) Where a person ceases to be a judicial manager of a company, he shall, from such time as the Court may determine, be released from any liability in respect of any act or omission by him in the management of the company or otherwise in relation to his conduct as a judicial manager but nothing in this section shall relieve him of any of the liabilities referred to in section 227Q(4).

[13/87]

Information to be given by and to judicial manager

227K.—(1) Where a judicial management order has been made, the judicial manager shall —

(*a*) immediately send to the Registrar a copy of the order;

(*b*) immediately send to the company and publish a notice of the order in the *Gazette* and in an English and Chinese local daily newspaper; and

(*c*) within 28 days after the making of the order, unless the Court otherwise directs, send such a notice to all creditors of the company (so far as he is aware of the addresses),

and the Registrar shall enter the copy of the order in his records of the company.

[13/87]

(2) A statement as to the affairs of the company shall be made out and submitted to the judicial manager in accordance with section 227L within 21 days after receipt by the company of the notice of the judicial management order. Any longer period allowed by the judicial manager shall not exceed 2 months.

[13/87]

(3) If a person, without reasonable excuse, fails to comply with this section he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and also to a default penalty.

[13/87]

Company's statement of affairs

227L.—(1) The company's statement of affairs required by section 227K to be submitted to the judicial manager shall show as at the date of the judicial management order —

(*a*) the particulars of the company's assets, debts and liabilities;

(*b*) the names and addresses of its creditors;

(*c*) the securities held by them respectively;

(*d*) the dates when the securities were respectively given; and

(*e*) such further or other information as may be prescribed.

[13/87]

(2) The statement shall be submitted by, and be verified by, affidavit of one or more of the persons who are, at the date of the judicial management order, the directors and by the person who is at that date the secretary of the company, or by such of the persons mentioned in

subsection (3) as the judicial manager may require to submit and verify the statement.

[13/87]

(3) The persons referred to in subsection (2) are —

(*a*) those who are or have been officers of the company;

(*b*) those who have taken part in the company's formation at any time within one year before the date of the judicial management order;

(*c*) those who are in the company's employment, or have been in its employment, and are in the judicial manager's opinion capable of giving the information required,

and in this subsection "employment" includes employment under a contract for services.

[13/87]

(4) If a person, without reasonable excuse, fails to comply with this section, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 and also to a default penalty.

[13/87]

(5) Any statement of affairs prepared under this section may be used in evidence against any person making or concurring in making it.

[13/87]

(6) A copy of the company's statement of affairs shall immediately be delivered by the judicial manager to the Registrar.

[13/87]

(7) Any person making the statement and affidavit shall be allowed and shall be paid by the judicial manager, out of his receipts, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the judicial manager may consider reasonable, subject to an appeal to the Court.

[13/87]

Statement of proposals

227M.—(1) Where a judicial management order has been made, the judicial manager shall, within 60 days (or such longer period as the Court may allow) after the making of the order —

(*a*) send to the Registrar and (so far as he is aware of their addresses) to all creditors a statement of his proposals for achieving one or more of the purposes mentioned in section 227B(1)(*b*) for whose achievement the order was made; and

(*b*) lay a copy of the statement before a meeting of the company's creditors summoned for the purpose on not less than 14 days' notice.

[13/87]

(2) The judicial manager shall also, within 60 days (or such longer period as the Court may allow) after the making of the order, either —

(*a*) send a copy of the statement (so far as he is aware of their addresses) to all members of the company; or

(*b*) publish a notice in an English and Chinese local daily newspaper stating an address to which members of the company should write for copies of the statement to be sent to them free of charge.

[13/87]

Consideration of proposals by creditors' meeting

227N.—(1) A meeting of creditors, summoned under section 227M, shall decide whether to approve the judicial manager's proposals.

[13/87]

(2) At such meeting the majority in number and value of creditors, present and voting either in person or by proxy whose claims have been accepted by the judicial manager, may approve the proposals with modifications but shall not do so unless the judicial manager consents to each modification.

[13/87]

(3) The judicial manager shall report the result of the meeting (which shall, subject to subsection (2), be conducted in accordance with regulations) to the Court and shall give notice of that result to the Registrar and to such other persons or bodies as the Court may approve.

[13/87]

(4) If a report is given to the Court under subsection (3) that the meeting has declined to approve the judicial manager's proposals (with or without modifications), the Court may by order discharge the judicial management order and make such consequential provision as it thinks fit, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit. A copy of any order of Court made under this subsection shall be published in an English and Chinese local daily newspaper.

[13/87]

(5) Where the judicial management order is discharged, the judicial manager shall immediately send to the Registrar a copy of the order effecting the discharge.

[13/87]

(6) If the judicial manager, without reasonable excuse, fails to comply with subsection (5) he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and also to a default penalty.

[13/87]

Committee of creditors

227O.—(1) Where a meeting of creditors summoned under section 227M has approved the judicial manager's proposals (with or without modifications), the meeting may, if it thinks fit, establish a committee to exercise the functions conferred on it under subsection (2).

[13/87]

(2) If such a committee is established, the committee may require the judicial manager to attend before it and furnish it with such information relating to the carrying out by him of his functions as it may reasonably require.

[13/87]

Duty to manage company's affairs, etc., in accordance with approved proposals

227P.—(1) Where the judicial manager's proposals have been approved by a meeting of creditors summoned under section 227M, then, subject to any order under section 227R, it shall be the duty of the judicial manager to manage the affairs, business and property of the company in accordance with the proposals as from time to time revised by him.

[13/87]

(2) Where the judicial manager proposes to make substantial revisions of his proposals as so approved, he shall —

(*a*) send to all creditors of the company (so far as he is aware of their addresses) a statement of his proposed revisions; and

(*b*) lay a copy of the statement before a meeting of the company's creditors summoned for the purpose on not less than 14 days' notice,

and shall not make the proposed revisions unless they are approved by the majority in number and value of creditors present and voting in person or by proxy at the meeting whose claims have been accepted by the judicial manager.

[13/87]

(3) The judicial manager shall also either —

(*a*) send a copy of the statement (so far as he is aware of their addresses) to all members of the company; or

(*b*) publish a notice in an English and Chinese local daily newspaper stating an address to which members of the company should write for copies of the statement to be sent to them free of charge.

[13/87]

(4) A meeting of creditors summoned under subsection (2) (which shall, subject to subsection (2) and this subsection, be conducted in accordance with the regulations) may approve the proposed revisions with modifications but shall not do so unless the judicial manager consents to each modification.

[13/87]

(5) After the conclusion of a meeting summoned under subsection (2), the judicial manager shall give notice of the result of the meeting to the Registrar or to such other persons or bodies as the Court may approve.

[13/87]

Duty to apply for discharge of judicial management order

227Q.—(1) The judicial manager of a company shall apply to the Court for the judicial management order to be discharged if it appears to him that the purpose or each of the purposes specified in the order either has been achieved or is incapable of achievement.

[13/87]

(2) On the hearing of an application under this section, the Court may by order discharge the judicial management order and make such consequential provision as it thinks fit, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order it thinks fit.

[13/87]

(3) Where the judicial management order is discharged, the judicial manager shall immediately send to the Registrar a copy of the order effecting the discharge.

[13/87]

(4) Where a judicial management order has been discharged under this Part or where a person ceases to be a judicial manager pursuant to section 227J, the judicial manager may apply to the Court for his release and the Court may, if it thinks fit, make an order releasing him from liability in respect of any act or omission by him in the management of the company or otherwise in relation to his conduct as judicial manager but any such release shall not relieve him from liability for any misapplication or retention of money or property of the company or for which he has become accountable or from any law to which he would be subject in respect

of negligence, default, misfeasance, breach of trust or breach of duty in relation to the company.

[13/87]

Protection of interests of creditors and members

227R.—(1) At any time when a judicial management order is in force, a creditor or member of the company may apply to the Court for an order under this section on the ground —

(*a*) that the company's affairs, business and property are being or have been managed by the judicial manager in a manner which is or was unfairly prejudicial to the interests of its creditors or members generally or of some part of its creditors or members (including at least himself) or of a single creditor that represents one quarter in value of the claims against the company; or

(*b*) that any actual or proposed act or omission of the judicial manager is or would be so prejudicial.

[13/87; 42/2005]

(2) On an application for an order under this section, the Court may make such order as it thinks fit for giving relief in respect of the matters complained of, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit.

[13/87; 42/2005]

(3) Subject to subsection (4), an order under this section may —

(*a*) regulate the future management by the judicial manager of the company's affairs, business and property;

(*b*) require the judicial manager to refrain from doing or continuing an act complained of by the applicant or to do an act which the applicant has complained he has omitted to do;

(*c*) require the summoning of a meeting of creditors or members for the purpose of considering such matters as the Court may direct;

(*d*) discharge the judicial management order and make such consequential provision as it thinks fit.

[13/87; 42/2005]

(4) An order under this section shall not prejudice or prevent the implementation of any composition or scheme approved under section 210.

[13/87]

(5) Where the judicial management order is discharged, the judicial manager shall immediately send to the Registrar a copy of the order effecting the discharge.

[13/87]

(6) If the judicial manager, without reasonable excuse, fails to comply with subsection (5) he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and also to a default penalty.

[13/87]

Trade union representation on behalf of members who are creditors and employees of a company

227S.—(1) Where employees of a company are creditors, by reason that wages or salary are payable to them whether by way of allowance or reimbursement under contracts of employment

or any award or agreement regulating conditions of employment or otherwise, and where the employees are members of a trade union that is recognised by the company under the Industrial Relations Act (Cap. 136), it shall be sufficient compliance by the judicial manager with sections 227K, 227M and 227N if the notice, statement of proposals or revised proposals referred to therein are sent to the trade union representing the employees.

[13/87]

(2) A trade union to which subsection (1) applies shall be entitled to represent any such employees at a meeting of creditors summoned under section 227M or, with leave of the Court, to apply to the Court under section 227R on their behalf or may make representations to the judicial manager on behalf of those employees in respect of —

(*a*) any matter connected with or arising from the continuation or termination of their contracts of employment under section 227I; or

(*b*) any matter relating to any award made by the Industrial Arbitration Court under the Industrial Relations Act (Cap. 136) or any collective agreement certified under that Act that affects those employees.

[13/87; 42/2005]

Undue preference in case of judicial management

227T.—(1) Subject to this Act and such modifications as may be prescribed, a settlement, a conveyance or transfer of property, a charge on property, a payment made or an obligation incurred by a company which if it had been made or incurred by a natural person would in the event of his becoming a bankrupt be void as against the Official Assignee under section 98, 99 or 103 of the Bankruptcy Act (Cap. 20) (read with sections 100, 101 and 102 thereof) shall, in the event of the company being placed under judicial management, be void as against the judicial manager.

[13/87; 15/95]

(2) For the purposes of subsection (1), the date that corresponds with the date of the application for a bankruptcy order in the case of a natural person and the date on which a person is adjudged bankrupt is the date on which an application for a judicial management order is made.

[13/87; 42/2005]

Delivery and seizure of property

227U.—(1) Where any of the persons mentioned in subsection (2) has in his possession or control any property, books, papers or records to which the company appears to be entitled, the Court may require that person immediately (or within such period as the Court may direct) to pay, deliver, convey, surrender or transfer the property, books, papers or records to the judicial manager.

[13/87]

(2) The persons referred to in subsection (1) are —

(*a*) a contributory or member of the company;

(*b*) any person who has previously held office as receiver or receiver and manager of the company's property; and

(*c*) any trustee for, or any banker, agent or officer of, the company.

[13/87]

(3) Where —

(*a*) the judicial manager seizes or disposes of any property which is not the property of the company; and

(*b*) at the time of seizure or disposal the judicial manager believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the Court or otherwise) to seize or dispose of that property,

the judicial manager shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the negligence of the judicial manager and the judicial manager shall have a lien on the property, or the proceeds of its sale, for such expenses as were incurred in connection with the seizure or disposal.

[13/87]

Duty to co-operate with judicial manager

227V.—(1) Each of the persons mentioned in subsection (2) shall —

(*a*) give to the judicial manager such information concerning the company and its promotion, formation, business, dealings, affairs or property as the judicial manager may at any time after the date of the judicial management order reasonably require; and

(*b*) attend on the judicial manager at such times as the judicial manager may reasonably require.

[13/87]

(2) The persons referred to in subsection (1) are —

(*a*) those who are or have at any time been officers of the company;

(*b*) those who have taken part in the formation of the company at any time within one year before the date of the judicial management order; and

(*c*) those who are in the employment of the company, or have been in its employment, and are, in the judicial manager's opinion, capable of giving information which he requires.

[13/87]

(3) If a person, without reasonable excuse, fails to comply with any obligation imposed by this section, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 and also to a default penalty.

[13/87]

Inquiry into company's dealings, etc.

227W.—(1) The Court may, on the application of the judicial manager, summon to appear before it —

(*a*) any officer of the company;

(*b*) any person known or suspected to have in his possession any property of the company or supposed to be indebted to the company; or

(*c*) any person whom the Court thinks capable of giving information concerning the

promotion, formation, business, dealings, affairs or property of the company,

and the Court may require any such person as is mentioned in paragraphs (*a*) to (*c*) to submit an affidavit to the Court containing an account of his dealings with the company or to produce any books, papers or other records in his possession or under his control relating to the company or the matters mentioned in paragraph (*c*).

[13/87]

(2) In a case where a person, without reasonable excuse, fails to appear before the Court when he is summoned to do so under this section or there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding his appearance before the Court under this section, the Court may, for the purpose of bringing that person and anything in his possession before the Court, cause a warrant to be issued to a police officer —

(*a*) for the arrest of that person; and

(*b*) for the seizure of any books, papers, records, money or goods in that person's possession,

and may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held until that person is brought before the Court under the warrant or until such other time as the Court may order.

[13/87]

(3) Any person who appears or is brought before the Court under this section may be examined on oath, either orally or by interrogatories, concerning the company or the matters mentioned in subsection (1)(*c*).

[13/87]

(4) If it appears to the Court, on consideration of any evidence obtained under this section, that any person has in his possession any property of the company, the Court may, on the application of the judicial manager, order that person to deliver the whole or any part of the property to the judicial manager at such time, in such manner and on such terms as the Court thinks fit.

[13/87]

(5) If it appears to the Court, on consideration of any evidence obtained under this section, that any person is indebted to the company, the Court may, on the application of the judicial manager, after examining that person on the matter, order that person to pay to the judicial manager, at such time and in such manner as the Court may direct, the whole or any part of the amount due, whether in full discharge of the debt or otherwise, as the Court thinks fit.

[13/87]

(6) The Court may, if it thinks fit, order that any person, who if within Singapore would be summoned to appear before it under this section, to be examined in a place outside Singapore.

[13/87]

Application of certain provisions in Parts VII and X to a company under judicial management

227X. At any time when a judicial management order is in force in relation to a company under judicial management —

(*a*) section 210 shall apply as if for subsections (1) and (3) thereof there were substituted the following:

"(1) Where a compromise or arrangement is proposed between a company and its creditors, the Court may on the application of the judicial manager order a meeting of creditors to be summoned in such manner as the Court directs.

(3) If three-fourths in value of the creditors present and voting either in person or by proxy at the meeting agree to any compromise or arrangement, the compromise or arrangement shall, if approved by the Court, be binding on all the creditors and on the judicial manager."; and

(*b*) sections 337, 340, 341 and 342 shall apply as if the company under judicial management were a company being wound up and the judicial manager were the liquidator, but this shall be without prejudice to the power of the Court to order that any other section in Part X shall apply to a company under judicial management as if it applied in a winding up by the Court and any reference to the liquidator shall be taken as a reference to the judicial manager and any reference to a contributory as a reference to a member of the company.

[13/87]

PART IX

INVESTIGATIONS

Application of this Part

228. This Part does not authorise any investigation into the insurance business of a company or into the business of a banking corporation, unless specifically provided for in this Part.

[62/70]

[Aust., 1961, s. 168 (2)]

Interpretation

229. In this Part, unless the contrary intention appears —

"company" includes a foreign company which is a declared company;

"declared company" means a company or foreign company which the Minister has by order declared to be a company to which this Part applies;

"officer or agent", in relation to a corporation, includes —

(*a*) a director, banker, solicitor or auditor of the corporation;

(*b*) a person who at any time —

(i) has been a person referred to in paragraph (*a*); or

(ii) has been otherwise employed or appointed by the corporation;

(*c*) a person who —

(i) has in his possession any property of the corporation;

(ii) is indebted to the corporation; or

(iii) is capable of giving information concerning the promotion, formation, trading, dealings, affairs or property of the corporation; and

(*d*) where there are reasonable grounds for suspecting or believing that a person is a

person referred to in paragraph (*c*) — that person.

[Aust., 1961, ss. 168 (2), 172 (1)]

[62/70; 13/87]

Power to declare company or foreign company

230. The Minister may by order declare that a company or foreign company is a company to which this Part applies if he is satisfied —

(*a*) that a prima facie case has been established that, for the protection of the public or the shareholders or creditors of the company or foreign company, it is desirable that the affairs of the company or foreign company should be investigated under this Part;

(*b*) that it is in the public interest that allegations of fraud, misfeasance or other misconduct by persons who are or have been concerned with the formation or management of the company or foreign company should be investigated under this Part;

(*c*) that for any other reason it is in the public interest that the affairs of the company or foreign company should be investigated under this Part; or

(*d*) in the case of a foreign company, that the appropriate authority of another country has requested that a declaration be made pursuant to this section in respect of the company.

[13/87]

[Aust., 1961, s. 172 (2) and (3)]

Appointment of inspectors for declared companies

231.—(1) Where a company or foreign company has been declared to be a company to which this Part applies, the Minister shall appoint one or more inspectors to investigate the affairs of that company, and to report his opinion thereon to the Minister.

(2) An inspector appointed under subsection (1) may, at any time in the course of his investigation, without the necessity of making an interim report, inform the Minister of matters coming to his knowledge as a result of the investigation which tend to show that an offence has been committed; and the Minister may thereafter take such steps as he may consider fit.

[19/75]

(3) The expenses of and incidental to an investigation of a declared company shall be defrayed in the first instance out of moneys provided by Parliament.

(4) Where the Minister is of the opinion that the whole or any part of the expenses of and incidental to the investigation should be paid by the company or by any person who is convicted on a prosecution brought under section 233(3) or who is ordered to pay damages or restore property in proceedings under section 233(4) the Minister may by notification in the *Gazette* direct that the expenses be so paid.

[13/87]

(5) A notification under subsection (4) may specify the time or times and the manner in which the payment of the expenses shall be made.

(6) Where a notification has been published by the Minister under subsection (5) the persons named in the notification to the extent therein specified shall be liable to reimburse the Minister in respect of such expenses.

(7) Action to recover any such expenses may be taken in the name of the Government in any court of competent jurisdiction.

(8) Where a notification under subsection (4) has been published for the payment of the whole or part of the expenses by a company and the company is in liquidation or subsequently goes into liquidation the expenses so ordered to be paid by the company shall be deemed to be part of the costs and expenses of the winding up for the purposes of section 328(1)(*a*).

(9) The report of the inspector may if he thinks fit, and shall, if the Minister so directs, include a recommendation as to the terms of the notification which he thinks proper in the light of his investigation to be given by the Minister under subsection (4).
[Aust., 1961, s. 173]

Investigation of affairs of company by inspectors at direction of Minister

232.—(1) The Minister may appoint one or more inspectors to investigate the affairs of a company or such aspects of the affairs of a company as are specified in the instrument of appointment and to report thereon in such manner as the Minister directs —

(*a*) in the case of a company having a share capital, on the application of —

(i) not less than 200 members (excluding the company itself if it is registered as a member) or of members holding not less than 10% of the shares issued (excluding treasury shares); or

(ii) holders of debentures holding not less than 20% in nominal value of debentures issued;

(*b*) in the case of a company not having a share capital, on the application of not less than 20% in number of the persons on the company's register of members; or

(*c*) in any case on the application of a company in pursuance of a special resolution.

[13/87; 21/2005]

(2) An application under this section shall be supported by such evidence as the Minister requires as to the reasons for the application and the motives of the applicants in requiring the investigation, and the Minister may before appointing an inspector require the applicants to give security for such amount as he thinks fit for payment of the cost of the investigation.
[UK, Treasury Shares, Sch., para. 23; Aust., 1961, s. 169]

As to reports of inspectors

233.—(1) An inspector appointed by the Minister may, and if so directed by the Minister shall, make interim reports to the Minister and on the conclusion of the investigation the inspector shall report his opinion on or in relation to the affairs that he has been appointed to investigate together with the facts upon which his opinion is based to the Minister, and a copy of the report shall, subject to subsection (1B), be forwarded by the Minister to the registered office of the company, and a further copy shall, subject to that subsection, at the request of the applicants be delivered to them.

[13/87]

(1A) Subject to subsections (1B) and (1C), the Minister shall give a copy of a report made under this Part to each person to whom in the opinion of the Minister the report ought to be given by reason that it relates to the affairs of that person to a material extent.

[13/87]

(1B) The Minister is not bound to furnish a company, an applicant or any other person with a copy of the report or any part thereof if he is of the opinion that there is good reason for not divulging the contents of the report or any part thereof.

[13/87]

(1C) Subject to subsection (1D), the Minister shall not give a copy of a report made under this Part to a person under subsection (1A) if he believes that legal proceedings that have been or, in his opinion, might be instituted, might be unduly prejudiced by giving the report to that person.

[13/87]

(1D) A court before which legal proceedings are brought against a person for or in respect of matters dealt with in a report under this Part may order that a copy of the report or part thereof shall be given to that person.

[13/87]

(2) The Minister may, if he is of the opinion that it is necessary in the public interest to do so, cause the report to be printed and published but shall refrain from so doing if the Attorney-General has certified in writing that publication of the report would be prejudicial to the administration of justice.

(3) If from any report of an inspector appointed by the Minister it appears to the Minister that the case is one in which a prosecution ought to be instituted, he shall cause a prosecution to be instituted accordingly and all officers and agents of the company (other than the defendant in the proceedings) shall on being required by the Minister to do so give all assistance in connection with the prosecution which they are reasonably able to give.

(4) If from any report of an inspector appointed by the Minister it appears to the Minister that proceedings ought in the public interest to be brought by any company dealt with by the report for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation of that company or in the management of its affairs or for the recovery of any property of the company which has been misapplied or wrongfully retained, he may himself bring proceedings for that purpose in the name of the company.
[Aust., 1961, s. 178]

Investigation by resolution of company

234. [*Repealed by Act 13 of 1987*]

Investigation of affairs of related corporation

235. Where an inspector thinks it necessary for the purposes of the investigation of the affairs of a company to investigate the affairs of a corporation which is or has at any relevant time been a corporation deemed to be related by virtue of section 6 to the company, he may, with the consent in writing of the Minister, investigate the affairs of that corporation.

[62/70]

[Aust., 1961, s. 172]

Procedure and powers of inspector

236.—(1) If an inspector appointed to investigate the affairs of a company thinks it necessary for the purposes of the investigation to investigate also the affairs of any other corporation which is or has at any relevant time been deemed to be or to have been related to that company by virtue of section 6, he shall have power to do so, and he shall report on the

affairs of the other corporation so far as he thinks the results of the investigation thereof are relevant to the investigation of the affairs of the company.

(2) Every officer and agent of a corporation the affairs of which are being investigated under this Part shall, if required by an inspector appointed under this Part, produce to the inspector all books and documents in his custody or power and shall give to the inspector all assistance in connection with the investigation which he is reasonably able to give.

(3) An inspector may, by notice in the prescribed form, require any officer or agent of any corporation whose affairs are being investigated pursuant to this Part to appear for examination on oath or affirmation (which he is hereby authorised to administer) in relation to its business; and the notice may require the production of all books and documents in the custody or under the control of that officer or agent.

(4) An inspector who, pursuant to this section, requires the production of all books and documents in the custody or power or under the control of an officer or agent of any corporation whose affairs are being investigated under or pursuant to this Part —

(*a*) may take possession of all such books and documents;

(*b*) may retain all such books and documents for such time as he considers to be necessary for the purpose of the investigation; and

(*c*) shall permit such corporation to have access at all reasonable times to all such books and documents so long as they are in his possession.

(4A) If an inspector has reasonable grounds for believing that a director or past director of the company or of a corporation which is or has at any time been deemed to be or to have been related to that company by virtue of section 6 whose affairs the inspector is investigating maintains or has maintained a bank account of any description, whether alone or jointly with another person and whether in Singapore or elsewhere, into or out of which there has been paid any money which has been in any way connected with any act or omission or series of acts or omissions, which on the part of that director constituted misconduct (whether fraudulent or not towards that company or that related company or its members), an inspector may require the director to produce to him all documents in the director's possession or under his control relating to that bank account.

[13/87]

(5) If any officer or agent of any corporation, the affairs of which are being investigated pursuant to this Part, fails to comply with the requirements of any notice issued under subsection (3) or fails or refuses to answer any question which is put to him by an inspector with respect to the affairs of the corporation or that officer or agent is a director or past director to whom subsection (4A) applies, if he fails to comply with a requirement of an inspector under that subsection, the inspector may certify the failure or refusal under his hand to the Court, which may thereupon inquire into the case and, after hearing any witnesses against or on behalf of the alleged offender and any statement offered in defence, punish the offender in like manner as if he had been guilty of contempt of the Court.

[13/87]

(6) No person, who is or has formerly been an officer or agent of a corporation the affairs of which are being investigated under this Part, shall be entitled to refuse to answer any question which is relevant or material to the investigation on the ground that his answer might tend to incriminate him but if he claims that the answer to any question, might incriminate him and but for this subsection he would have been entitled to refuse to answer the question, the answer to

the question shall not be used in any subsequent criminal proceedings except in the case of a charge against him for making a false statement in answer to that question.

(7) Subject to subsection (6), any person shall be entitled to refuse to answer a question on the ground that the answer might tend to incriminate him.

(8) An inspector may cause notes of any examination under this Part to be recorded and reduced to writing and to be read to or by and signed by the person examined and any such signed notes may except in the case of any answer which that person would not have been required to give but for subsection (6) thereafter be used in evidence in any legal proceedings against that person.

[Aust., 1961, ss. 173-176]

As to costs of investigations

237.—(1) The expenses of and incidental to an investigation by an inspector appointed pursuant to sections 232 and 243 (including the costs of any proceedings brought by the Minister in the name of the company), shall be paid by the company investigated or if the Minister so directs by the applicants or in part by the company and in part by the applicants.

(2) Notwithstanding subsection (1) —

(*a*) if the company fails to pay the whole or any part of the sum which it is so liable to pay, the applicants shall make good the deficiency up to the amount by which the security given by them under this Part exceeds the amount, if any, which they have under subsection (1) been directed by the Minister to pay; and

(*b*) any balance of the expenses not paid either by the company or the applicants shall be paid out of moneys provided by Parliament.

[Aust., 1961, s. 179]

Report of inspector to be admissible in evidence

238. A copy of the report of any inspector appointed under this Part, certified as correct by the Minister, shall be admissible in any legal proceedings as evidence of the opinion of the inspector and of the facts upon which his opinion is based in relation to any matter contained in the report.

[Aust., 1961, s. 178 (10)]

Powers of inspector in relation to a declared company

239.—(1) An inspector of a declared company may employ such persons as he considers necessary and in writing authorise any such person to do anything he could himself do, except to examine on oath or affirmation.

(2) Any officer or agent of a corporation who —

(*a*) refuses or fails to produce any book or document to any person who produces a written authority of an inspector given pursuant to subsection (1); or

(*b*) refuses or fails to answer any question lawfully put to him by any such person,

shall be liable to be dealt with in the same manner as is provided in section 236(5) for refusing or failing to comply with the request of an inspector.

[Aust., 1961, s. 173]

Suspension of actions and proceedings by declared company

240.—(1) On and after the appointment of an inspector in respect of any declared company until the expiration of 3 months after the inspector has presented his final report to the Minister, no action or proceeding shall without the consent of the Minister (which may be given generally or in a particular case and which may be given subject to such conditions and limitations as he thinks fit) be commenced or proceeded with in any Court —

(*a*) by the company upon or in respect of any contract, bill of exchange or promissory note; or

(*b*) by the holder or any other person in respect of any bill of exchange or promissory note made, drawn or accepted by or issued, transferred, negotiated or endorsed by or to the company unless the holder or other person —

(i) at the time of the negotiation, transfer, issue, endorsement or delivery thereof to him gave therefor adequate pecuniary consideration; and

(ii) was not at the time of the negotiation, transfer, issue, endorsement or delivery thereof to him or at any time within 3 years before that time a member, officer, agent or employee of the company or the wife or husband of any member, officer, agent or employee of the company.

(2) Any action or proceeding which is commenced or proceeded with in contravention of this section shall be void and of no effect.

[Aust., 1961, s. 174]

Winding up of company

241.—(1) An application to the Court —

(*a*) in the case of a company, for the winding up of the company; or

(*b*) in the case of a foreign company, for the winding up so far as the assets of the company in Singapore are concerned of the affairs of the company,

may be made by the Minister at any time after a report has been made in respect of a declared company by an inspector whereupon the provisions of this Act shall with such adaptations as are necessary, apply as if —

(*c*) in the case of a company, a winding up application had been duly made to the Court by the company; and

(*d*) in the case of a foreign company, an application for an order for the affairs of the company so far as assets in Singapore are concerned to be wound up in Singapore had been duly made to the Court by a creditor or contributory of the company upon the liquidation of the company in the place in which it is incorporated.

[42/2005]

(2) Where, in the case of a foreign company, on any application under subsection (1) an order is made for the affairs of the company so far as assets in Singapore are concerned to be wound up in Singapore the company shall not carry on business or establish or keep a place of business in Singapore.

[42/2005]

[Aust., 1961, s. 180]

Penalties

242.—(1) Any person who, with intent to defeat the purposes of this Part or to delay or obstruct the carrying out of an investigation under this Part —

(*a*) destroys, conceals or alters any book, document or record of or relating to a declared company; or

(*b*) sends or attempts to send or conspires with any other person to send out of Singapore any such book, document or record or any property of any description belonging to or in the disposition or under the control of such a company,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years.

[15/84]

(2) If in any prosecution for an offence under this section it is proved that the person charged with the offence —

(*a*) has destroyed, concealed or altered any book, document or record of or relating to the company; or

(*b*) has sent or attempted to send or conspired to send out of Singapore any book, document or record or any property of any description belonging to or in the disposition or under the control of the company,

the onus of proving that in so doing he had not acted with intent to defeat the purposes of this Part or to delay or obstruct the carrying out of an investigation under this Part shall lie on him.
[Aust., 1961, s. 179A]

Appointment and powers of inspectors to investigate ownership of company

243.—(1) Where it appears to the Minister that there is good reason to do so, he may appoint one or more inspectors to investigate and report on the membership of any corporation, whether or not it is a declared company, and otherwise with respect to the corporation for the purpose of determining the true persons who are or have been financially interested in the success or failure, real or apparent, of the corporation or able to control or materially to influence the policy of the corporation.

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

(3) Where an application for an investigation under this section with respect to particular shares or debentures of a corporation is made to the Minister by members of the corporation, and the number of applicants or the amount of the shares held by them is not less than that required for an application for the appointment of an inspector under section 232, the Minister shall appoint an inspector to conduct the investigation unless he is satisfied that the application is vexatious, and the inspector's appointment shall not exclude from the scope of his investigation any matter which the application seeks to have included therein, except in so far as the Minister is satisfied that it is unreasonable for that matter to be investigated.

(4) Subject to the terms of an inspector's appointment, his powers shall extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding

which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of his investigation.

(5) For the purposes of any investigation under this section, the provisions of this Part with respect to the investigation of declared companies shall apply with the necessary modifications of references to the affairs of the corporation or to those of any other corporation, but so that —

(*a*) this Part shall apply in relation to all persons who are or have been, or whom the inspector has reasonable cause to believe to be or to have been financially interested in the success or failure or the apparent success or failure of the corporation or any other corporation the membership of which is investigated with that of the corporation, or able to control or materially to influence the policy thereof, including persons concerned only on behalf of others, as they apply in relation to officers and agents of the corporation or of the other corporation, as the case may be; and

(*b*) the Minister shall not be bound to furnish the corporation or any other person with a copy of any report by an inspector appointed under this section or with a complete copy thereof if he is of opinion that there is good reason for not divulging the contents of the report or of parts thereof, but may, if he thinks fit, cause to be kept by the Registrar a copy of the report or, as the case may be, the parts of the report, as respects which he is not of that opinion.

[13/87]

[UK, 1948, s. 172; Aust., 1961, s. 177]

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

244.—(1) Where it appears to the Minister that there is good reason to investigate the ownership of any shares in or debentures of a corporation and that it is unnecessary to appoint an inspector for the purpose, he may require any person whom he has reasonable cause to believe to have or to be able to obtain any information as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures to give such information to the Minister.

[62/70; 13/87]

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

[62/70]

(3) Any person who fails to give any information required of him under this section, or who in giving any such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months or to both.

[62/70; 15/84]

(4) This section shall apply to a banking corporation but nothing therein shall, subject to the provisions of the Banking Act (Cap. 19), require disclosure by a banking corporation to the Minister of any information as to the affairs of any of its customers other than the corporation of which it is the banker.

[62/70]

(5) The Minister may by notification in the *Gazette* delegate his powers under this section either generally or in any particular case to a committee of a securities exchange that has been approved by him under any written law relating to the securities industry or to any body, panel or committee that has been established to advise him on matters connected with the securities industry.

[49/73; 42/2001]

(6) A committee of a securities exchange or any body, panel or committee referred to in subsection (5) in the discharge of its powers under that subsection shall keep the Minister informed of any information obtained under this section.

[49/73; 42/2001]

(7) Notwithstanding any delegation of his powers under this section, the Minister may exercise any of the powers conferred upon him under this section.

[49/73]

Power to impose restrictions on shares or debentures

245.—(1) Where in connection with an investigation under section 243 or 244 it appears to the Minister that there is difficulty in finding out the relevant facts about any shares, whether issued or to be issued, the Minister may by order published in the *Gazette* direct that the shares are until further order subject to the following restrictions:

(*a*) that any transfer of those shares or any exercise of the right to acquire or dispose of those shares or in the case of unissued shares any transfer of the right to be issued therewith and any issue thereof, shall be void;

(*b*) that no voting rights shall be exercisable in respect of those shares;

(*c*) that no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder thereof; and

(*d*) that, except in a liquidation, no payment shall be made of any sums due from the company on those shares, whether in respect of capital or otherwise.

[13/87]

(2) Any order of the Minister directing that shares shall cease to be subject to the restrictions referred to in subsection (1) which is expressed to be made with a view to permitting a transfer of those shares may continue the application of subsection (1)(*c*) and (*d*), in relation to those shares, either in whole or in part, so far as those paragraphs relate to any right acquired or offer made before the transfer.

(3) Where any shares are for the time being subject to any restrictions referred to in subsection (1), any person who —

(*a*) having knowledge that the shares are subject to any such restrictions, exercises or purports to exercise any right to dispose of those shares, or of any right to be issued with the shares;

(*b*) votes in respect of those shares, whether as holder or proxy, or appoints a proxy to vote in respect thereof; or

(*c*) being the holder of any of those shares, fails to notify the fact of their being subject to those restrictions to any person whom he does not know to be aware of that fact but does know to be entitled, apart from those restrictions, to vote in respect of those shares whether as holder or proxy,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months or to both.

[15/84]

(4) Where shares in any company are issued in contravention of the restrictions imposed pursuant 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 on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months.

[15/84]

(5) A prosecution shall not be instituted under this section except with the consent of the Public Prosecutor.

(6) This section shall apply in relation to debentures as it applies in relation to shares.
[UK, 1948, s. 174; Aust., 1961, s. 179]

Inspectors appointed in other countries

246. Where —

(*a*) under a corresponding law of another country an inspector has been appointed to investigate the affairs of a corporation; and

(*b*) the Minister is of the opinion that, in connection with that investigation, it is expedient that an investigation be made in Singapore,

the Minister may by notice declare that the inspector so appointed shall have the same powers and duties in Singapore in relation to the investigation as if the corporation were a declared company and the inspector had been appointed under section 231 and thereupon the inspector shall have those powers and duties.
[Aust.,1961, s. 170]

PART X

WINDING UP

Division 1 — Preliminary

Modes of winding up

247. The winding up of a company may be either —

(*a*) by the Court; or

(*b*) voluntary.
[Aust., 1961, s. 216 (1)]

Application of this Division

248. Unless inconsistent with the context or subject-matter, the provisions of this Act with respect to winding up shall apply to the winding up of a company in either of those modes.
[Aust., 1961, s. 216 (2)]

Government bound by certain provisions

249. The provisions of this Part relating to the remedies against the property of a company,

the priorities of debts and the effect of an arrangement with creditors shall bind the Government.

[Aust., 1961, s. 217]

Liability as contributories of present and past members

250.—(1) On 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 adjustments of the rights of the contributories among themselves, subject to 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 more 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 Act;

(*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 subsection (4), 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 Act 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 in his character of a member by way of dividends, profits or otherwise shall not be a debt of the company payable to that member in a case of competition between himself and any other creditor not a member, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

Unlimited liability of directors

(2) In the winding up of a limited company any director, whether past or present, whose liability is 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.

(3) Notwithstanding anything in subsection (2) —

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

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

(*c*) subject to the articles of the company, a director shall not be liable to make a further contribution unless the Court considers 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.

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

[UK, 1948, s. 212; Aust., 1961, s. 218]

Nature of liability of contributory

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

[UK, 1948, s. 214; Aust., 1961, s. 219]

Contributories in case of death of member

252.—(1) If a contributory dies, either before or after he has been placed on the list of contributories, his personal representatives shall be liable in due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly, and if they make default in paying any money ordered to be paid by them proceedings may be taken for administering the estate of the deceased contributory and for compelling payment thereout of the money due.

Contributories in case of bankruptcy of member

(2) If a contributory becomes bankrupt or assigns his estate for the benefit of his creditors, either before or after he has been placed on the list of contributories —

(*a*) his trustee shall represent him for all the purposes of the winding up and shall be a contributory accordingly; and

(*b*) there may be proved against his estate the estimated value of his liability to future calls as well as calls already made.

[UK, 1948, ss. 215, 216; Aust., 1961, s. 220]

Division 2 — Winding up by Court

Subdivision (1) — General

Application for winding up

253.—(1) A company, whether or not it is being wound up voluntarily, may be wound up under an order of the Court on the application —

(*a*) of the company;

(*b*) of any creditor, including a contingent or prospective creditor, of the company;

(*c*) of a contributory or any person who is the personal representative of a deceased contributory or the Official Assignee of the estate of a bankrupt contributory;

(*d*) of the liquidator;

(*e*) of the Minister pursuant to section 241 or on the ground specified in section 254(1)(*d*) or (*l*);

(*f*) of the judicial manager appointed pursuant to Part VIIIA;

(*g*) in the case of a company which is carrying on or has carried on banking business, of the Monetary Authority of Singapore established under the Monetary Authority of Singapore Act (Cap. 186); or

[1/2007 wef 31/03/2007]

(*h*) of the Minister on the ground specified in section 254(1)(*m*),

or of any 2 or more of those parties.

[49/73; 15/84; 13/87; 42/2005]

(2) Notwithstanding anything in subsection (1) —

(*a*) a person referred to in subsection (1)(*c*) may not make a winding up application on any of the grounds specified in section 254(1)(*a*), (*b*), (*c*), (*e*) or (*i*), unless —

(i) the company has no member; or

(ii) the shares in respect of which the contributory was a contributory or some of them were originally allotted to the contributory, or have been held by him and registered in his name for at least 6 months during the 18 months before the making of the winding up application or have devolved on him through the death or bankruptcy of a former holder;

(*b*) a winding up application shall not, if the ground of the application is default in lodging the statutory report or in holding the statutory meeting, be made by any person except a contributory or the Minister nor before the expiration of 14 days after the last day on which the meeting ought to have been held;

(*c*) the Court shall not hear the winding up application if made by a contingent or prospective creditors until such security for costs has been given as the Court thinks reasonable and a prima facie case for winding up has been established to the satisfaction of the Court; and

(*d*) the Court shall not, where a company is being wound up voluntarily, make a winding up order unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories.

[28/2004; 42/2005]

[Aust., 1961, s. 221]

Circumstances in which company may be wound up by Court

254.—(1) The Court may order the winding up if —

(*a*) the company has by special resolution resolved that it be wound up by the Court;

(*b*) default is made by the company in lodging the statutory report or in holding the statutory meeting;

(*c*) the company does not commence business within a year from its incorporation or suspends its business for a whole year;

(*d*) the company has no member;

(*e*) the company is unable to pay its debts;

(*f*) the directors have acted in the affairs of the company in their own interests rather than in the interests of the members as a whole, or in any other manner whatever which appears to be unfair or unjust to other members;

(*g*) an inspector appointed under Part IX has reported that he is of opinion —

(i) that the company cannot pay its debts and should be wound up; or

(ii) that it is in the interests of the public or of the shareholders or of the creditors that the company should be wound up;

(*h*) when the period, if any, fixed for the duration of the company by the memorandum or articles expires or the event, if any, happens on the occurrence of which the memorandum or articles provide that the company is to be dissolved;

(*i*) the Court is of opinion that it is just and equitable that the company be wound up;

(*j*) the company has held a licence under any written law relating to banking, and that licence has been revoked or has expired and has not been renewed;

(*k*) the company is carrying on or has carried on banking business in Singapore in contravention of the provisions of any written law relating to banking;

[1/2007 wef 31/03/2007]

(*l*) the company has carried on multi-level marketing or pyramid selling in contravention of any written law that prohibits multi-level marketing or pyramid selling; or

(*m*) the company is being used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore or against national security or interest.

[49/73; 15/84; 28/2004]

Definition of inability to pay debts

(2) A company shall be deemed to be unable to pay its debts if —

(*a*) a creditor by assignment or otherwise to whom the company is indebted in a sum exceeding $10,000 then due has served on the company by leaving at the registered office a demand under his hand or under the hand of his agent thereunto lawfully authorised requiring the company to pay the sum so due, and the company has for 3 weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor;

(*b*) execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(*c*) it is proved to the satisfaction of the Court that the company is unable to pay its debts; and in determining whether a company is unable to pay its debts the Court shall take into account the contingent and prospective liabilities of the company.

[13/87; 37/99]

(3) For the purpose of subsection (1)(*m*), a certificate issued by the Minister charged with the responsibility for internal security stating that he is satisfied that the company referred to in the certificate is being used for purposes against national security or interest shall be conclusive

evidence that the company is being used for such purposes.

[36/2000]

(4) Upon the making of an application by the Minister under section 253(1)(*h*) for the winding up of a company under subsection (1)(*m*) on the ground that it is being used for purposes against national security or interest, the Court, upon the application of the Minister, may, pending the hearing of the winding up application or the making of a winding up order, make —

(*a*) an order restraining the company or its directors, manager, officers or employees from doing any act or from carrying out any activity as may be specified in the order; and

(*b*) such other interim orders as the Court thinks fit.

[36/2000; 42/2005]

(5) Any person who acts in contravention of an order made by the Court under subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.

[36/2000]

[UK, 1948, ss. 222, 223; Aust., 1961, s. 222]

Commencement of winding up

255.—(1) Where before the making of a winding up application 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.

[42/2005]

(2) In any other case the winding up shall be deemed to have commenced at the time of the making of the application for the winding up.

[42/2005]

[UK, 1948, s. 229; Aust., 1961, s. 223]

Payment of preliminary costs, etc.

256.—(1) The persons, other than the company itself or the liquidator thereof, on whose application any winding up order is made, shall at their own cost prosecute all proceedings in the winding up until a liquidator has been appointed under this Part.

[42/2005]

(2) The liquidator shall, unless the Court orders otherwise, reimburse the applicant out of the assets of the company the taxed costs incurred by the applicant in any such proceedings.

[42/2005]

(3) Where the company has no assets or has insufficient assets, and in the opinion of the Minister any fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since the formation thereof, the taxed costs or so much of them as is not so reimbursed may, with the approval in writing of the Minister, to an extent specified by the Minister but not in any case exceeding $3,000, be reimbursed to the applicant out of moneys provided by Parliament for the purpose.

[13/87; 42/2005]

As to costs when order made on application of company or liquidator

(4) Where any winding up order is made upon the application of the company or the liquidator thereof, the costs incurred shall, subject to any order of the Court, be paid out of assets of the company in like manner as if they were the costs of any other applicant.

[42/2005]

[Aust., 1961, s. 224]

Powers of Court on hearing winding up application

257.—(1) On hearing a winding up application, the Court may dismiss it with or without costs or adjourn the hearing conditionally or unconditionally or make any interim or 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 or in the case of an application by a contributory that there will be no assets available for distribution amongst the contributories.

[42/2005]

(2) The Court may on the winding up application coming on for hearing or at any time on the application of the person making the winding up application, the company, or any person who has given notice that he intends to appear on the hearing of the winding up application —

(*a*) direct that any notices be given or any steps taken before or after the hearing of the winding up application;

(*b*) dispense with any notices being given or steps being taken which are required by this Act, or by the rules made thereunder, or by any prior order of the Court;

(*c*) direct that oral evidence be taken on the winding up application or any matter relating thereto;

(*d*) direct a speedy hearing or trial of the winding up application or any issue or matter;

(*e*) allow the winding up application to be amended or withdrawn; and

(*f*) give such directions as to the proceedings as the Court thinks fit.

[42/2005]

(3) Where the winding up application is made on the ground of default in lodging the statutory report or in holding the statutory meeting, the Court may, instead of making a winding up order, direct that the statutory report shall be lodged or that a meeting shall be held and may order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.

[42/2005]

[UK, 1948, s. 225; Aust., 1961, s. 225]

Power to stay or restrain proceedings against company

258. At any time after the making of a winding up application and before a winding up order has been made, the company or any creditor or contributory may, where any action or proceeding against the company is pending, apply to the Court to stay or restrain further proceedings in the action or proceeding, and the Court may stay or restrain the proceedings accordingly on such terms as it thinks fit.

[42/2005]

[UK, 1948, s. 226; Aust., 1961, s. 226]

Avoidance of dispositions of property, etc.

259. Any disposition of the property of the company, including things in action, and any transfer of shares or alteration in the status of the members of the company made after the commencement of the winding up by the Court shall unless the Court otherwise orders be void.
[UK, 1948, s. 227; Aust., 1961, s. 227]

Avoidance of certain attachments, etc.

260. Any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding up by the Court shall be void.
[UK, 1948, s. 228; Aust., 1961, s. 228]

Winding up application to be lis pendens

261. Any application for winding up a company shall constitute a lis pendens within the meaning of any law relating to the effect of a lis pendens upon purchasers or mortgagees.
[42/2005]
[Aust., 1961, s. 229]

Copy of order to be lodged, etc.

262.—(1) Within 7 days after the making of a winding up order, the applicant for the winding up order shall lodge with the Registrar notice of —

(*a*) the order and its date; and

(*b*) the name and address of the liquidator.

[42/2005]

(2) On the passing and entering of the winding up order, the applicant for the winding up order shall within 7 days —

(*a*) lodge an office copy of the order with the Official Receiver and a copy of the order with the Registrar;

(*b*) cause a copy to be served upon the secretary of the company or upon such other person or in such manner as the Court directs; and

(*c*) deliver a copy to the liquidator with a statement that the requirements of this subsection have been complied with.

[12/2002; 42/2005]

Actions stayed on winding up order

(3) 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 —

(*a*) by leave of the Court; and

(*b*) in accordance with such terms as the Court imposes.

Effect of order

(4) Subject to section 322A, an order for winding up a company shall operate in favour of all the creditors and contributories of the company as if made on the joint application of a creditor and of a contributory.

[36/2000; 42/2005]

(5) If default is made in complying with subsection (1) or (2), the applicant for the winding

up order shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

[15/84; 42/2005]

[UK, 1948, ss. 230-232; Aust., 1961, s. 230]

Subdivision (2) — Liquidators

Appointment, style, etc., of liquidators

263. The following provisions with respect to liquidators shall have effect on a winding up order being made:

(*a*) if an approved liquidator, other than the Official Receiver, is not appointed to be the liquidator of the company, the Official Receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such;

(*b*) if there is no liquidator appointed, 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;

(*c*) the Court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matter aforesaid, the Court shall decide the difference and make such order thereon as the Court may think fit;

(*d*) in a case where a liquidator is not appointed by the Court, the Official Receiver shall be the liquidator of the company;

(*da*) in a case where a winding up order is made under section 254(1)(*m*) on the ground that the company is being used for purposes against national security or interest, the Official Receiver shall be the liquidator of the company;

(*e*) the Official Receiver shall by virtue of his office be the liquidator during any vacancy;

(*f*) any vacancy in the office of a liquidator appointed by the Court may be filled by the Court;

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

[36/2000]

Provisions where person other than Official Receiver is appointed liquidator

264. Where in the winding up of a company by the Court, a person other than the Official Receiver, is appointed liquidator, that person —

(*a*) shall not be capable of acting as liquidator until he has notified his appointment to the Registrar and given security in the prescribed manner to the satisfaction of the Official Receiver; and

(*b*) shall give the Official Receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be required for enabling that officer to perform his duties under this Act.

Control of unofficial liquidators by Official Receiver

265.—(1) Where in the winding up of a company by the Court, a person, other than the Official Receiver, is the liquidator the Official Receiver shall take cognizance of his conduct and if the liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by any written law or otherwise with respect to the performance of his duties, or if any complaint is made to the Official Receiver by any creditor or contributory in regard thereto, the Official Receiver shall inquire into the matter, and take such action thereon as he may think expedient.

(2) The Official Receiver may at any time require any such 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 Official Receiver thinks fit, apply to the Court to examine him or any other person on oath concerning the winding up.

(3) The Official Receiver may also direct a local investigation to be made of the books and vouchers of such liquidator.

Control of Official Receiver by Minister

266. The Minister shall take cognizance of the conduct of the Official Receiver and of all Assistant Official Receivers who are concerned in the liquidation of companies, and if any such person does not faithfully perform his duties and duly observe all the requirements imposed on him by any written law or otherwise with respect to the performance of his duties, or if any complaint is made to the Minister by any creditor or contributory in regard thereto, the Minister shall inquire into the matter, and take such action thereon as he may think expedient, and may direct a local investigation to be made of the books and vouchers of such person.

Provisional liquidator

267. The Court may appoint the Official Receiver or an approved liquidator provisionally at any time after the making of a winding up application and before the making of a winding up order and the provisional liquidator shall have and may exercise all the functions and powers of a liquidator, subject to such limitations and restrictions as may be prescribed by the Rules or as the Court may specify in the order appointing him.

[42/2005]

[Aust., 1961, s. 231A (2)]

General provisions as to liquidators

268.—(1) A liquidator appointed by the Court may resign or on cause shown be removed by the Court.

(2) A provisional liquidator, other than the Official Receiver, shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is determined by the Court.

(3) A liquidator, other than the Official Receiver, shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is determined —

(*a*) by agreement between the liquidator and the committee of inspection, if any;

(*b*) failing such agreement, or where there is no committee of inspection by a resolution passed at a meeting of creditors by a majority of not less than 75% in value and 50% in number of the creditors present in person or by proxy and voting at the meeting and whose debts have been admitted for the purpose of voting, which meeting shall be convened by the liquidator by a notice to each creditor to which notice shall be attached a statement of all receipts and expenditure by the liquidator and the amount of remuneration sought by him; or

(*c*) failing a determination in a manner referred to in paragraph (*a*) or (*b*), by the Court.

(4) Where the salary or remuneration of a liquidator is determined in the manner specified in subsection (3)(*a*), the Court may, on the application of a member or members whose shareholding or shareholdings represents or represent in the aggregate not less than 10% of the issued capital of the company (excluding treasury shares), confirm or vary the determination.

(5) Where the salary or remuneration of a liquidator is determined in the manner specified in subsection (3)(*b*), the Court may, on the application of the liquidator or a member or members referred to in subsection (4), confirm or vary the determination.

(6) Subject to any order of the Court, the Official Receiver when acting as a liquidator or provisional liquidator of a company shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is prescribed.

(7) If more than one liquidator is appointed by the Court, the Court shall declare whether anything by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(8) Subject to this Act, the acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.
[UK, 1948, s. 242; Aust., 1961, s. 232]

Custody and vesting of company's property

269.—(1) Where a winding up order has been made or a provisional liquidator has been appointed, the liquidator or provisional liquidator 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.

(2) The Court may, on the application of the liquidator, by order direct that all or any part of the property of whatever description belonging to the company or held by trustees on its behalf shall vest in the liquidator 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 directs, bring or defend 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.

(3) Where an order is made under this section, every liquidator of a company in relation to which the order is made shall lodge within 7 days of the making of the order —

(*a*) a copy of the order with the Registrar; and

(*b*) where the order relates to land, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land,

and every liquidator who makes default in complying with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 and also to a default

penalty.

[15/84; 12/2002]

(4) No vesting order referred to in this section shall have any effect or operation in transferring or otherwise vesting land until an appropriate entry or memorandum thereof is made by or with the appropriate authority.

[UK, 1948, ss. 243, 244; Aust., 1961, s. 233]

Statement of company's affairs to be submitted to Official Receiver

270.—(1) There shall be made out and verified in the prescribed form and manner and submitted to the Official Receiver or the liquidator, as the case requires, a statement as to the affairs of the company as at the date of the winding up order showing —

(*a*) the particulars of its assets, debts and liabilities;

(*b*) the names and addresses of its creditors;

(*c*) the securities held by them respectively;

(*d*) the dates when the securities were respectively given; and

(*e*) such further information as is prescribed or as the Official Receiver or the liquidator requires.

(2) The statement shall be submitted by one or more of the persons who are, at the date of the winding up order, directors, and by the secretary of the company, or by such of the persons hereinafter mentioned as the Official Receiver or the liquidator, subject to the direction of the Court, requires, that is to say, persons —

(*a*) who are or have been officers of the company;

(*b*) who have taken part in the formation of the company at any time within one year before the date of the winding up order; or

(*c*) who are or have been within that period officers of or in the employment of a corporation which is, or within that period was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within 14 days after the date of the winding up order or within such extended time as the Official Receiver or the liquidator or the Court for special reasons specifies, and the Official Receiver or the liquidator shall within 7 days after its receipt cause a copy of the statement to be filed with the Court and lodged with the Registrar and, where the Official Receiver is not the liquidator, shall cause a copy to be lodged with the Official Receiver.

(4) Any person making or concurring in making the statement required by this section may, subject to the rules, be allowed, and be paid, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement as the Official Receiver or the liquidator considers reasonable subject to an appeal to the Court.

(5) Every person who, without reasonable excuse, makes default in complying with the requirements of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months or to both and also to a default penalty.

[15/84]

[UK, 1948, s. 235; Aust., 1961, s. 234]

Report by liquidator

271.—(1) The liquidator shall as soon as practicable after receipt of the statement of affairs submit a preliminary report to the Court or if the liquidator is not the Official Receiver, to the Official Receiver —

(*a*) as to the amount of capital issued, subscribed and paid up and the estimated amount of assets and liabilities;

(*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.

[13/87]

(2) The liquidator may also, if he thinks fit, make further reports to the Court or if the liquidator is not the Official Receiver, to the Official Receiver stating the manner in which the company was formed and whether in his opinion any fraud has been committed or any material fact has been concealed by any person in its promotion or formation or by any officer in relation to the company since its formation, and whether any officer of the company has contravened or failed to comply with any of the provisions of this Act, and specifying any other matter which in his opinion it is desirable to bring to the notice of the Court.

[UK, 1948, s. 236; Aust., 1961, s. 235]

Powers of liquidator

272.—(1) The liquidator may with the authority either of the Court or of the committee of inspection —

(*a*) carry on the business of the company so far as is necessary for the beneficial winding up thereof, but the authority shall not be necessary to so carry on the business during the 4 weeks next after the date of the winding up order;

(*b*) subject to section 328 pay any class of creditors in full;

(*c*) make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;

(*d*) compromise any calls and liabilities to calls, debts and liabilities capable of resulting in debts and any claims present or future, certain or contingent, ascertained or sounding only in damages subsisting, or supposed to subsist, between the company and a contributory or 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 are agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof; and

(*e*) appoint a solicitor to assist him in his duties.

(2) The liquidator may —

(*a*) bring or defend any action or other legal proceeding in the name and on behalf of the company;

(*b*) compromise any debt due to the company, other than calls and liabilities to calls and other than a debt where the amount claimed by the company to be due to it exceeds $1,500;

(*c*) sell the immovable and movable property and things in action of the company by public auction, public tender or private contract with power to transfer the whole thereof to any person or company or to sell the same in parcels;

(*d*) do all acts and execute in the name and on behalf of the company all deeds, receipts and other documents and for that purpose use when necessary the company's seal;

(*e*) prove, rank and claim in the bankruptcy of any contributory or debtor for any balance against his estate, and receive dividends in the bankruptcy in respect of that balance as a separate debt due from the bankrupt, and rateably with the other separate creditors;

(*f*) 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;

(*g*) raise on the security of the assets of the company any money required;

(*h*) take out letters of administration of the estate of any deceased contributory or debtor, and do any other act necessary for obtaining payment of any money due from a contributory or debtor 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 purposes of enabling the liquidator to take out the letters of administration or recover the money, be deemed due to the liquidator himself;

(*i*) appoint an agent to do any business which the liquidator is unable to do himself; and

(*j*) do all such other things as are necessary for winding up the affairs of the company and distributing its assets.

(3) The exercise by the liquidator 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.
[UK, 1948, s. 245; Aust., 1961, s. 236]

Exercise and control of liquidator's powers

273.—(1) Subject to this Part, the liquidator shall in the administration of the assets of the company and in the distribution thereof among its creditors have regard to any directions given by resolution of the creditors or contributories at any general meeting or by the committee of inspection, and any directions so given by the creditors or contributories shall, in case of conflict, 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 he shall summon meetings at such times as the creditors or contributories by resolution direct or whenever requested in writing to do so by not less than 10% in value of the creditors or contributories.

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

(4) Subject to this Part, the liquidator shall use his own discretion in the management of the affairs and property of the company and the distribution of its assets.
[UK, 1948, s. 246; Aust., 1961, s. 237]

Payment by liquidator into bank

274.—(1) Every liquidator shall, in the manner and at the times prescribed by the rules, pay the money received by him into such bank account as is prescribed by those rules or as is specified by the Court.

(2) If any liquidator retains for more than 10 days a sum exceeding $1,000, or such other amount as the Court in any particular case authorises 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, computed from the expiration of the abovementioned 10 days, until he has complied with subsection (1) at the rate of 20% per annum, and shall be liable —

(*a*) to disallowance of all or such part of his remuneration as the Court thinks just;

(*b*) to be removed from his office by the Court; and

(*c*) to pay any expenses occasioned by reason of his default.

[13/87]

(3) Any liquidator who pays any sums received by him as liquidator into any bank or account other than the bank or account prescribed or specified under subsection (1) shall be guilty of an offence.
[UK, 1948, s. 248; Aust., 1961, s. 238]

Release of liquidators and dissolution of company

275. When the liquidator —

(*a*) has realised all the property of the company or so much thereof as can in his opinion be realised, without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors and adjusted the rights of the contributories among themselves and made a final return, if any, to the contributories; or

(*b*) has resigned or has been removed from his office,

he may apply to the Court —

(i) for an order that he be released; or

(ii) for an order that he be released and that the company be dissolved.
[UK, 1948, ss. 251, 274; Aust., 1961, s. 239]

As to orders for release or dissolution

276.—(1) Where an order is made that the company be dissolved, the company shall from the date of the order be dissolved accordingly.

(2) The Court —

(*a*) may cause a report on the accounts of a liquidator, not being the Official Receiver, to be prepared by the Official Receiver or by a public accountant appointed by the Court;

(*b*) on the liquidator complying with all the requirements of the Court, shall take into

consideration the report and any objection which is urged by the Official Receiver, auditor or any creditor or contributory or other person interested against the release of the liquidator; and

(*c*) shall either grant or withhold the release accordingly.

[5/2004]

(3) 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.

(4) 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.

(5) Where the liquidator has not previously resigned or been removed his release shall operate as a removal from office.

(6) Where the Court has made —

(*a*) an order that the liquidator be released; or

(*b*) an order that the liquidator be released and that the company be dissolved,

a copy of the order and an office copy of the order shall, within 14 days after the making thereof, be lodged by the liquidator with the Registrar and with the Official Receiver, respectively, and a liquidator who makes default in complying with the requirements of this subsection shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 and also to a default penalty.

[15/84; 12/2002]

[Aust., 1961, s. 240]

Subdivision (3) — Committees of inspection

Meetings to determine whether committee of inspection to be appointed

277.—(1) The liquidator may, and shall, if requested by any creditor or contributory, summon separate meetings of the creditors and contributories for the purpose of determining whether or not the creditors or contributories require the appointment of a committee of inspection to act with the liquidator, and if so who are to be members of the committee.

(2) If there is a difference between the determinations of the meetings of the creditors and contributories the Court shall decide the difference and make such order as it thinks fit.

[UK, 1948, ss. 252, 254; Aust., 1961, s. 241]

Constitution and proceedings of committee of inspection

278.—(1) The committee of inspection shall consist of creditors and contributories of the company or persons holding —

(*a*) general powers of attorney from creditors or contributories; or

(*b*) special authorities from creditors or contributories authorising the persons named

therein to act on such a committee,

appointed by the meetings of creditors and contributories in such proportions as are agreed or, in case of difference, as are determined by the Court.

(2) The committee shall meet at such times and places as it may from time to time appoint, and the liquidator or any member of the committee may also call a meeting of the committee as he thinks necessary.

(3) The committee may act by a majority of its members present at a meeting, but shall not act unless a majority of the committee is present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt or assigns his estate for the benefit of his creditors or makes an arrangement with his creditors pursuant to any written law relating to bankruptcy or is absent from 5 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 meeting 7 days' notice has been given stating the object of the meeting.

(7) A vacancy in the committee may be filled by the appointment by the committee of the same or another creditor or contributory or person holding a general power of attorney or special authority as specified in subsection (1).

(8) The liquidator may at any time of his own motion and shall within 7 days after the request in writing of a creditor or contributory summon a meeting of creditors or of contributories, as the case requires, to consider any appointment made pursuant to subsection (7), and the meeting may confirm the appointment or revoke the appointment and appoint another creditor or contributory or person holding a general power of attorney or special authority as specified in subsection (1), as the case requires, in his stead.

(9) The continuing members of the committee if not less than 2 may act notwithstanding any vacancy in the committee.

[UK, 1948, s. 253; Aust., 1961, s. 242]

(10) In this section, "general power of attorney" includes a lasting power of attorney registered under the Mental Capacity Act 2008.

[22/2008 wef 01/03/2008]

Subdivision (4) — General powers of Court

Power to stay winding up

279.—(1) At any time after an order for winding up has been made, the Court may, on the application of the liquidator or of 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 such application the Court may, before making an order, require the liquidator to

furnish a report with respect to any facts or matters which are in his opinion relevant.

(3) A copy of an order made under this section and an office copy of such an order shall be lodged by the company with the Registrar and the Official Receiver, respectively, within 14 days after the making of the order.

[12/2002]

(4) Any person who fails to comply with subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

[15/84]

[UK, 1948, s. 256; Aust., 1961, s. 243]

Settlement of list of contributories and application of assets

280.—(1) As soon as possible after making a winding up order, the Court shall settle a list of contributories and may rectify the register of members in all cases where rectification is required in pursuance of this Part and shall cause the assets of the company to be collected and applied in discharge of its liabilities.

(2) Notwithstanding subsection (1), 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.

(3) 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.

(4) The list of contributories, when settled, shall be prima facie evidence of the liabilities of the persons named therein as contributories.

[UK, 1948, s. 257; Aust., 1961, s. 244]

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

281.—(1) The Court may make an order directing any contributory for the time being on the list of contributories to pay to the company, in the manner directed by the order, any money due from him or from the estate of the person whom he represents, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act, and 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 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 whose liability is unlimited or to his estate the like allowance,

and 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.

[UK, 1948, s. 259; Aust., 1961, s. 245 (2)]

Power of Court to make calls

(2) The Court may either before or after it has ascertained the sufficiency of the assets of the company —

(*a*) make calls on all or any of the contributories for the time being on the list of 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

(*b*) make an order for payment of any calls so made,

and, in making a call, may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.
[UK, 1948, s. 260; Aust., 1961, s. 245 (3)]

Payment into bank of moneys due to company

(3) The Court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into some bank, named in such order, 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.

(4) All moneys and securities paid or delivered into any bank pursuant to this Division shall be subject in all respects to orders of the Court.
[UK, 1948, s. 261; Aust., 1961, s. 245 (4)]

Order on contributory conclusive evidence

(5) An order made by the Court under this section shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due, and all other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings.
[UK, 1948, s. 262; Aust., 1961, s. 245 (6)]

Appointment of special manager

282.—(1) The liquidator may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the Court which may appoint a special manager of the estate or business to act during such time as the Court directs with such powers, including any of the powers of a receiver or manager, as are entrusted to him by the Court.

(2) The special manager —

(*a*) shall give such security and account in such manner as the Court directs;

(*b*) shall receive such remuneration as is fixed by the Court; and

(*c*) may at any time resign after giving not less than one month's notice in writing to the liquidator of his intention to resign, or on cause shown be removed by the Court.
[UK, 1948, s. 263; Aust., 1961, s. 246]

Claims of creditors and distribution of assets

283.—(1) The Court may fix a date on or before which creditors are to prove their debts or claims or after which they will be excluded from the benefit of any distribution made before those debts or claims are proved.

(2) The Court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto.

(3) The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding up in such order of priority as the Court thinks fit.
[UK, 1948, ss. 264, 265, 267; Aust., 1961, s. 247]

Inspection of books and papers by creditors and contributories

284. The Court may make such order for inspection of the books and papers of the company by creditors and contributories as the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.
[UK, 1948, s. 266; Aust., 1961, s. 248]

Power to summon persons connected with company

285.—(1) The Court may summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the Court considers capable of giving information concerning the promotion, formation, trade dealings, affairs or property of the company.

(2) The Court may examine him on oath concerning the matters mentioned in subsection (1) either by word of mouth or on written interrogatories and may cause to be made a record of his answers, and any such record may be used in evidence in any legal proceedings against him.
[17/2005]

(3) The Court may require him to produce any books and papers in his custody or power relating to the company, but where he claims any lien on books or papers the production shall be without prejudice to that lien, and the Court shall have jurisdiction to determine all questions relating to that lien.

(4) An examination under this section or section 286 may, if the Court so directs and subject to the Rules, be held before any District Judge named for the purpose by the Court, and the powers of the Court under this section and section 286 may be exercised by that Judge.

(5) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, not having a lawful excuse, made known to the Court at the time of its sitting and allowed by it, the Court may cause him to be apprehended and brought before the Court for examination.
[UK, 1948, s. 268; Aust., 1961, s. 249]

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

286.—(1) Where the liquidator has made a report under this Part stating that, in his opinion, a fraud has been committed or that any material fact has been concealed by any person in the promotion or formation of the company or by any officer in relation to the company since its formation or that any officer of the company has failed to act honestly or diligently or has been guilty of any impropriety or recklessness in relation to the affairs of the company, the Court may, after consideration of the report, direct that the person or officer, or any other person who was previously an officer of the company, including any banker, solicitor or auditor, or who is known or suspected to have in his possession any property of the company or is supposed to be indebted to the company or any person whom the Court considers capable of giving information

concerning the promotion, formation, trade dealings, affairs or property of the company, shall attend before the Court on a day appointed and be publicly examined as to the promotion or formation or the conduct of the business of the company, or in the case of an officer or former officer as to his conduct and dealings as an officer thereof.

(2) The liquidator and any creditor or contributory may take part in the examination either personally or by a solicitor.

(3) The Court may put or allow to be put such questions to the person examined as the Court thinks fit.

(4) The person examined shall be examined on oath and shall answer all such questions as the Court puts or allows to be put to him.

(5) A person ordered to be examined under this section shall before his examination be furnished with a copy of the liquidator's report.

(6) Where a person directed to attend before the Court under subsection (1) applies to the Court to be exculpated from any charges made or suggested against him, the liquidator shall appear on the hearing of the application and call the attention of the Court to any matters which appear to him to be relevant and if the Court, after hearing any evidence given or witnesses called by the liquidator, grants the application the Court may allow the applicant such costs as the Court in its discretion thinks fit.

(7) The record of the examination —

(*a*) may be used in evidence in any legal proceedings against the person examined; and

(*b*) shall, at all reasonable times, be made available to any creditor or contributory for review at the court premises.

[17/2005]

(8) The Court may if it thinks fit adjourn the examination from time to time.
[UK, 1948, s. 270; Aust., 1961, s. 250]

Power to arrest absconding contributory, director or former director

287. The Court, at any time before or after making a winding up order, on proof of probable cause for believing that a contributory or a director or former director of the company is about to leave Singapore or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may cause the contributory, director or former director to be arrested and his books and papers and movable personal property to be seized and safely kept until such time as the Court orders.
[UK, 1948, s. 271; Aust., 1961, s. 251]

Delegation to liquidator of certain powers of Court

288. Provision may be made by rules enabling or requiring all or any of the powers and duties conferred and imposed on the Court by this Part in respect of —

(*a*) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;

(*b*) the settling of lists of contributories, the rectifying of the register of members where required, and the collecting and applying of the assets;

(*c*) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;

(*d*) the making of calls and the adjusting of the rights of contributories; and

(*e*) 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, but 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.
[UK, 1948, s. 273; Aust., 1961, s. 252]

Powers of Court cumulative

289.—(1) Any powers by this Act conferred on the Court shall be in addition to, and not in derogation 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.

(2) Subject to the Rules, an appeal from any order or decision made or given in the winding up of a company shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the Court in cases within its ordinary jurisdiction.
[UK, 1948, ss. 272, 277; Aust., 1961, s. 253]

Division 3 — Voluntary winding up

Subdivision (1) — Introductory

Circumstances in which company may be wound up voluntarily

290.—(1) A company may be wound up voluntarily —

(*a*) when the period, if any, fixed for the duration of the company by the memorandum or articles expires or the event, if any, happens, on the occurrence of which the memorandum or 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; or

(*b*) if the company so resolves by special resolution.

(2) A company shall —

(*a*) within 7 days after the passing of a resolution for voluntary winding up, lodge a copy of the resolution with the Registrar; and

(*b*) within 10 days after the passing of the resolution, give notice of the resolution in one or more newspapers circulating in Singapore.

[12/2002]

(3) If the company fails to comply with subsection (2), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

[15/84]

[UK, 1948, ss. 278, 279; Aust., 1961, s. 254]

Provisional liquidator

291.—(1) Where the directors of a company have made a statutory declaration in the prescribed form which has been lodged with the Official Receiver and have lodged a declaration in the prescribed form with the Registrar —

(*a*) that the company cannot by reason of its liabilities continue its business; and

(*b*) that meetings of the company and of its creditors have been summoned for a date within one month of the date of the declaration,

the directors shall immediately appoint an approved liquidator to be the provisional liquidator.

[12/2002]

(2) A provisional liquidator shall have and may exercise all the functions and powers of a liquidator in a creditors' winding up subject to such limitations and restrictions as may be prescribed by the Rules.

(3) The appointment of a provisional liquidator under this section shall continue for one month from the date of his appointment or for such further period as the Official Receiver may allow in any particular case or until the appointment of a liquidator, whichever first occurs.

(4) Notice of the appointment of a provisional liquidator under this section together with a copy of the declaration lodged with the Official Receiver shall be advertised within 14 days of the appointment of the provisional liquidator in at least 4 local daily newspapers, one each published in the English, Malay, Chinese and Tamil languages.

[12/2002]

(5) A provisional liquidator shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is prescribed.

Commencement of voluntary winding up

(6) A voluntary winding up shall commence —

(*a*) where a provisional liquidator has been appointed before the resolution for voluntary winding up was passed, at the time when the declaration referred to in subsection (1) was lodged with the Registrar; and

(*b*) in any other case, at the time of the passing of the resolution for voluntary winding up.

Effect of voluntary winding up

292.—(1) The company shall from the commencement of the winding up cease to carry on its business, except so far as is in the opinion of the liquidator required for the beneficial winding up thereof, but the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

(2) 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 made after the commencement of the winding up, shall be void.

[UK, 1948, ss. 281, 282; Aust., 1961, s. 256]

Declaration of solvency

293.—(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 2 directors, the majority of the directors shall, in the case of a members' voluntary winding up 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 declaration to the effect that they have made an inquiry into the affairs of the company, and that, at a meeting of directors, have formed the opinion that the company will be able to pay its debts in full within a period not exceeding 12 months after the commencement of the winding up.

[13/87; 12/2002]

(2) There shall be attached to the declaration a statement of affairs of the company showing, in the prescribed form —

(*a*) the assets of the company and the total amount expected to be realised therefrom;

(*b*) the liabilities of the company; and

(*c*) the estimated expenses of winding up,

made up to the latest practicable date before the making of the declaration.

(3) A declaration so made shall have no effect for the purposes of this Act unless it is —

(*a*) made at the meeting of directors referred to in subsection (1);

(*b*) made within 5 weeks immediately preceding the passing of the resolution for voluntary winding up; and

(*c*) lodged with the Registrar 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.

(4) A director, who makes a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period stated in the declaration, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months or to both.

[15/84]

(5) If the company is wound up in pursuance of a resolution for voluntary winding up passed within a period of 5 weeks after the making of the declaration, but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion.

[UK, 1948, s. 283; Aust., 1961, s. 257]

Subdivision (2) — Provisions applicable only to members' voluntary winding up

Liquidator

294.—(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 liquidator or the company in general meeting with the consent of the liquidator approves the continuance thereof.

(3) The company may, in general meeting convened by any contributory by special

resolution of which special notice has been given to the creditors and the liquidators, remove any liquidator but no such resolution shall be effective to remove a liquidator if the Court, on the application of the liquidator or a creditor, has ordered that the liquidator be not removed.

(4) If a vacancy occurs by death, resignation, removal or otherwise in the office of a liquidator, the company in general meeting may fill the vacancy by the appointment of a liquidator and fix the remuneration to be paid to him, and for that purpose a general meeting may be convened by any contributory, or if there were more liquidators than one, by the continuing liquidators.

(5) The meeting shall be held in the manner provided by this Act or by the articles or in such manner as is, on application by any contributory or by the continuing liquidators, determined by the Court.

[UK, 1948, ss. 285, 286; Aust., 1961, s. 258]

Duty of liquidator to call creditors' meeting in case of insolvency

295.—(1) If the liquidator is at any time of the opinion that the company will not be able to pay or provide for the payment of its debts in full within the period stated in the declaration made under section 293, he shall immediately summon a meeting of the creditors and lay before the meeting a statement of the assets and liabilities of the company and the notice summoning the meeting shall draw the attention of the creditors to the right conferred upon them by subsection (2).

(2) The creditors may, at the meeting summoned under subsection (1), appoint some other person to be the liquidator for the purpose of winding up the affairs and distributing the assets of the company instead of the liquidator appointed by the company.

(3) If the creditors appoint some other person under subsection (2), the winding up shall thereafter proceed as if the winding up were a creditors' voluntary winding up.

(4) Within 7 days after a meeting has been held pursuant to subsection (1), the liquidator or if some other person has been appointed by the creditors to be the liquidator, the person so appointed shall lodge with the Registrar and with the Official Receiver a notice in the prescribed form and if default is made in complying with this subsection the liquidator or the person so appointed, as the case requires, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $800 and also to a default penalty.

[15/84]

Alternative provisions as to annual meetings in case of insolvency

(5) Where the liquidator has convened a meeting under subsection (1) and the creditors do not appoint a liquidator instead of the liquidator appointed by the company, the winding up shall thereafter proceed as if the winding up were a creditors' voluntary winding up; but the liquidator shall not be required to summon an annual meeting of creditors at the end of the first year from the commencement of the winding up if the meeting held under subsection (1) was held less than 3 months before the end of that year.

[UK, 1948, ss. 288, 291; Aust., 1961, s. 259]

Subdivision (3) — Provisions applicable only to creditors' voluntary winding up

Meeting of creditors

296.—(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 meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.

(2) The company shall convene the meeting at a time and place convenient to the majority in value of the creditors and shall —

(*a*) give to the creditors at least 7 clear days' notice by post of the meeting; and

(*b*) send to each creditor with the notice, a statement showing the names of all creditors and the amounts of their claims.

(3) The company shall cause notice of the meeting of the creditors to be advertised at least 7 days before the date of the meeting in a newspaper circulating in Singapore.

(4) The directors of the company shall —

(*a*) cause a full statement of the company's affairs showing in respect of assets the method and manner in which the valuation of the assets was arrived at, together with a list of the creditors and the estimated amount of their claims to be laid before the meeting of creditors; and

(*b*) appoint one of their number to attend the meeting.

(5) The director so appointed and the secretary shall attend the meeting and disclose to the meeting the company's affairs and the circumstances leading up to the proposed winding up.

(6) The creditors may appoint one of their number or the director appointed under subsection (4)(*b*) to preside at the meeting.

(7) The chairman shall at the meeting determine whether the meeting has been held at a time and place convenient to the majority in value of the creditors and his decision shall be final.

(8) If the chairman decides that the meeting has not been held at a time and place convenient to that majority, the meeting shall lapse and a further meeting shall be summoned by the company as soon as is practicable.

(9) If the meeting of the company is adjourned and the resolution for winding up is passed at an adjourned meeting, any resolution passed at the meeting of the creditors shall have effect as if it had been passed immediately after the passing of the resolution for winding up.

(10) If default is made in complying with this section, the company and any officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000.

[UK, 1948, s. 293; Aust., 1961, s. 260]

[15/84]

Liquidator

297.—(1) The company shall, and the creditors may at their respective meetings, 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 nominated by the company shall be liquidator.

(2) Notwithstanding subsection (1), where different persons are nominated any director, member or creditor may, within 7 days after the date on which the nomination was made by the creditors, apply to the Court for an order directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors.

(3) The committee of inspection, or if there is no such committee the creditors, may fix the remuneration to be paid to the liquidator.

(4) 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, approve the continuance thereof.

(5) If a liquidator, other than a liquidator appointed by or by the direction of the Court, dies, resigns or otherwise vacates the office, the creditors may fill the vacancy and for the purpose of so doing a meeting of the creditors may be summoned by any 2 of their number.
[UK, 1948, ss. 294, 296, 297; Aust., 1961, s. 261]

Committee of inspection

298.—(1) The creditors at the meeting summoned pursuant to section 295 or 296 or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than 5 persons, whether creditors or not 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 but not more than 5 as it thinks fit to act as members of the committee.

(2) Notwithstanding subsection (1), 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 subsection the Court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(3) Subject to this section and the rules made under this Act, the provisions of Subdivision (3) of Division 2 relating to the proceedings of and vacancies in committees of inspection shall apply with respect to a committee of inspection appointed under this section.
[UK, 1948, s. 295; Aust., 1961, s. 262]

Property and proceedings

299.—(1) Any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of a creditors' voluntary winding up shall be void.

(2) After the commencement of the winding up 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 imposes.
[Aust., 1961, s. 263]

Subdivision (4) — Provisions applicable to every voluntary winding up

Distribution of property of company

300. Subject to the provisions of this Act as to preferential payments, the property of a company shall, on its winding up, be applied pari passu in satisfaction of its liabilities, and, subject to that application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.
[UK, 1948, s. 302; Aust., 1961, s. 264]

Appointment of liquidator

301. If from any cause there is no liquidator acting, the Court may appoint a liquidator.
[UK, 1948, s. 304; Aust., 1961, s. 265]

Removal of liquidator

302. The Court may, on cause shown, remove a liquidator and appoint another liquidator.
[Aust., 1961, s. 266]

Review of liquidator's remuneration

303. Any member or creditor or the liquidator may at any time before the dissolution of the company apply to the Court to review the amount of the remuneration of the liquidator, and the decision of the Court shall be final and conclusive.
[Aust., 1961, s. 267]

Act of liquidator valid, etc.

304.—(1) The acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

(2) Any conveyance, assignment, transfer, mortgage, charge or other disposition of a company's property made by a liquidator shall, notwithstanding any defect or irregularity affecting the validity of the winding up or the appointment of the liquidator be valid in favour of any person taking such property bona fide and for value and without notice of such defect or irregularity.

(3) Every person making or permitting any disposition of property to any liquidator shall be protected and indemnified in so doing notwithstanding any defect or irregularity affecting the validity of the winding up or the appointment of the liquidator not then known to that person.

(4) For the purposes of this section, a disposition of property shall be taken as including a payment of money.
[Aust., 1961, s. 268]

Powers and duties of liquidator

305.—(1) The liquidator may —

(*a*) in the case of a members' voluntary winding up, with the approval of a special resolution of the company and, in the case of a creditors' voluntary winding up, with the approval of the Court or the committee of inspection, exercise any of the powers given by section 272(1)(*b*), (*c*), (*d*) and (*e*) to a liquidator in a winding up by the Court;

(*b*) exercise any of the other powers by this Act given to the liquidator in a winding up by the Court;

(*c*) exercise the power of the Court under this Act 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; or

(*e*) summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution in respect of any matter or for any other purpose he thinks fit.

(2) The liquidator shall pay the debts of the company and adjust the rights of the contributories among themselves.

(3) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as is determined at the time of their appointment, or in default of such determination by any number not less than 2.

[UK, 1948, s. 303; Aust., 1961, s. 269]

Power of liquidator to accept shares, etc., as consideration for sale of property of company

306.—(1) Where it is proposed that the whole or part of the business or property of a company (referred to in this section as the company) be transferred or sold to another corporation (referred to in this section as the corporation), the liquidator of the company may, with the sanction of a special resolution of the company conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale shares, debentures, policies or other like interests in the corporation for distribution among the members of the company, or may enter into any other arrangement whereby the members of the company may, in lieu of receiving cash, shares, debentures, policies or other like interests or in addition thereto, participate in the profits of or receive any other benefit from the corporation and any such transfer, sale or arrangement shall be binding on the members of the company.

(2) If any member of the company expresses his dissent therefrom in writing addressed to the liquidator and left at the registered office of the liquidator within 7 days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in the manner provided by this section.

(3) If the liquidator elects to purchase the member's interest, the purchase money shall be paid before the company is dissolved and be raised by the liquidator in such manner as is determined by special resolution.

(4) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but if an order for winding up the company by the Court is made within a year after the passing of the resolution the resolution shall not be valid unless sanctioned by the Court.

(5) For the purposes of an arbitration under this section, the Arbitration Act (Cap. 10) shall apply as if there were a submission for reference to 2 arbitrators, one to be appointed by each party; and the appointment of an arbitrator may be made under the hand of the liquidator, or if there is more than one liquidator then under the hands of any 2 or more of the liquidators; and the Court may give any directions necessary for the initiation and conduct of the arbitration and such direction shall be binding on the parties.

(6) In the case of a creditors' voluntary winding up, the powers of the liquidator under this section shall not be exercised except with the approval of the Court or the committee of inspection.

[UK, 1948, ss. 287, 298; Aust., 1961, s. 270]

Annual meeting of members and creditors

307.—(1) If the winding up continues for more than one year, the liquidator shall summon a general meeting of the company in the case of a members' voluntary winding up, and of the company and the creditors in the case of a creditors' voluntary winding up, at the end of the first year from the commencement of the winding up and of each succeeding year or not more than 3 months thereafter, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) The liquidator shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.

(3) Every liquidator who fails to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 and also to a default penalty.

[UK, 1948, ss. 289, 299; Aust., 1961, s. 271]

[15/84]

Final meeting and dissolution

308.—(1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account 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, or in the case of a creditors' voluntary winding up a meeting of the company and the creditors, for the purpose of laying before it the account and giving any explanation thereof.

(2) The meeting shall be called by advertisement published in at least 4 local daily newspapers, one each in the English, Malay, Chinese and Tamil languages which advertisement shall specify the time, place and object of the meeting and shall be published at least one month before the meeting, except that when a declaration is made by the liquidator and filed with the Official Receiver that neither at the date of commencement of the winding up nor since that date has the company had trade creditors, the advertisement referred to in this subsection need only be published in a newspaper circulating generally throughout Singapore.

[15/84]

(3) The liquidator shall within 7 days after the meeting lodge with the Registrar and the Official Receiver a return of the holding of the meeting and of its date with a copy of the account attached to such return, and if the return or copy of the account is not so lodged the liquidator shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

[15/84]

(4) The quorum at a meeting of the company shall be 2 and at a meeting of the company and the creditors shall be 2 members and 2 creditors and if a quorum is not present at the meeting, the liquidator shall in lieu of the return mentioned in subsection (3) lodge a return (with account attached) that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being lodged subsection (3) as to the lodging of the return shall be deemed to have been complied with.

(5) On the expiration of 3 months after the lodging of the return with the Registrar and with

the Official Receiver, the company shall be dissolved.

(6) Notwithstanding subsection (5), 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.

(7) The person on whose application an order of the Court under this section is made shall, within 14 days after the making of the order, lodge with the Registrar and with the Official Receiver a copy of the order and an office copy of the order, respectively, and if he fails to do so he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

[15/84; 12/2002]

(8) If the liquidator fails to call a meeting as required by this section, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 and also to a default penalty.

[UK, 1948, ss. 290, 300; Aust., 1961, s. 272]

[15/84]

Arrangement when binding on creditors

309.—(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 a special resolution, and on the creditors if acceded to by 75% in value and 50% in number of the creditors, every creditor for under $50 being reckoned in value only.

(2) A creditor shall be accounted a creditor for value for such sum as upon an account fairly stated, after allowing the value of security or liens held by him and the amount of any debt or set-off owing by him to the debtor, appears to be the balance due to him.

(3) Any dispute with regard to the value of any such security or lien or the amount of such debt or set-off may be settled by the Court on the application of the company, the liquidator or the creditor.

(4) Any creditor or contributory may within 3 weeks from the completion of the arrangement appeal to the Court against it, and the Court may thereupon, as it thinks just, amend, vary or confirm the arrangement.

[UK, 1948, s. 306; Aust., 1961, s. 273]

Application to Court to have questions determined or powers exercised

310.—(1) The liquidator or any contributory or creditor may apply to the Court —

(*a*) to determine any question arising in the winding up of a company; or

(*b*) to exercise 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 exercise of power will be just and beneficial, may accede wholly or partially to any such application on such terms and conditions as it thinks fit or may make such other order on the application as it thinks just.

[UK, 1948, s. 307; Aust., 1961, s. 274]

Costs

311. All proper costs, charges and expenses of and incidental to 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.
[UK, 1948, s. 309; Aust., 1961, s. 275]

Limitation on right to wind up voluntarily

312. Where an application has been made to the Court to wind up a company on the ground that it is unable to pay its debts the company shall not, without the leave of the Court, resolve that it be wound up voluntarily.

[42/2005]

[Aust., 1961, s. 276]

Division 4 — Provisions applicable to every mode of winding up

Subdivision (1) — General

Books to be kept by liquidator

313.—(1) Every liquidator shall keep proper books in which he shall cause to be made entries or minutes of proceedings at meetings and of such other matters as are prescribed, and any creditor or contributory may, subject to the control of the Court, personally or by his agent inspect them.
[UK, 1948, s. 247; Aust., 1961, s. 277]

Control of Court over liquidators

(2) The Court shall take cognizance of the conduct of liquidators, and if a liquidator does not faithfully perform his duties and observe the prescribed requirements or the requirements of the Court or if any complaint is made to the Court by any creditor or contributory or by the Official Receiver in regard thereto, the Court shall inquire into the matter and take such action as it thinks fit.
[UK, 1948, s. 250; Aust., 1961, s. 278]

(3) The Registrar or the Official Receiver may report to the Court any matter which in his opinion is a misfeasance, neglect or omission on the part of the liquidator and the Court may order the liquidator to make good any loss which the estate of the company has sustained thereby and make such other order as it thinks fit.

(4) The Court may at any time require any liquidator to answer any inquiry in relation to the winding up and may examine him or any other person on oath concerning the winding up and may direct an investigation to be made of the books and vouchers of the liquidator.

Delivery of property to liquidator

(5) The Court may require any contributory, trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer to the liquidator or provisional liquidator immediately or within such time as the Court directs any money, property, books and papers in his hands to which the company is prima facie entitled.
[UK, 1948, s. 258; Aust., 1961, s. 245 (1)]

Powers of Official Receiver where no committee of inspection

314.—(1) Where a person other than the Official Receiver is the liquidator and there is no committee of inspection, the Official Receiver may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Act authorised or required to be done or given by the committee.

(2) Where the Official Receiver is the liquidator and there is no committee of inspection, the Official Receiver may in his discretion do any act or thing which is by this Act required to be done by, or subject to any direction or permission given by, the committee.

Appeal against decision of liquidator

315. Any person aggrieved by any act or decision of the liquidator may apply to the Court which may confirm, reverse or modify the act or decision complained of and make such order as it thinks just.
[Aust., 1961, s. 279]

Notice of appointment and address of liquidator

316.—(1) A liquidator shall, within 14 days after his appointment, lodge with the Registrar and with the Official Receiver notice in the prescribed form of his appointment and of the situation of his office and in the event of any change in the situation of his office shall within 14 days after the change lodge with the Registrar and with the Official Receiver notice in the prescribed form of the change.

(2) Service made by leaving any document at or sending it by post addressed to the address of the office of the liquidator given in any such notice lodged with the Registrar shall be deemed to be good service upon the liquidator and upon the company.

(3) A liquidator shall, within 14 days after his resignation or removal from office, lodge with the Registrar and with the Official Receiver notice thereof in the prescribed form.

(4) If a liquidator fails to comply with this section, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.
[UK, 1948, s. 305; Aust., 1961, s. 280]

[15/84]

Liquidator's accounts

317.—(1) Every liquidator shall, within one month after the expiration of a period of 6 months from the date of his appointment and of every subsequent period of 6 months and in any case within one month after he ceases to act as liquidator and immediately after obtaining an order of release, lodge with the Official Receiver in the prescribed form and verified by statutory declaration an account of his receipts and payments and a statement of the position in the winding up, and any liquidator who fails to do so shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

[15/84; 12/2002]

(1A) The liquidator referred to in subsection (1) shall also lodge with the Registrar a notice in the prescribed form of the matters referred to in that subsection and, if he fails to do so, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

[12/2002]

(2) The Official Receiver may cause the account of any liquidation to be audited by a public

accountant, and for the purpose of the audit the liquidator shall furnish the public accountant with such vouchers and information as he requires, and the public accountant may at any time require the production of and inspect any books or accounts kept by the liquidator.

[5/2004]

(3) A copy of the account or, if audited, a copy of the audited account shall be kept by the liquidator and the copy shall be open to the inspection of any creditor or of any person interested at the office of the liquidator.

(4) The liquidator shall —

(*a*) give notice that the account has been made up to every creditor and contributory when next forwarding any report, notice of meeting, notice of call or dividend; and

(*b*) in such notice inform the creditors and contributories at what address and between what hours the account may be inspected.

(5) The costs of an audit under this section shall be fixed by the Official Receiver and shall be part of the expenses of winding up.

[UK, 1948, s. 249; Aust., 1961, s. 281]

Liquidator to make good defaults

318.—(1) If any liquidator who has made any default in lodging or making any application, return, account or other document, or in giving any notice which he is by law required to lodge, make or give, fails to make good the default within 14 days after the service on him of a notice requiring him to do so, the Court may, on the application of any contributory or creditor of the company or the Official Receiver, make an order directing the liquidator to make good the default within such time as is specified in the order.

(2) Any order made under subsection (1) may provide that all costs of and incidental to the application shall be borne by the liquidator.

(3) Nothing in subsection (1) shall prejudice the operation of any written law imposing penalties on a liquidator in respect of any such default.

[UK, 1948, s. 337; Aust., 1961, s. 282]

Notification that a company is in liquidation

319.—(1) Where a company is being wound up 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 have the words "in liquidation" added after the name of the company where it first appears therein.

(2) If default is made in complying with this section, the company, and every officer of the company or liquidator and every receiver or manager who knowingly and wilfully authorises or permits the default, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $400.

[UK, 1948, s. 338; Aust., 1961, s. 283]

[15/84]

Books and papers of company and liquidator

320.—(1) Where a company is being wound up, all books and papers of the company and of

the liquidator that are relevant to the affairs of the company at or subsequent to the commencement of the winding up of the company shall, as between the contributories of the company, be prima facie evidence of the truth of all matters purporting to be therein recorded.

(2) When a company has been wound up the liquidator shall retain the books and papers referred to in subsection (1) for a period of 2 years from the date of dissolution of the company and at the expiration of that period may destroy them.

[9/2003]

(3) Notwithstanding subsection (2), when a company has been wound up the books and papers referred to in subsection (1) may be destroyed within a period of 2 years after the dissolution of the company —

(*a*) in the case of a winding up by the Court, in accordance with the directions of the Court;

(*b*) in the case of a members' voluntary winding up, as the company by resolution directs; and

(*c*) in the case of a creditors' voluntary winding up, as the committee of inspection, or, if there is no such committee, as the creditors of the company direct.

[9/2003]

(4) No responsibility shall rest on the company or the liquidator by reason of any such book or paper not being forthcoming to any person claiming to be interested therein if such book or paper has been destroyed in accordance with this section.

(5) Any person who fails to comply with subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000.

[UK, 1948, ss. 340, 341; Aust., 1961, s. 284]

[15/84]

Investment of surplus funds on general account

321.—(1) Whenever the cash balance standing to the credit of any company in liquidation is in excess of the amount which, in the opinion of the committee of inspection, or, if there is no committee of inspection, of the liquidator, is required for the time being to answer demands in respect of the estate of the company, the liquidator, if so directed in writing by the committee of inspection, or, if there is no committee of inspection, the liquidator himself, may, unless the Court on application by any creditor thinks fit to direct otherwise and so orders, invest the sum or any part thereof in securities issued by the Government of Singapore or of Malaysia or place it on deposit at interest with any bank, and any interest received in respect thereof shall form part of the assets of the company.

(2) Whenever any part of the money so invested is, in the opinion of the committee of inspection, or, if there is no committee of inspection, of the liquidator, required to answer any demands in respect of the company's estate, the committee of inspection may direct, or, if there is no committee of inspection, the liquidator may arrange for the sale or realisation of such part of those securities as is necessary.

[UK, 1948, s. 361; Aust., 1961, s. 285]

Unclaimed assets to be paid to Official Receiver

322.—(1) Where a liquidator has in his hands or under his control —

(*a*) any unclaimed dividend or other moneys which have remained unclaimed for more than 6 months from the date when the dividend or other moneys became payable; or

(*b*) after making final distribution, any unclaimed or undistributed moneys arising from the property of the company,

he shall immediately pay those moneys to the Official Receiver to be placed to the credit of the Companies Liquidation Account and shall be entitled to the prescribed certificate of receipt for the moneys so paid and that certificate shall be an effectual discharge to him in respect thereof.

(2) The Court may, at any time on the application of the Official Receiver, order any liquidator to submit to it an account of any unclaimed or undistributed funds, dividends or other moneys in his hands or under his control verified by affidavit and may direct an audit thereof and may direct him to pay those moneys to the Official Receiver to be placed to the credit of the Companies Liquidation Account.

(3) The interest arising from the investment of the moneys standing to the credit of the Companies Liquidation Account shall be paid into the Consolidated Fund.

(4) For the purposes of this section, the Court may exercise all the powers conferred by this Act with respect to the discovery and realisation of the property of the company and the provisions of this Act with respect thereto shall with such adaptations as are prescribed apply to proceedings under this section.

(5) This section shall not, except as expressly declared in this Act, deprive any person of any other right or remedy to which he is entitled against the liquidator or any other person.

(6) If any claimant makes any demand for any money placed to the credit of the Companies Liquidation Account, the Official Receiver upon being satisfied that the claimant is the owner of the money shall authorise payment thereof to be made to him out of that Account or, if it has been paid into the Consolidated Fund, may authorise payment of a like amount to be made to him out of moneys made available by Parliament for the purpose.

(7) Any person dissatisfied with the decision of the Official Receiver in respect of a claim made in pursuance of subsection (6) may appeal to the Court which may confirm, disallow or vary the decision.

(8) Where any unclaimed moneys paid to any claimant are afterwards claimed by any other person, that other person shall not be entitled to any payment out of the Companies Liquidation Account or out of the Consolidated Fund but such person may have recourse against the claimant to whom the unclaimed moneys have been paid.

(9) Any unclaimed moneys paid to the credit of the Companies Liquidation Account to the extent to which the unclaimed moneys have not been under this section paid out of that Account shall, on the lapse of 7 years from the date of the payment of the moneys to the credit of that Account, be paid into the Consolidated Fund.

[UK, 1948, s. 343; Aust., 1961, s. 286]

Outstanding assets of company wound up on grounds of national security or interest

322A. Notwithstanding any written law or rule of law to the contrary, upon a company being wound up under section 254(1)(*m*) on the ground that it is being used for purposes against national security or interest, the Court may, on the application of the Minister, order that any assets of the company remaining after payment of its debts and liabilities and the costs, charges

and expenses of the winding up shall be paid into the Consolidated Fund.

[36/2000]

Expenses of winding up where assets insufficient

323.—(1) Unless expressly directed to do so by the Official Receiver, a liquidator shall not be liable to incur any expense in relation to the winding up of a company unless there are sufficient available assets.

(2) The Official Receiver may, on the application of a creditor or a contributory, direct a liquidator to incur a particular expense on condition that the creditor or contributory indemnifies the liquidator in respect of the recovery of the amount expended and, if the Official Receiver so directs, gives such security to secure the amount of the indemnity as the Official Receiver thinks reasonable.

[Aust., 1961, s. 287]

Resolutions passed at adjourned meetings of creditors and contributories

324. Subject to section 296(9), where a resolution is passed at an adjourned meeting of any creditors or contributories of a company, the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed and not on any earlier date.

[UK, 1948, s. 345; Aust., 1961, s. 288]

Meetings to ascertain wishes of creditors or contributories

325.—(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 as proved to it by any sufficient evidence, and may if it thinks fit for the purpose of ascertaining those wishes direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the Court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or the articles.

[UK, 1948, s. 346; Aust., 1961, s. 289]

Special commission for receiving evidence

326.—(1) District Judges shall be commissioners for the purpose of taking evidence under this Part, and the Court may refer the whole or any part of the examination of any witnesses under this Part to any person hereby appointed commissioner.

(2) Every commissioner shall, in addition to any powers which he might lawfully exercise as a District Judge, have in the matter so referred to him the same powers as the Court of summoning and examining witnesses, of requiring the production or delivery of documents, of punishing defaults by witnesses and of allowing costs and expenses to witnesses.

(3) Unless otherwise ordered by the Court the taking of evidence by commissioners shall be in open court and shall be open to the public.

(4) The examination so taken shall be returned or reported to the Court in such manner as the Court directs.

[UK, 1948, s. 348; Aust., 1961, s. 290]

Subdivision (2) — Proof and ranking of claims

Proof of debts

327.—(1) In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as are subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

(2) Subject to section 328, in the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and debts provable and the valuation of annuities and future and contingent liabilities as are in force for the time being under the law relating to bankruptcy in relation to the estates of bankrupt persons, and all persons, who in any such case would be entitled to prove for and receive dividends out of the assets of the company, may come in under the winding up and make such claims against the company as they respectively are entitled to by virtue of this section.

[UK, 1948, ss. 316, 317; Aust., 1961, s. 291]

Priorities

328.—(1) Subject to the provisions of this Act, in a winding up there shall be paid in priority to all other unsecured debts —

(*a*) firstly, the costs and expenses of the winding up including the taxed costs of the applicant for the winding up order payable under section 256, the remuneration of the liquidator and the costs of any audit carried out pursuant to section 317;

(*b*) secondly, subject to subsection (2), all wages or salary (whether or not earned wholly or in part by way of commission) including any amount payable by way of allowance or reimbursement under any contract of employment or award or agreement regulating conditions of employment of any employee;

(*c*) thirdly, subject to subsection (2), the amount due to an employee as a retrenchment benefit or ex gratia payment under any contract of employment or award or agreement that regulates conditions of employment whether such amount becomes payable before, on or after the commencement of the winding up;

(*d*) fourthly, all amounts due in respect of work injury compensation under the Work Injury Compensation Act (Cap. 354) accrued before, on or after the commencement of the winding up;

[5/2008 wef 01/04/2008]

(*e*) fifthly, all amounts due in respect of contributions payable during the 12 months next before, on or after the commencement of the winding up by the company as the employer of any person under any written law relating to employees' superannuation or provident funds or under any scheme of superannuation which is an approved scheme under the law relating to income tax;

(*f*) sixthly, all remuneration payable to any employee in respect of vacation leave, or in the case of his death to any other person in his right, accrued in respect of any period

before, on or after the commencement of the winding up; and

(*g*) seventhly, the amount of all tax assessed and all goods and services tax due under any written law before the commencement of the winding up or assessed at any time before the time fixed for the proving of debts has expired.

[15/84; 13/87; 22/93; 31/93; 42/2005]

(2) The amount payable under subsection (1)(*b*) and (*c*) shall not exceed an amount that is equivalent to 5 months salary whether for time or piecework in respect of services rendered by the employee to the company or $7,500, whichever is the lesser.

[22/93]

(2A) The Minister may, by order published in the *Gazette*, amend subsection (2) by varying the amount specified in that subsection as the maximum amount payable under subsection (1)(*b*) and (*c*).

[22/93]

(2B) For the purposes of —

(*a*) subsection (1)(*b*) and (*c*) —

"employee" means a person who has entered into or works under a contract of service with an employer and includes a subcontractor of labour;

"wages or salary" shall be deemed to include —

(i) all arrears of money due to a subcontractor of labour;

(ii) any amount payable to an employee on account of wages or salary during a period of notice of termination of employment or in lieu of notice of such termination, as the case may be, whether such amount becomes payable before, on or after the commencement of the winding up; and

(iii) any amount payable to an employee, on termination of his employment, as a gratuity under any contract of employment, or under any award or agreement that regulates conditions of employment whether such amount becomes payable before, on or after the commencement of the winding up;

(*b*) subsection (1)(*c*) —

"ex gratia payment" means the amount payable to an employee on the winding up of a company or on the termination of his service by his employer on the ground of redundancy or by reason of any re-organisation of the employer, profession, business, trade or work, and "the amount payable to an employee" for these purposes means the amount stipulated in any contract of employment, award or agreement, as the case may be;

"retrenchment benefit" means the amount payable to an employee on the winding up of a company or on the termination of his service by his employer on the ground of redundancy or by reason of any re-organisation of the employer, profession, business, trade or work, and "the amount payable to an employee" for these purposes means the amount stipulated in any contract of employment, award or agreement, as the case may be, or if no amount is stipulated therein, such amount as is stipulated by the Commissioner for Labour.

[22/93]

(3) The debts in each class, specified in subsection (1), shall rank in the order therein specified but as between debts of the same class shall rank equally between themselves, and shall be paid in full, unless the property of the company is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(4) Where any payment has been made to any employee of the company on account of wages, salary or vacation leave out of money advanced by a person for that purpose, the person by whom the money was advanced shall, in a winding up, have a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the employee would have been entitled to priority in the winding up has been diminished by reason of the payment, and shall have the same right of priority in respect of that amount as the employee would have had if the payment had not been made.

(5) So far as the assets of the company available for payment of general creditors are insufficient to meet any preferential debts specified in subsection (1)(*a*), (*b*), (*c*), (*e*) and (*f*) and any amount payable in priority by virtue of subsection (4), those debts shall have priority over the claims of the holders of debentures under any floating charge created by the company (which charge, as created, was a floating charge), and shall be paid accordingly out of any property comprised in or subject to that charge.

[22/93]

(6) Where the company is under a contract of insurance (entered into before the commencement of the winding up) insured against liability to third parties, then if any such liability is incurred by the company (either before or after the commencement of the winding up) and an amount in respect of that liability is or has been received by the company or the liquidator from the insurer the amount shall, after deducting any expenses of or incidental to getting in such amount, be paid by the liquidator to the third party in respect of whom the liability was incurred to the extent necessary to discharge that liability or any part of that liability remaining undischarged in priority to all payments in respect of the debts referred to in subsection (1).

(7) If the liability of the insurer to the company is less than the liability of the company to the third party, nothing in subsection (6) shall limit the rights of the third party in respect of the balance.

(8) Subsections (6) and (7) shall have effect notwithstanding any agreement to the contrary entered into after 29th December 1967.

[S 258/67]

(9) Notwithstanding anything in subsection (1) —

(*a*) paragraph (*d*) of that subsection shall not apply in relation to the winding up of a company in any case where the company is being wound up voluntarily merely for the purpose of reconstruction or of amalgamation with another company and the right to the compensation has on the reconstruction or amalgamation been preserved to the person entitled thereto, or where the company has entered into a contract with an insurer in respect of any liability under any law relating to work injury compensation; and

[5/2008 wef 01/04/2008]

(*b*) where a company has given security for the payment or repayment of any amount to which paragraph (*g*) of that subsection relates, that paragraph shall apply only in relation to the balance of any such amount remaining due after deducting therefrom

the net amount realised from such security.

[22/93]

(10) Where in any winding up assets have been recovered under an indemnity for costs of litigation given by certain creditors, or have been protected or preserved by the payment of moneys or the giving of indemnity by creditors, or where expenses in relation to which a creditor has indemnified a liquidator have been recovered, the Court may make such order as it thinks just with respect to the distribution of those assets and the amount of those expenses so recovered with a view to giving those creditors an advantage over others in consideration of the risks run by them in so doing.
[UK, 1948, s. 319; Aust., 1961, s. 292]

Subdivision (3) — Effect on other transactions

Undue preference

329.—(1) Subject to this Act and such modifications as may be prescribed, any transfer, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company which, had it been made or done by or against an individual, would in his bankruptcy be void or voidable under section 98, 99 or 103 of the Bankruptcy Act (Cap. 20) (read with sections 100, 101 and 102 thereof) shall in the event of the company being wound up be void or voidable in like manner.

[15/95]

(2) For the purposes of this section, the date which corresponds with the date of making of the application for a bankruptcy order in the case of an individual shall be —

(*a*) in the case of a winding up by the Court —

(i) the date of the making of the winding up application; or

(ii) where before the making of the winding up application a resolution has been passed by the company for voluntary winding up, the date upon which the resolution to wind up the company voluntarily is passed,

whichever is the earlier; and

(*b*) in the case of a voluntary winding up, the date upon which the winding up is deemed by this Act to have commenced.

[42/2005]

(3) Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.
[UK, 1948, s. 320; Aust., 1961, s. 293]

Effect of floating charge

330. A floating charge on the undertaking or property of the company created within 6 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 5% per annum.
[UK, 1948, s. 322; Aust., 1961, s. 294]

Liquidator's right to recover in respect of certain sales to or by company

331.—(1) Where any property, business or undertaking has been acquired by a company for a cash consideration within a period of 2 years before the commencement of the winding up of the company —

(*a*) from a person who was at the time of the acquisition a director of the company; or

(*b*) from a company of which, at the time of the acquisition, a person was a director who was also a director of the first-mentioned company,

the liquidator may recover from the person or company from which the property, business or undertaking was acquired any amount by which the cash consideration for the acquisition exceeded the value of the property, business or undertaking at the time of its acquisition.

(2) Where any property, business or undertaking has been sold by a company for a cash consideration within a period of 2 years before the commencement of the winding up of the company —

(*a*) to a person who was at the time of the sale a director of the company; or

(*b*) to a company of which at the time of the sale a person was a director who was also a director of the company first-mentioned in this subsection,

the liquidator may recover from the person or company to which the property, business or undertaking was sold any amount by which the value of the property, business or undertaking at the time of the sale exceeded the cash consideration.

(3) For the purposes of this section, the value of the property, business or undertaking includes the value of any goodwill or profits which might have been made from the business or undertaking or similar considerations.

(4) In this section "cash consideration", in relation to an acquisition or sale by a company, means consideration for such acquisition or sale payable otherwise than by the issue of shares in the company.

[Aust., 1961, s. 295]

Disclaimer of onerous property

332.—(1) Where any part of the property of a company consists of —

(*a*) any estate or interest in land which is burdened with onerous covenants;

(*b*) shares in corporations;

(*c*) unprofitable contracts; or

(*d*) any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money,

the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto, may, with the leave of the Court or the committee of inspection and, subject to this section, by writing signed by him, at any time within 12 months after the commencement of the winding up or such extended period as is allowed by the Court, disclaim the property; but where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power of disclaiming may be exercised at any time within 12 months after he has become aware thereof or such extended period as is allowed by the Court.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest and liabilities of the company and the property of the company in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The Court or the committee before or on granting leave to disclaim may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the Court or committee thinks just.

(4) The liquidator shall not be entitled to disclaim if an application in writing has been made to him by any person interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of 28 days after the receipt of the application or such further period as is allowed by the Court or the committee, given notice to the applicant that he intends to apply to the Court or the committee for leave to disclaim, and, in the case of a contract, if the liquidator after such an application in writing does not within that period or further period disclaim the contract the liquidator shall be deemed to have adopted it.

(5) The Court may, on the application of a person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court thinks just, and any damages payable under the order to that person may be proved by him as a debt in the winding up.

(6) The Court may, on the application of a person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any person entitled thereto, or to whom it seems just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just, and on any such vesting order being made and a copy thereof and an office copy thereof being lodged with the Registrar and the Official Receiver, respectively, and if the order relates to land with the appropriate authority concerned with the recording or registration of dealings in that land, as the case requires, the property comprised therein shall vest accordingly in the person therein named in that behalf without any further conveyance, transfer or assignment.

[12/2002]

(7) Notwithstanding anything in subsection (6), where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee, except upon the terms of making that person —

(*a*) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or

(*b*) if the Court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

and in either event, if the case so requires, as if the lease had comprised only the property comprised in the vesting order, and any under-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 may vest the estate and interest of the company in the property in any person liable 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.

(8) 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.

[UK, 1948, s. 323; Aust., 1961, s. 296]

Interpretation

333. For the purposes of sections 334 and 335 —

"goods" includes all chattels personal;

"bailiff" includes any officer charged with the execution of a writ or other process.

[Aust., 1961, s. 297]

Restriction of rights of creditor as to execution or attachment

334.—(1) Where a creditor has issued execution against the goods or land 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 unless he has completed the execution or attachment before the date of the commencement of the winding up, but —

(*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 this section be substituted for the date of the commencement of the winding up;

(*b*) a person who purchases in good faith under a sale by the bailiff 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; and

(*c*) the rights conferred by this subsection on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court thinks fit.

(2) For the purposes of this section —

(*a*) an execution against goods is completed by seizure and sale;

(*b*) an attachment of a debt is completed by receipt of the debt; and

(*c*) an execution against land is completed by sale or, in the case of an equitable interest, by the appointment of a receiver.

[UK, 1948, s. 325; Aust., 1961, s. 298]

Duties of bailiff as to goods taken in execution

335.—(1) Subject to subsection (3), 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 bailiff 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 bailiff 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 moneys so delivered, and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.

(2) Subject to subsection (3), where under an execution in respect of a judgment for a sum exceeding $100 the goods of a company are sold or money is paid in order to avoid sale, the bailiff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance of 14 days; and if within that time notice is served on him of an application for the winding up of the company having been made or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up and an order is made or a resolution is passed for the winding up, the bailiff shall pay the balance to the liquidator who shall be entitled to retain it as against the execution creditor.

[42/2005]

(3) The rights conferred by this section on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court thinks fit.

[UK, 1948, s. 326; Aust., 1961, s. 299]

Subdivision (4) — Offences

Offences by officers of companies in liquidation

336.—(1) Every person who, being a past or present officer or a contributory of a company which is being wound up —

(*a*) does not to the best of his knowledge and belief fully and truly disclose 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;

(*b*) does not deliver up to the liquidator, or as he directs —

(i) all the movable and immovable property of the company in his custody or under his control and which he is required by law to deliver up; or

(ii) 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;

(*c*) within 12 months next before the commencement of the winding up or at any time thereafter —

(i) has concealed any part of the property of the company to the value of $200 or upwards, or has concealed any debt due to or from the company;

(ii) has fraudulently removed any part of the property of the company to the value of $200 or upwards;

(iii) has concealed, destroyed, mutilated or falsified, or has been privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the company;

(iv) has made or has been privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company;

(v) has fraudulently parted with, altered or made any omission in, or has been privy to fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company;

(vi) by any false representation or other fraud, has obtained any property for or on behalf of the company on credit which the company has not subsequently paid for;

(vii) has obtained on credit, for or on behalf of the company, under the false pretence that the company is carrying on its business, any property which the company has not subsequently paid for; or

(viii) has pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing was in the ordinary way of the business of the company;

(*d*) makes any material omission in any statement relating to the affairs of the company;

(*e*) knowing or believing that a false debt has been proved by any person fails for a period of one month to inform the liquidator thereof;

(*f*) prevents the production of any book or paper affecting or relating to the property or affairs of the company;

(*g*) within 12 months next before the commencement of the winding up or at any time thereafter, has attempted to account for any part of the property of the company by fictitious losses or expenses; or

(*h*) within 12 months next before the commencement of the winding up or at any time thereafter, has been guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years.

[15/84; 13/87]

(2) It shall be a good defence to a charge under subsection (1)(*a*), (*b*), (*d*) or subsection (1)(*c*)(i), (vii) or (viii) if the accused proves that he had no intent to defraud, and to a charge under subsection (1)(*f*) or subsection (1)(*c*)(iii) or (iv) if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(3) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under subsection (1)(*c*)(viii), every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years.

[15/84]

[UK, 1948, s. 328; Aust., 1961, s. 300]

Inducement to be appointed liquidator

337. Any person who gives or agrees or offers to give to any member or creditor of a company any valuable consideration with a view to securing his own appointment or

nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 or to imprisonment for a term not exceeding 6 months.

[15/84]

[UK, 1948, s. 336; Aust., 1961, s. 301 (1)]

Penalty for destruction, falsification, etc., of books

338. Every officer or contributory of any company being wound up who 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 or book of account or document belonging to the company with intent to defraud or deceive any person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years.

[15/84]

[UK, 1948, s. 329; Aust., 1961, s. 301 (2)]

Liability where proper accounts not kept

339.—(1) If, on an investigation under any other Part or where a company is wound up, it is shown that proper books of account were not kept by the company throughout the period of 2 years immediately preceding the commencement of the investigation or winding up or the period between the incorporation of the company and the commencement of the investigation or winding up (whichever is the lesser) every officer who is in default shall, unless he acted honestly and shows 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 on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months.

[15/84]

(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 stocktakings 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 or if such books or accounts have not been kept in such manner as to enable them to be conveniently and properly audited, whether or not the company has appointed an auditor.

(3) If, in the course of the winding up of a company or in any proceedings against a company, it appears that an officer of the company who was knowingly a party to the contracting of a debt had, at the time the debt was contracted, no reasonable or probable ground of expectation, after taking into consideration the other liabilities, if any, of the company at the time of the company being able to pay the debt, the officer shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 or to imprisonment for a term not exceeding 3 months.

[15/84]

[UK, 1948, s. 331; Aust., 1961, s. 303]

Responsibility for fraudulent trading

340.—(1) If, in the course of the winding up of a company or in any proceedings against a

company, it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the Court, on the application of the liquidator or any creditor or contributory of the company, may, if it thinks proper to do so, declare that any person who was knowingly a party to the carrying on of the business in that manner 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 directs.

(2) Where a person has been convicted of an offence under section 339(3) in relation to the contracting of such a debt as is referred to in that subsection, the Court, on the application of the liquidator or any creditor or contributory of the company, may, if it thinks proper to do so, declare that the person shall be personally responsible without any limitation of liability for the payment of the whole or any part of that debt.

(3) Where the Court makes any declaration pursuant to subsection (1) or (2), 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 person under the declaration a charge on any debt or obligation due from the company to him, or on any charge or any interest in any charge on any assets of the company held by or vested in him or any corporation or person on his behalf, or any person claiming as assignee from or through the person liable or any corporation or person acting on his behalf, and may from time to time make such further order as is necessary for the purpose of enforcing any charge imposed under this subsection.

(4) For the purpose of subsection (3), "assignee" includes any person to whom or in whose favour by the directions of the person liable the debt, obligation or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(5) Where any business of a company is carried on with the intent or for the purpose mentioned in subsection (1), every person who was knowingly a party to the carrying on of the business with that intent or purpose shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $15,000 or to imprisonment for a term not exceeding 7 years or to both.

[15/84]

(6) Subsection (5) shall apply to a company whether or not it has been, or is in the course of being, wound up.

[15/84]

(7) This section shall have effect notwithstanding that the person concerned is criminally liable apart from this section in respect of the matters on the ground of which the declaration is made.

(8) On the hearing of an application under subsection (1) or (2), the liquidator may himself give evidence or call witnesses.

[UK, 1948, s. 332; Aust., 1961, s. 304]

Power of Court to assess damages against delinquent officers, etc.

341.—(1) If, in the course of winding up, it appears that any person who has taken part in the formation or promotion of the company or any past or present liquidator or officer has misapplied or retained or become liable or accountable for any money or property of the

company or been guilty of any misfeasance or breach of trust or duty in relation to the company, the Court may on the application of the liquidator or of any creditor or contributory examine into the conduct of such person, liquidator or officer and compel him to repay or restore the money or property or any part thereof 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 or duty as the Court thinks just.

(2) This section shall extend and apply to and in respect of the receipt of any money or property by any officer of the company during the 2 years preceding the commencement of the winding up whether by way of salary or otherwise appearing to the Court to be unfair or unjust to other members of the company.

(3) This section shall have effect notwithstanding that the offence is one for which the offender is criminally liable.

[UK, 1948, s. 333; Aust., 1961, s. 305]

Prosecution of delinquent officers and members of company

342.—(1) If it appears to the Court, in the course of a winding up by the Court, that any past or present officer, or any member, of the company has been guilty of an offence in relation to the company for which he is criminally liable, the Court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator to prosecute the offender or to refer the matter to the Minister.

(2) If it appears to the liquidator, in the course of a voluntary winding up, that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall immediately report the matter to the Minister and shall, in respect of information or documents in his possession or under his control which relate to the matter in question, furnish the Minister with such information and give to him such access to and facilities for inspecting and taking copies of any document as he may require.

(3) If it appears to the liquidator, in the course of any winding up, that the company which is being wound up will be unable to pay its unsecured creditors more than 50 cents in the dollar, the liquidator shall immediately report the matter in writing to the Official Receiver and shall furnish the Official Receiver with such information and give to him such access to and facilities for inspecting and taking copies of any document as the Official Receiver may require.

(4) Where any report is made under subsection (2) or (3), the Minister may, if he thinks fit, investigate the matter and for the purposes of such an investigation shall have all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the Court, but if it appears to him that the case is not one in which proceedings ought to be taken by him he shall inform the liquidator accordingly, and thereupon, subject to the previous approval of the Court the liquidator may himself take proceedings against the offender.

[13/87]

(5) If it appears to the Court, in the course of a voluntary winding up, that any past or present officer, or any member, of the company has been guilty as aforesaid and that no report with respect to the matter has been made by the liquidator to the Minister, the Court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly this section shall have effect as though the report has been made in pursuance of subsection (2).

(6) If, where any matter is reported or referred to the Minister or the Official Receiver under this section, he considers that the case is one in which a prosecution ought to be instituted, he may institute proceedings accordingly, and the liquidator and every officer and agent of the company past and present, other than the defendant in the proceedings, shall give the Minister or the Official Receiver all assistance in connection with the prosecution which he is reasonably able to give.

(7) For the purposes of subsection (6), "agent", in relation to a company, includes any banker or solicitor of the company and any person employed by the company as auditor, whether or not an officer of the company.

(8) If any person fails or neglects to give assistance in the manner required by subsection (6), the Court may, on the application of the Minister or the Official Receiver, direct that person to comply with the requirements of that subsection, and where any application is made under this subsection with respect to a liquidator the Court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him to do so, direct that the costs of the application shall be borne by the liquidator personally.

(9) The Minister may direct that the whole or any part of any costs and expenses properly incurred by the liquidator in proceedings brought under this section shall be defrayed out of moneys provided by Parliament.

(10) Subject to any direction given under subsection (9) and to any charges on the assets of the company and any debts to which priority is given by this Act, all such costs and expenses shall be payable out of those assets as part of the costs of winding up.
[UK, 1948, s. 334; Aust., 1961, s. 306]

Subdivision (5) — Dissolution

Power of Court to declare dissolution of company void

343.—(1) Where a company has been dissolved, the Court may at any time within 2 years after the date of dissolution, on application of the liquidator of the company or of 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) The person on whose application the order was made shall, within 7 days after the making of the order or such further time as the Court allows, lodge with the Registrar and with the Official Receiver a copy of the order and an office copy of the order, respectively, and if he fails to do so shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000.

[15/84; 12/2002]

[UK, 1948, s. 352; Aust., 1961, s. 307]

Power of Registrar to strike defunct company off register

344.—(1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he may send to the company by post a letter to that effect and stating that if an answer showing cause to the contrary is not received 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.

(2) Unless the Registrar receives an answer within one month from the date of the letter to the effect that the company is carrying on business or is in operation, he may publish in the *Gazette* and send to the company by registered post a notice that at the expiration of 3 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.

(3) If in any case where a company is being wound up the Registrar has reasonable cause to believe that —

(*a*) no liquidator is acting;

(*b*) the affairs of the company are fully wound up and for a period of 6 months the liquidator has been in default in lodging any return required to be made by him; or

(*c*) the affairs of the company have been fully wound up under Division 2 and there are no assets or the assets available are not sufficient to pay the costs of obtaining an order of the Court dissolving the company,

he may publish in the *Gazette* and send to the company or the liquidator, if any, a notice to the same effect as that referred to in subsection (2).

(4) At the expiration of the time mentioned in the notice, the Registrar may, unless cause to the contrary is previously shown, strike the name of the company off the register, and shall publish notice thereof in the *Gazette*, and on the publication in the *Gazette* of the notice the company shall be dissolved; but —

(*a*) the liability, if any, of every 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.

(5) If any person feels aggrieved by the name of the company having been struck off the register, the Court, on an application made by the person at any time within 15 years after the name of the company has been so struck off may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the name of the company be restored to the register, order the name of the company to be restored to the register, and upon a copy of the order being lodged with the Registrar 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.

[12/2002]

(6) 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 officer of the company, or, if there is no officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the memorandum of the company addressed to him at the address mentioned in the memorandum.

[UK, 1948, s. 353; Aust., 1961, s. 308]

Official Receiver to act as representative of defunct company in certain events

345.—(1) Where, after a company has been dissolved, it is proved to the satisfaction of the Official Receiver —

(*a*) that the company, if still existing, would be legally or equitably bound to carry out, complete or give effect to some dealing, transaction or matter; and

(*b*) that in order to carry out, complete or give effect thereto some purely administrative act, not discretionary, should have been done by or on behalf of the company, or should be done by or on behalf of the company, if still existing,

the Official Receiver may, as representing the company or its liquidator under this section, do or cause to be done any such act.

(2) The Official Receiver may execute or sign any relevant instrument or document adding a memorandum stating that he has done so in pursuance of this section, and such execution or signature shall have the same force, validity and effect as if the company if existing had duly executed such instrument or document.

[Aust., 1961, s. 309]

Outstanding assets of defunct company to vest in Official Receiver

346.—(1) Where, after a company has been dissolved, there remains any outstanding property, movable or immovable, including things in action and whether in or outside Singapore which was vested in the company or to which it was entitled, or over which it had a disposing power at the time it was so dissolved, but which was not got in, realised upon or otherwise disposed of or dealt with by the company or its liquidator, such property except called and uncalled capital, shall, for the purposes of the following sections of this Subdivision and notwithstanding any written law or rule of law to the contrary, by the operation of this section, be and become vested in the Official Receiver for all the estate and interest therein legal or equitable of the company or its liquidator at the date the company was dissolved, together with all claims, rights and remedies which the company or its liquidator then had in respect thereof.

(2) Where any claim, right or remedy of the liquidator may under this Act be made, exercised or availed of only with the approval or concurrence of the Court or some other person, the Official Receiver may for the purposes of this section make, exercise or avail himself of that claim, right or remedy without such approval or concurrence.

[Aust., 1961, s. 310]

Disposal of outstanding interests in property

347.—(1) Upon proof to the satisfaction of the Official Receiver that there is vested in him by operation of section 346 or by operation of any corresponding previous written law or of a law of a designated country corresponding with section 354 any estate or interest in property, whether solely or together with any other person, of a beneficial nature and not merely held in trust, the Official Receiver may sell or otherwise dispose of or deal with such estate or interest or any part thereof as he sees fit.

(2) The Official Receiver may sell or otherwise dispose of or deal with such property either solely or in concurrence with any other person in such manner for such consideration by public auction, public tender or private contract upon such terms and conditions as he thinks fit, with power to rescind any contract and resell or otherwise dispose of or deal with such property as he thinks expedient, and may make, execute, sign and give such contracts, instruments and documents as he thinks necessary.

(3) The Official Receiver shall be remunerated by such commission, whether by way of percentage or otherwise, as is prescribed in respect of the exercise of the powers conferred upon him by subsection (1).

(4) The moneys received by the Official Receiver in the exercise of any of the powers conferred on him by this Subdivision shall be applied in defraying all costs, expenses, commission and fees incidental thereto and thereafter to any payment authorised by this Subdivision and the surplus, if any, shall be dealt with as if they were unclaimed moneys paid to the Official Receiver in pursuance of section 322.
[Aust., 1961, s. 311]

Liability of Official Receiver and Government as to property vested in Official Receiver

348. Property vested in the Official Receiver by operation of this Subdivision or by operation of any corresponding previous written law shall be liable and subject to all charges, claims and liabilities imposed thereon or affecting such property by reason of any statutory provision as to rates, taxes, charges or any other matter or thing to which such property would have been liable or subject had such property continued in the possession, ownership or occupation of the company; but there shall not be imposed on the Official Receiver or the Government any duty, obligation or liability whatsoever to do or suffer any act or thing required by any such statutory provision to be done or suffered by the owner or occupier other than the satisfaction or payment of any such charges, claims or liabilities out of the assets of the company so far as they are in the opinion of the Official Receiver properly available for and applicable to such payment.
[Aust., 1961, s. 312]

Accounts and audit

349.—(1) The Official Receiver shall —

(*a*) record in a register a statement of any property coming to his hand or under his control or to his knowledge vested in him by operation of this Subdivision and of his dealings therewith;

(*b*) keep accounts of all moneys arising therefrom and of how they have been disposed of; and

(*c*) keep all accounts, vouchers, receipts and papers relating to such property and moneys.

(2) The Auditor-General shall have all the powers in respect of such accounts as are conferred upon him by any Act relating to audit of public accounts.
[Aust., 1961, s. 313]

Division 5 — Winding up of unregistered companies

Definition of unregistered company

350.—(1) For the purposes of this Division, "unregistered company" includes a foreign company and any partnership, association or company consisting of more than 5 members but does not include a company incorporated under this Act or under any corresponding previous written law.

Provisions of Division cumulative

(2) This Division shall be in addition to, and not in derogation of, any provisions contained in this or any other written law with respect to the winding up of companies by the Court and the Court or the 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.
[UK, 1948, ss. 398, 404; Aust., 1961, s. 314]

Winding up of unregistered companies

351.—(1) Subject to this Division, any unregistered company may be wound up under this Part, which Part shall apply to an unregistered company with the following adaptations:

(*a*) the principal place of business of such company in Singapore shall for all the purposes of the winding up be the registered office of the company;

(*b*) no such company shall be wound up voluntarily;

(*c*) the circumstances in which the company may be wound up are —

(i) if the company is dissolved or has ceased to have a place of business in Singapore or has a place of business in Singapore only for the purpose of winding up its affairs or has ceased to carry on business in Singapore;

(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.

(2) An unregistered company shall be deemed to be unable to pay its debts if —

(*a*) a creditor by assignment or otherwise to whom the company is indebted in a sum exceeding $2,000 then due has served on the company, by leaving at its principal place of business in Singapore or by delivering to the secretary or a director, manager or principal officer of the company or by otherwise serving in such manner as the Court approves or directs, a demand under his hand requiring the company to pay the sum so due, and the company has for 3 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;

(*b*) 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 it at its principal place of business in Singapore or by delivering it to the secretary or a director, manager or principal officer of the company or by otherwise serving it in such manner as the Court approves or directs, the company has not within 10 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 the defendant to his reasonable satisfaction against the action or proceeding and against all costs, damages and expenses to be incurred by him by reason thereof;

(*c*) 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 authorised to be sued as nominal defendant on behalf of the company is

returned unsatisfied; or

(*d*) it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

(3) A company incorporated outside Singapore may be wound up as an unregistered company under this Division notwithstanding that it is being wound up or has been dissolved or has otherwise ceased to exist as a company under the laws of the place under which it was incorporated.

(4) In this section, "to carry on business" has the same meaning as in section 366.
[UK, 1948, ss. 399, 400; Aust., 1961, s. 315]

Contributories in winding up of unregistered company

352.—(1) On an unregistered company being wound up every person shall be a contributory —

(*a*) who is liable to pay or contribute to the payment of —

(i) any debt or liability of the company;

(ii) any sum for the adjustment of the rights of the members among themselves; or

(iii) the costs and expenses of winding up; or

(*b*) where the company has been dissolved in the place in which it is formed or incorporated, who immediately before the dissolution was so liable,

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.

(2) On the death or bankruptcy of any contributory, the provisions of this Act with respect to the personal representatives of deceased contributories and the assignees and trustees of bankrupt contributories respectively shall apply.
[UK, 1948, s. 401; Aust., 1961, s. 316]

Power of Court to stay or restrain proceedings

353.—(1) The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the making of an application 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.

[42/2005]

(2) 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 imposes.
[UK, 1948, ss. 402, 403; Aust., 1961, s. 317]

Outstanding assets of defunct unregistered company

354.—(1) Where an unregistered company the place of incorporation or origin of which is in a designated country has been dissolved and there remains in Singapore any outstanding

property, movable or immovable, including things in action which was vested in the company or to which it was entitled or over which it had a disposing power at the time it was dissolved, but which was not got in, realised upon or otherwise disposed of or dealt with by the company or its liquidator before the dissolution, the property, except called and uncalled capital, shall, by the operation of this section, be and become vested, for all the estate and interest therein legal or equitable of the company or its liquidator at the date the company was dissolved, in such person as is entitled thereto according to the law of the place of incorporation or origin of the company.

(2) Where the place of origin of an unregistered company is Singapore, sections 345 to 349 (both inclusive) shall with such adaptations as may be necessary apply in respect of that company.

(3) Where it appears to the Minister that any law in force in any other country contains provisions similar to this section, he may, by notification in the *Gazette*, declare that other country to be a designated country for the purposes of this section.
[Aust., 1961, s. 318]

PART XI

VARIOUS TYPES OF COMPANIES, ETC.

Division 1 — Investment companies

Interpretation of this Division

355. [*Repealed by Act 8 of 2003*]

Restriction on borrowing by investment companies

356. [*Repealed by Act 8 of 2003*]

Restriction on investments of investment companies

357. [*Repealed by Act 8 of 2003*]

Restriction on underwriting by investment companies

358. [*Repealed by Act 8 of 2003*]

Special requirements as to articles and prospectus

359. [*Repealed by Act 8 of 2003*]

Not to hold shares in other investment companies

360. [*Repealed by Act 8 of 2003*]

Not to speculate in commodities

361. [*Repealed by Act 8 of 2003*]

Balance-sheets and accounts

362. [*Repealed by Act 8 of 2003*]

Investment fluctuation reserve

363. [*Repealed by Act 8 of 2003*]

Penalties

364. [*Repealed by Act 8 of 2003*]

Division 2 — Foreign companies

Foreign companies to which this Division applies

365. This Division applies to a foreign company which, before it establishes a place of business or commences to carry on business in Singapore, complies with section 368 and is registered under this Division.

[13/87]

Interpretation of this Division

366.—(1) In this Division, unless the contrary intention appears —

"agent" means the person named in a memorandum of appointment or power of attorney lodged under section 368(1)(*e*) or 370(6) or under any corresponding previous written law;

"carrying on business" includes administering, managing or otherwise dealing with property situated in Singapore as an agent, legal personal representative, or trustee, whether by employees or agents or otherwise, and "to carry on business" has a corresponding meaning.

[8/2003]

(2) Notwithstanding subsection (1), a foreign company shall not be regarded as carrying on business in Singapore for the reason only that in Singapore it —

(*a*) is or becomes a party to any action or suit or any administrative or arbitration proceeding or effects settlement of an action, suit or proceeding or of any claim or dispute;

(*b*) holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs;

(*c*) maintains any bank account;

(*d*) effects any sale through an independent contractor;

(*e*) solicits or procures any order which becomes a binding contract only if such order is accepted outside Singapore;

(*f*) creates evidence of any debt or creates a charge on movable or immovable property;

(*g*) secures or collects any of its debts or enforces its rights in regard to any securities relating to such debts;

(*h*) conducts an isolated transaction that is completed within a period of 31 days, but not being one of a number of similar transactions repeated from time to time;

(*i*) invests any of its funds or holds any property;

(*j*) establishes a share transfer or share registration office in Singapore; or

(*k*) effects any transaction through its related corporation licensed or approved under any written law by the Monetary Authority of Singapore, established under the Monetary Authority of Singapore Act (Cap. 186), under an arrangement approved by the Authority.

[38/98; 8/2003]

Power of foreign companies to hold immovable property

367. Subject to and in accordance with any written law, a foreign company registered under this Division shall have power to hold immovable property in Singapore.
[Aust., 1961, s. 345]

Documents, etc., to be lodged by foreign companies having place of business in Singapore

368.—(1) Every foreign company shall, before it establishes a place of business or commences to carry on business in Singapore, lodge with the Registrar for registration —

(*a*) a certified copy of the certificate of its incorporation or registration in its place of incorporation or origin or a document of similar effect;

(*b*) a certified copy of its charter, statute or memorandum and articles or other instrument constituting or defining its constitution;

(*c*) a list of its directors containing similar particulars with respect to its directors as are by this Act required to be contained in the register of the directors, managers and secretaries of a company incorporated under this Act;

(*d*) where the list includes directors resident in Singapore who are members of the local board of directors, a memorandum duly executed by or on behalf of the foreign company stating the powers of the local directors;

(*e*) a memorandum of appointment or power of attorney under the seal of the foreign company or executed on its behalf in such manner as to be binding on the company and, in either case, verified in the prescribed manner, stating the names and addresses of 2 or more natural persons resident in Singapore authorised to accept on its behalf service of process and any notices required to be served on the company; and

(*f*) notice of the situation of its registered office in Singapore and, unless the office is open and accessible to the public during ordinary business hours on each business day, the days and hours during which it is open and accessible to the public,

(*g*) [*Deleted by Act 12 of 2002*]

and on payment of the appropriate fees and subject to this Act the Registrar shall register the company under this Division by registration of the documents.

[15/84; 13/87; 12/2002]

(2) Where a memorandum of appointment or power of attorney lodged with the Registrar in pursuance of subsection (1)(*e*) is executed by a person on behalf of the company, a copy of the deed or document by which that person is authorised to execute the memorandum of appointment or power of attorney, verified by statutory declaration in the prescribed manner, shall be lodged with the Registrar and the copy shall for all purposes be regarded as an original.

(3) Subsection (1) shall apply to a foreign company which was not registered under the

repealed written laws but which, immediately before 29th December 1967, had a place of business or was carrying on business in Singapore and, on that date, had a place of business or was carrying on business in Singapore, as if it established that place of business or commenced to carry on that business on that date.

[S 258/67]

[UK, 1948, s. 407; Aust., 1961, s. 346 (1)-(3)]

Power to refuse registration of a foreign company in certain circumstances

369.—(1) Notwithstanding anything in this Act or any rule of law, the Registrar shall refuse to register a company under this Division if he is satisfied that the foreign company is being used or is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore or is acting or likely to act against the national security or interest.

[15/84]

(2) A foreign company aggrieved by the decision of the Registrar under subsection (1) may, within 30 days of the date of the decision, appeal to the Minister whose decision shall be final.

As to registered office and agents of foreign companies

370.—(1) A foreign company shall have a registered office in Singapore to which all communications and notices may be addressed and which shall be open and accessible to the public for not less than 5 hours between the hours of 9 a.m. and 5 p.m. each business day.

(2) An agent, until he ceases to be such in accordance with subsection (4), shall —

(*a*) continue to be the agent of the company;

(*b*) be answerable for the doing of all such acts, matters and things, as are required to be done by the company under this Act; and

(*c*) be personally liable to all penalties imposed on the company for any contravention of any of the provisions of this Act unless he satisfies the court hearing the matter that he should be not so liable.

(3) A foreign company or its agent may lodge with the Registrar a notice in the prescribed form stating that the agent has ceased to be the agent or will cease to be the agent on a date specified in the notice.

[12/2002]

(4) The agent in respect of whom the notice has been lodged shall cease to be an agent on the expiration of a period of 21 days after the date of lodgment of the notice or on the date of the appointment of another agent the memorandum of whose appointment has been lodged in accordance with subsection (5), whichever is the earlier, but if the notice states a date on which he is to so cease and the date is later than the expiration of that period, on that date.

(5) Where an agent ceases to be an agent and if as a result the company is left with only one agent in Singapore, it shall, within 21 days after the agent ceases to be such, appoint another agent.

[15/84]

(6) On the appointment of a new agent the company shall lodge a memorandum of the appointment or power of attorney in accordance with section 368(1) and, if not already lodged in pursuance of section 368(2), a copy of the deed or document or power of attorney, referred to in section 368(2), verified in accordance with that subsection.

[12/2002]

[Aust., 1961, s. 346 (4)-(8)]

Transitory provisions

371.—(1) On the registration of a foreign company under this Division, the Registrar shall issue a notice in the prescribed form and the notice shall be prima facie evidence in all courts of the particulars mentioned in the notice.

[12/2002]

(2) Upon the application of the foreign company that has been duly registered and payment of the prescribed fee, the Registrar shall issue to the foreign company a certificate, under his hand and seal, confirming the particulars mentioned in the notice, and the certificate shall be prima facie evidence in all courts of those particulars.

[12/2002]

Return to be filed where documents, etc., altered

372.—(1) Where any change or alteration is made in —

(*a*) the charter, statutes, memorandum or articles of the foreign company or other instrument lodged with the Registrar;

(*b*) the directors of the foreign company;

(*c*) the agent or agents of the foreign company;

(*d*) the situation or address or designation of situation or address of the registered office of the foreign company in Singapore or the days or hours during which it is open and accessible to the public;

(*e*) the address of the registered office of the foreign company in its place of incorporation or origin;

(*f*) the name of the foreign company; or

(*g*) the powers of any directors resident in Singapore who are members of the local board of directors of the foreign company,

the foreign company shall, within one month or within such further period as the Registrar in special circumstances allows after the change or alteration, lodge with the Registrar particulars of the change or alteration and such documents as the regulations require.

[40/89; 28/94]

(1A) Any agent of a foreign company who has changed his residential address shall —

(*a*) notify the foreign company of the change; and

(*b*) subject to subsection (1B), lodge with the Registrar a notice in the prescribed form notifying the Registrar of his new residential address.

[28/94]

(1B) Where any agent of a foreign company has made a report of a change of his residential address under section 8 of the National Registration Act (Cap. 201), he shall be deemed to have notified the Registrar of the change in compliance with subsection (1A)(*b*).

[28/94]

(1C) If default is made by any agent of a foreign company in complying with subsection (1A), he shall be guilty of an offence and shall be liable on conviction to a fine not

exceeding $5,000 and also to a default penalty.

[28/94]

(2) If a foreign company increases its authorised share capital it shall within one month or within such further period as the Registrar in special circumstances allows after such increase lodge with the Registrar notice of the amount from which and of the amount to which it has been so increased.

(3) If a foreign company not having a share capital changes the number of its members so that it is different from the registered number, the company shall, within one month or within such further period as the Registrar in special circumstances allows after the date on which the change was resolved or took place, lodge with the Registrar notice of the change in the prescribed form.

[12/2002; 8/2003]

(4) If any order is made by a court under any law in force in the country in which a foreign company is incorporated which corresponds to section 210, the company shall, within one month or within such further period as the Registrar in special circumstances allows after the order was made, lodge with the Registrar a copy of that order.

[12/2002]

[UK, 1948, s. 409; Aust., 1961, s. 347]

Balance-sheets

373.—(1) Subject to this section, a foreign company shall, within 2 months of its annual general meeting, lodge with the Registrar a copy of its balance-sheet made up to the end of its last financial year in such form and containing such particulars and accompanied by copies of such documents as the company is required to annex, attach or send with its balance-sheet by the law for the time being applicable to that company in the place of its incorporation or origin, together with a declaration in the prescribed form verifying that the copies are true copies of the documents so required.

[12/2002]

(2) The Registrar may, if he is of the opinion that the balance-sheet and other documents referred to in subsection (1) do not sufficiently disclose the company's financial position, require the company to lodge a balance-sheet within such period, in such form and containing such particulars and to annex thereto such documents as the Registrar by notice in writing to the company requires, but this subsection does not authorise the Registrar to require a balance-sheet to contain any particulars or the company to annex, attach or to send any documents that would not be required to be furnished if the company were a public company incorporated under this Act.

(3) The company shall comply with the requirements set out in the notice.

(4) Where a foreign company is not required by the law of the place of its incorporation or origin to hold an annual general meeting and prepare a balance-sheet the company shall prepare and lodge with the Registrar a balance-sheet within such period, in such form and containing such particulars and to annex thereto such documents as the directors of the company would have been required to prepare or obtain if the company were a public company incorporated under this Act.

(5) In addition to the balance-sheet and other documents required to be lodged with the Registrar by subsections (1) to (4), a foreign company shall lodge with the Registrar with such balance-sheet and other documents a duly audited statement showing its assets used in and

liabilities arising out of its operations in Singapore as at the date to which its balance-sheet was made up and a duly audited profit and loss account which, in so far as is practicable, complies with the requirements of the Accounting Standards and which gives a true and fair view of the profit or loss arising out of the company's operation in Singapore for the last preceding financial year of the company:

Provided that —

(*a*) the company shall be entitled to make such apportionments of expenses incurred in connection with operations or administration affecting both Singapore and elsewhere and to add such notes and explanations as in its opinion are necessary or desirable in order to give a true and fair view of the profit or loss of its operation in Singapore; and

(*b*) the Registrar may waive compliance with this subsection in relation to any foreign company if he is satisfied that —

(i) it is impractical to comply with this subsection having regard to the nature of the company's operations in Singapore;

(ii) it would be of no real value having regard to the amount involved;

(iii) it would involve expense unduly out of proportion to its value; or

(iv) it would be misleading or harmful to the business of the company or to any company which is deemed by virtue of section 6 to be related to the company.

[12/2002]

(6) A statement and profit and loss account shall be deemed to have been duly audited for the purposes of subsection (5) if it is accompanied by a report by a public accountant appointed to provide auditing services in respect of the company's operations in Singapore which complies, in so far as is practicable, with section 207.

[5/2004]

(7) Without prejudice to the powers of the Registrar under paragraph (*b*) of the proviso to subsection (5), a foreign company may apply to the Registrar in writing for an order relieving the foreign company from any requirement of this section relating to the form and content of accounts or reports and the Registrar may make such an order either unconditionally or on condition that the foreign company complies with such other requirements relating to the form and content of the accounts or reports as the Registrar thinks fit to impose.

[15/84]

(8) The Registrar shall not make an order under subsection (7) unless he is of the opinion that compliance with the requirements of this section would render the accounts or reports misleading or inappropriate to the circumstances of the foreign company or would impose unreasonable burdens on the foreign company.

[15/84]

(9) The Registrar may make an order under subsection (7) which may be limited to a specific period and may from time to time revoke or suspend the operation of any such order.

[15/84]

(10) Without prejudice to paragraph (*b*) of the proviso to subsection (5) and subsection (7), the Minister may, by order published in the *Gazette*, in respect of foreign companies of a specified class or description, substitute other accounting standards for the Accounting

Standards, and the provisions of this section shall apply accordingly in respect of such foreign companies.

[12/2002]

[UK, 1948, s. 410; Aust., 1961, s. 348]

As to fee payable on registration of foreign company because of establishment of a share register in Singapore

374. [*Repealed by Act 12 of 2002*]

Obligation to state name of foreign company, whether limited, and country where incorporated

375.—(1) A foreign company shall —

(*a*) conspicuously exhibit outside its registered office and every place of business established by it in Singapore in romanised letters its name and the place where it is formed or incorporated;

(*b*) cause its name and the place where it is formed or incorporated to be stated in legible romanised letters on all its bill-heads and letter paper and in all its notices, prospectuses and other official publications; and

(*c*) if the liability of its members is limited (unless the last word of its name is the word "Limited" or "Berhad" or the abbreviation "Ltd." or "Bhd."), cause notice of that fact —

(i) to be stated in legible characters in every prospectus issued by it and in all its bill-heads, letter paper, notices, and other official publications in Singapore; and

(ii) except in the case of a banking corporation, to be exhibited outside its registered office and every place of business established by it in Singapore.

(2) Where the name of a foreign company is indicated on the outside of its registered office or any place of business established by it in Singapore or on any of the documents referred to in subsection (1) in characters or in any other way than by the use of romanised letters, this section relating to the exhibition or statement of its name shall be deemed not to have been complied with unless the name of the company is exhibited outside such office or place of business or stated on such document in romanised letters not smaller than any of the characters so exhibited or stated on the relevant office, place of business or document.

[UK, 1948, s. 411; Aust., 1961, s. 350]

Service of document

376. Any document required to be served on a foreign company shall be sufficiently served —

(*a*) if addressed to the foreign company and left at or sent by post to its registered office in Singapore;

(*b*) if addressed to an agent of the company and left at or sent by post to his registered address; or

(*c*) in the case of a foreign company which has ceased to maintain a place of business in Singapore, if addressed to the foreign company and left at or sent by post to its

registered office in the place of its incorporation.

[UK, 1948, s. 412; Aust., 1961, s. 351]

Cesser of business in Singapore

377.—(1) If a foreign company ceases to have a place of business or to carry on business in Singapore, it shall, within 7 days after so ceasing, lodge with the Registrar notice of that fact, and as from the day on which the notice is so lodged its obligation to lodge any document (not being a document that ought to have been lodged before that day) with the Registrar shall cease, and the Registrar shall upon the expiration of 12 months after the lodging of the notice remove the name of that foreign company from the register.

(2) If a foreign company goes into liquidation or is dissolved in its place of incorporation or origin —

(*a*) each person who immediately prior to the commencement of the liquidation proceedings was an agent shall, within one month after the commencement of the liquidation or the dissolution or within such further time as the Registrar in special circumstances allows, lodge or cause to be lodged with the Registrar notice of that fact and, when a liquidator is appointed, notice of such appointment; and

(*b*) the liquidator shall, until a liquidator for Singapore is duly appointed by the Court, have the powers and functions of a liquidator for Singapore.

(3) A liquidator of a foreign company appointed for Singapore by the Court or a person exercising the powers and functions of such a liquidator —

(*a*) shall, before any distribution of the foreign company's assets is made, by advertisement in a newspaper circulating generally in each country where the foreign company had been carrying on business prior to the liquidation if no liquidator has been appointed for that place, invite all creditors to make their claims against the foreign company within a reasonable time prior to the distribution;

(*b*) subject to subsection (7), shall not, without obtaining an order of the Court, pay out any creditor to the exclusion of any other creditor of the foreign company; and

(*c*) shall, unless otherwise ordered by the Court, only recover and realise the assets of the foreign company in Singapore and shall, subject to paragraph (*b*) and subsection (7), pay the net amount so recovered and realised to the liquidator of that foreign company for the place where it was formed or incorporated after paying any debts and satisfying any liabilities incurred in Singapore by the foreign company.

(4) Where a foreign company has been wound up so far as its assets in Singapore are concerned and there is no liquidator for the place of its incorporation or origin, the liquidator may apply to the Court for directions as to the disposal of the net amount recovered in pursuance of subsection (3).

(5) On receipt of a notice from an agent that the company has been dissolved, the Registrar shall remove the name of the company from the register.

(6) Where the Registrar has reasonable cause to believe that a foreign company has ceased to carry on business or to have a place of business in Singapore, the provisions of this Act relating to the striking off the register of the names of defunct companies shall with such adaptations as are necessary extend and apply accordingly.

(7) Section 328 shall apply to a foreign company wound up or dissolved pursuant to this section as if for references to a company there were substituted references to a foreign company.

(8) Where the Registrar is satisfied that a foreign company is being used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore or against the national security or interest, he shall strike the name of the foreign company off the register and it shall thereupon cease to be registered as a foreign company under this Division.

[15/84]

(9) Any person aggrieved by the decision of the Registrar under subsection (8) may, within 30 days of the date of the decision, appeal to the Minister whose decision shall be final.

[15/84]

[UK, 1948, s. 413 (2); Aust., 1961, s. 352]

Restriction on use of certain names

378.—(1) Except with the consent of the Minister, a foreign company shall not be registered by a name that, in the opinion of the Registrar, is undesirable or is a name, or a name of a kind, that the Minister has directed the Registrar not to accept for registration.

(2) Except with the consent of the Minister, any change in the name of a foreign company shall not be registered if in the opinion of the Registrar the new name of the company is undesirable or is a name, or a name of a kind, that the Minister has directed the Registrar not to accept for registration, notwithstanding that particulars of the change have been lodged in accordance with section 372.

(3) No foreign company to which this Division applies shall use in Singapore any name other than that under which it is registered under this Division.

(4) If default is made in complying with subsection (3), the foreign company, every officer of the company who is in default and every agent of the company who knowingly and wilfully authorises or permits the default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 and also to a default penalty.

[15/84]

[Aust., 1961, s. 353]

Branch register

379.—(1) Subject to this section, a foreign company which has a share capital and has any member who is resident in Singapore shall keep at its registered office in Singapore or at some other place in Singapore a branch register for the purpose of registering shares of members resident in Singapore who apply to have the shares registered therein.

(2) The company shall not be obliged to keep a branch register pursuant to subsection (1) until after the expiration of 2 months from the receipt by it of an application in writing by a member resident in Singapore for registration in its branch register in Singapore of the shares held by the member.

(3) If default is made in complying with subsection (1), the foreign company, every officer of the company who is in default and every agent of the company who knowingly and wilfully authorises or permits the default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

[15/84]

(4) This section shall not apply to any foreign company which by its constitution prohibits any invitation to the public to subscribe for shares in the company.

(5) Every such register shall be kept in the manner provided by Division 4 of Part V as though the register were the register of a company and transfers shall be effected on such register in the same manner and at the same charges as on the principal register of the company and transfers lodged at its registered office in Singapore shall be binding on the company and the Court shall have the same powers in relation to rectification of the register as it has in respect of the register of a company incorporated in Singapore.

(6) Where a foreign company opens a branch register in Singapore, it shall within 14 days after the opening thereof lodge with the Registrar notice of that fact specifying the address where the register is kept.

(7) Where any change is made in the place where the register is kept or where the register is discontinued, the company shall within 14 days of the change or discontinuance lodge notice of the change or discontinuance with the Registrar.

(8) Where a company or corporation is entitled pursuant to a law of the place of incorporation of a foreign company corresponding with section 215 to give notice to a dissenting shareholder in that foreign company that it desires to acquire any of his shares registered on a branch register kept in Singapore, this section shall cease to apply to that foreign company until —

(*a*) the shares have been acquired; or

(*b*) that company or corporation has ceased to be entitled to acquire the shares.

[Aust., 1961, s. 354]

Registration of shares in branch register

380. Subject to this Act, on application in that behalf by a member resident in Singapore the foreign company shall register in a branch register of the company the shares held by a member which are registered in any other register kept by the company.

[Aust., 1961, s. 355]

Removal of shares from branch register

381. Subject to this Act, on application in that behalf by a member holding shares registered in a branch register, the foreign company shall remove the shares from the branch register and register them in such other register within Singapore as is specified in the application.

[Aust., 1961, s. 356]

Index of members, inspection and closing of branch registers

382. Sections 190, 191 and 192 shall, with such adaptations as are necessary, apply respectively to the index of persons holding shares in a branch register and to the inspection and the closing of the register.

[Aust., 1961, s. 357]

Application of provisions of this Act relating to transfer

383. Sections 126, 127, 128(1), 130(1) and (3) and 194 shall apply with necessary adaptations with respect to the transfer of shares on and the rectification of the branch register of a foreign company.

[Aust., 1961, s. 358]

Branch register to be prima facie evidence

384. A branch register shall be prima facie evidence of any matters by this Division directed or authorised to be inserted therein.

[Aust., 1961, s. 359]

Certificate as to shareholding

385. A certificate under the seal of a foreign company specifying any shares held by any member of that company and registered in the branch register shall be prima facie evidence of the title of the member to the shares and the registration of the shares in the branch register.

[Aust., 1961, s. 360]

Penalties

386. If default is made by any foreign company in complying with any provision of this Division, other than a provision in which a penalty or punishment is expressly mentioned, the company and every officer of the company who is in default and every agent of the company who knowingly and wilfully authorises or permits the default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

[15/84]

[Aust., 1961, s. 361]

PART XII

GENERAL

Division 1 — Enforcement of this Act

Service of documents on company

387. A document may be served on a company by leaving it at or sending it by registered post to the registered office of the company.

[UK, 1948, s. 437; Aust., 1961, s. 362]

Electronic transmission of notices of meetings

387A.—(1) Where any notice of a meeting is required or permitted to be given, sent or served under this Act or under the memorandum or articles of a company by the company or the directors of the company to —

(*a*) a member of the company; or

(*b*) an officer or auditor of the company,

that notice may be given, sent or served using electronic communications to the current address of that person.

[5/2004]

(2) For the purposes of this section, a notice of a meeting shall also be treated as given or sent to, or served on a person where —

(*a*) the company and that person have agreed in writing that notices of meetings required to be given to that person may instead be accessed by him on a website;

(*b*) the meeting is a meeting to which that agreement applies;

(*c*) the notice is published on the website such that it is or can be made legible;

(*d*) that person is notified, in a manner for the time being agreed between him and the company for the purpose, of —

(i) the publication of the notice on that website;

(ii) the address of that website; and

(iii) the place on that website where the notice may be accessed, and how it may be accessed; and

(*e*) the notice continues to be published on and remains accessible to that person from that website throughout the period beginning with the giving of that notification and ending with the conclusion of the meeting.

[5/2004]

(3) For the purposes of this Act, a notice of a meeting treated in accordance with subsection (2) as given or sent to or served on any person shall be treated as so given, sent or served at the time of the notification mentioned in subsection (2)(*d*).

[5/2004]

(4) A notice of a meeting given for the purposes of subsection (2)(*d*) shall specify such matters or information as may be required for a notice of that type under any other provision of this Act or the memorandum or articles of that company.

[5/2004]

(5) Nothing in subsection (2) shall invalidate the proceedings of a meeting where —

(*a*) any notice of a meeting that is required to be published and remain accessible as mentioned in paragraph (*e*) of that subsection is published and remains accessible for a part, but not all, of the period mentioned in that paragraph; and

(*b*) the failure to publish and make accessible that notice throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the company to prevent or avoid.

[5/2004]

(6) A company may, notwithstanding any provision to the contrary in its memorandum or articles, take advantage of subsection (1), (2), (3), (4) or (5).

[5/2004]

(7) For the purposes of this section and section 387B, the current address of a person of a company, in relation to any notice or document, is a number or address used for electronic communication which —

(*a*) has been notified by the person in writing to the company as one at which that notice or document may be sent to him; and

(*b*) the company has no reason to believe that that notice or document sent to the person at that address will not reach him.

[5/2004]

[UK, 1985, s. 369]

Electronic transmission of documents

387B.—(1) Where any accounts, balance-sheet, report or other document is required or

permitted to be given, sent or served under this Act or under the memorandum or articles of a company by the company or the directors of the company to —

(*a*) a member of the company; or

(*b*) an officer or auditor of the company,

that document may be given, sent or served using electronic communications to the current address of that person.

[5/2004]

(2) For the purposes of this section, a document shall also be treated as given or sent to, or served on a person where —

(*a*) the company and that person have agreed in writing to his having access to documents on a website (instead of their being sent to him);

(*b*) the document is a document to which that agreement applies;

(*c*) the document is published on the website such that it is or can be made legible; and

(*d*) that person is notified, in a manner for the time being agreed for that purpose between him and the company, of —

(i) the publication of the document on that website;

(ii) the address of that website; and

(iii) the place on that website where the document may be accessed, and how it may be accessed.

[5/2004]

(3) Where any provision of this Act or of the memorandum or articles of the company requires any document to be given or sent to, or served on a person not less than a specified number of days before a meeting, that document, if treated in accordance with subsection (2) as given or sent to, or served on any person, shall be treated as given or sent to, or served on the person not less than the specified number of days before the date of a meeting if, and only if —

(*a*) the document is published on and remains accessible to that person from the website throughout a period beginning before the specified number of days before the date of the meeting and ending with the conclusion of the meeting; and

(*b*) the notification given for the purposes of subsection (2)(*d*) is given not less than the specified number of days before the date of the meeting.

[5/2004]

(4) Nothing in subsection (3) shall invalidate the proceedings of a meeting where —

(*a*) any document that is required to be published and remain accessible as mentioned in paragraph (*a*) of that subsection is published and remains accessible for a part, but not all, of the period mentioned in that paragraph; and

(*b*) the failure to publish and make accessible that document throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the company to prevent or avoid.

[5/2004]

(5) A company may, notwithstanding any provision to the contrary in its articles, take advantage of subsection (1), (2), (3) or (4).

[5/2004]

[UK, 1985, s. 238]

Security for costs

388.—(1) Where a corporation is plaintiff in any action or other legal proceeding the court having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the corporation 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 stay all proceedings until the security is given.

Costs

(2) The costs of any proceeding before a court under this Act shall be borne by such party to the proceeding as the court may, in its discretion, direct.
[UK, 1948, s. 447; Aust., 1961, s. 363]

As to rights of witnesses to legal representation

389. Any person summoned for examination under Part IX or under section 285 or 286 may, at his own cost, employ a solicitor who shall be at liberty to put to him such questions as the inspector, Court or District Judge considers just for the purpose of enabling him to explain or qualify any answers given by him.
[UK, 1948, s. 270 (6); Aust., 1961, s. 249 (5)]

Disposal of shares of shareholder whose whereabouts unknown

390.—(1) Where by the exercise of reasonable diligence a company is unable to discover the whereabouts of a shareholder for a period of not less than 10 years, the company may cause an advertisement to be published in a newspaper circulating in the place shown in the register of members as the address of the shareholder stating that the company after the expiration of one month from the date of the advertisement intends to transfer the shares to the Official Receiver.

(2) If, after the expiration of one month from the date of the advertisement, the whereabouts of the shareholder remain unknown, the company may transfer the shares held by the shareholder in the company to the Official Receiver and for that purpose may execute for and on behalf of the owner a transfer of those shares to the Official Receiver.

(3) The Official Receiver shall sell or dispose of any shares so received in such manner and at such time as he thinks fit and shall deal with proceeds of the sale or disposal as if they were moneys paid to him pursuant to section 322.
[Aust., 1961, s. 364]

Power to grant relief

391.—(1) If in any proceedings for negligence, default, breach of duty or breach of trust against a person to whom this section applies it appears to the court before which the proceedings are taken that he is or may be liable in respect thereof 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 or breach the court may relieve him either wholly or partly from his liability on such terms as the court thinks fit.

(1A) For the avoidance of doubt and without prejudice to the generality of subsection (1),

"liability" includes the liability of a person to whom this section applies to account for profits made or received.

[8/2003]

(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 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 him for negligence, default, breach of duty or breach of trust had been brought.

(3) The persons to whom this section applies are —

(*a*) officers of a corporation;

(*b*) persons employed by a corporation as auditors, whether they are or are not officers of the corporation;

(*c*) experts within the meaning of this Act; and

(*d*) persons who are receivers, receivers and managers or liquidators appointed or directed by the Court to carry out any duty under this Act in relation to a corporation and all other persons so appointed or so directed.

[UK, 1948, s. 448; UK, 1985, s. 727; Aust., 1961, s. 365]

Irregularities

392.—(1) In this section, unless the contrary intention appears a reference to a procedural irregularity includes a reference to —

(*a*) the absence of a quorum at a meeting of a corporation, at a meeting of directors or creditors of a corporation or at a joint meeting of creditors and members of a corporation; and

(*b*) a defect, irregularity or deficiency of notice or time.

[13/87]

(2) A proceeding under this Act is not invalidated by reason of any procedural irregularity unless the Court is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the Court and by order declares the proceeding to be invalid.

[13/87]

(3) A meeting held for the purposes of this Act, or a meeting notice of which is required to be given in accordance with the provisions of this Act, or any proceeding at such a meeting, is not invalidated by reason only of the accidental omission to give notice of the meeting or the non-receipt by any person of notice of the meeting, unless the Court, on the application of the person concerned, a person entitled to attend the meeting or the Registrar, declares proceedings at the meeting to be void.

[13/87]

(4) Subject to the following provisions of this section and without limiting the generality of any other provision of this Act, the Court may, on application by any interested person, make all or any of the following orders, either unconditionally or subject to such conditions as the Court imposes:

(*a*) an order declaring that any act, matter or thing purporting to have been done, or any

proceeding purporting to have been instituted or taken, under this Act or in relation to a corporation is not invalid by reason of any contravention of, or failure to comply with, a provision of this Act or a provision of any of the constituent documents of a corporation;

(*b*) an order directing the rectification of any register kept by the Registrar under this Act;

(*c*) an order relieving a person in whole or in part from any civil liability in respect of a contravention or failure of a kind referred to in paragraph (*a*);

(*d*) an order extending the period for doing any act, matter or thing or instituting or taking any proceeding under this Act or in relation to a corporation (including an order extending a period where the period concerned expired before the application for the order was made) or abridging the period for doing such an act, matter or thing or instituting or taking such a proceeding,

and may make such consequential or ancillary orders as the Court thinks fit.

[13/87]

(5) An order may be made under subsection (4)(*a*) or (*b*) notwithstanding that the contravention or failure referred to in the paragraph concerned resulted in the commission of an offence.

[13/87]

(6) The Court shall not make an order under this section unless it is satisfied —

(*a*) in the case of an order referred to in subsection (4)(*a*) —

(i) that the act, matter or thing, or the proceeding, referred to in that paragraph is essentially of a procedural nature;

(ii) that the person or persons concerned in or party to the contravention or failure acted honestly; or

(iii) that it is in the public interest that the order be made;

(*b*) in the case of an order referred to in subsection (4)(*c*), that the person subject to the civil liability concerned acted honestly; and

(*c*) in every case, that no substantial injustice has been or is likely to be caused to any person.

[13/87]

[Aust., 1961, s. 366]

Privileged communications

393. No inspector appointed under this Act shall require disclosure by a solicitor of any privileged communication made to him in that capacity, except as respects the name and address of his client.

[UK, 1948, s. 175; Aust., 1961, s. 367]

Production and inspection of books or papers where offence suspected

394.—(1) If, on an application made to a judge of the Court in chambers by or on behalf of the Minister, there is shown to be reasonable cause to believe that any person has, while an officer of a company, committed an offence in connection with the management of the

company's affairs and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company, an order may be made —

(*a*) authorising any person named therein to inspect such books or papers or any of them for the purpose of investigating and obtaining evidence of the offence; or

(*b*) requiring the secretary or such other officer as is named in the order to produce such books or papers or any of them to a person named in the order at a place so named.

(2) No appeal shall lie against any order or decision of a judge on or in relation to an application under this section.

[UK, 1948, s. 441; Aust., 1961, s. 368]

Form of registers, etc.

395.—(1) For the purposes of this Act, any register, index, minute book or book of account may be kept either by making entries in a bound book or by recording the matters in question in any other permanent manner.

(2) Where any register, index, minute book or book of account required by this Act to be kept is not kept by making entries in a bound book, but by some other means —

(*a*) reasonable precautions shall be taken for guarding against falsification and for facilitating the discovery of any falsification; and

(*b*) proper facilities shall be provided to enable the register, index, minute book or book of account to be inspected,

and, where 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 on conviction to a fine not exceeding $1,000 and also to a default penalty.

[15/84]

[UK, 1948, s. 436; Aust., 1961, s. 369]

Inspection of registers, etc.

396.—(1) Any register, minute book or document of a corporation which is by this Act required to be available for inspection shall, subject to and in accordance with this Act, be available for inspection at the place where in accordance with this Act it is kept during the hours in which the registered office of the corporation is accessible to the public.

(2) Any person permitted by this Act to inspect any register, minute book or document of a corporation may make copies of or take extracts from it and any officer of the corporation who fails to allow any person so permitted to make a copy of or take extracts from the register, minute book or document, as the case may be, shall be guilty of an offence.

[Aust., 1961, s. 370]

Translations of instruments, etc.

397.—(1) Where under this Act a corporation is required to lodge with the Registrar any instrument, certificate, contract or document or a certified copy thereof and the same is not written in the English language, the corporation shall lodge at the same time with the Registrar a certified translation thereof in the English language.

(2) Where under this Act a corporation is required to make available for public inspection any instrument, certificate, contract or document and the same is not written in the English

language, the corporation shall keep at its registered office in Singapore a certified translation thereof in the English language.

(3) Where any accounts, minute books or other records of a corporation required by this Act to be kept are not kept in the English language, the directors of the corporation shall cause a true translation of such accounts, minute books and other records to be made from time to time at intervals of not more than 7 days and shall cause such translations to be kept with the original accounts, minute books and other records for so long as the original accounts, minute books and other records are required by this Act to be kept.

[Aust., 1961, s. 371]

Certificate of incorporation conclusive evidence

398. A certificate of incorporation under the hand and seal of the Registrar issued under this Act in force before 13th January 2003, a notice of incorporation issued by the Registrar under this Act, and a certificate of confirmation of incorporation under the hand and seal of the Registrar issued under this Act, shall each be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the company referred to therein is duly incorporated under this Act.

[12/2002]

[UK, 1948, s. 15; Aust., 1961, s. 372]

Court may compel compliance

399.—(1) If any person in contravention of this Act refuses or fails to permit the inspection of any register, minute book or document or to supply a copy of any register, minute book or document the Court may by order compel an immediate inspection of the register, minute book or document or order the copy to be supplied.

(2) If any officer or former officer of a company has failed or omitted to do any act, matter or thing which under this Act he is or was required or directed to do, the Court on the application of the Registrar or any member of the company or the Official Receiver or liquidator may, by order, require that officer or former officer to do such act, matter or thing immediately or within such time as is allowed by the order, and for the purpose of complying with any such order a former officer shall be deemed to have the same status, powers and duties as he had at the time the act, matter or thing should have been done.

[Aust., 1961, s. 373]

Division 2 — Offences

Restriction on offering shares, debentures, etc., for subscription or purchase

400. [*Repealed by S 236/2002*]

False and misleading statement

401.—(1) Every corporation which advertises, circulates or publishes any statement of the amount of its capital which is misleading, or in which the amount of capital or subscribed capital is stated but the amount of paid-up capital or the amount of any charge on uncalled capital is not stated as prominently as the amount of subscribed capital is stated, and every officer of the corporation who knowingly authorises, directs or consents to such advertising, circulation or publication shall be guilty of an offence.

[21/2005]

(2) Every person who in any return, report, certificate, balance-sheet or other document required by or for the purposes of this Act wilfully makes or authorises the making of a statement false or misleading in any material particular knowing it to be false or misleading or wilfully omits or authorises the accession of any matter or thing without which the document is misleading in a material respect shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

[62/70; 15/84; 5/2004]

(2A) Any person who, for any purpose under this Act —

(*a*) lodges or files with or submits to the Registrar any document; or

(*b*) authorises another person to lodge or file with or submit to the Registrar any document,

knowing that document to be false or misleading in a material respect, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

[12/2002; 5/2004]

(3) For the purposes of subsection (2), where a person at a meeting votes in favour of the making of a statement referred to in that subsection he shall be deemed to have authorised the making of that statement.

[62/70]

[UK, 1948, s. 438; Aust., 1961, s. 375]

False statements or reports

402.—(1) An officer of a corporation who, with intent to deceive, makes or furnishes, or knowingly and wilfully authorises or permits the making or furnishing of, any false or misleading statement or report to —

(*a*) a director, auditor, member, debenture holder or trustee for debenture holders of the corporation; or

(*b*) in the case of a corporation that is a subsidiary, an auditor of the holding company,

relating to the affairs of the corporation, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.

[62/70; 49/73; 15/84; 42/2001]

(2) In subsection (1), "officer" includes a person who at any time has been an officer of the corporation.

[Aust., 1961, s. 375A]

Dividends payable from profits only

403.—(1) No dividend shall be payable to the share-holders of any company except out of profits.

[21/2005]

(1A) Subject to subsection (1B), any profits of a company applied towards the purchase or acquisition of its own shares in accordance with sections 76B to 76G shall not be payable as dividends to the shareholders of the company.

[21/2005]

(1B) Subsection (1A) shall not apply to any part of the proceeds received by the company as consideration for the sale or disposal of treasury shares which the company has applied towards the profits of the company.

[21/2005]

(1C) Any gains derived by the company from the sale or disposal of treasury shares shall not be payable as dividends to the shareholders of the company.

[21/2005]

(2) Every director or manager of a company who wilfully pays or permits to be paid any dividend in contravention of this section —

(*a*) shall, without prejudice to any other liability, be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months; and

(*b*) shall also be liable to the creditors of the company for the amount of the debts due by the company to them respectively to the extent by which the dividends so paid have exceeded the profits and such amount may be recovered by the creditors or the liquidator suing on behalf of the creditors.

[15/84; 21/2005]

(3) If the whole amount is recovered from one director or from the manager he may recover contribution against any other person liable who has directed or consented to such payment.

(4) No liability by this section imposed on any person shall on the death of such person extend or pass to his executors or administrators nor shall the estate of any such person after his decease be made liable under this section.

(5) In this section, "dividend" includes bonus and payment by way of bonus.

[Aust., 1961, s. 376]

Fraudulently inducing persons to invest money

Obtaining payment of moneys, etc., to company by false promise of officer or agent of company

404. —(1) [*Deleted by Act 42 of 2001*]

Conspiracy

(2) [*Deleted by Act 42 of 2001*]

(3) Whoever, being an officer or agent of any corporation, by any deceitful means or false promise and with intent to defraud, causes or procures any money to be paid or any chattel or marketable security to be delivered to that corporation or to himself or any other person for the use or benefit or on account of that corporation shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $15,000 or to imprisonment for a term not exceeding 5 years or to both.

[15/84]

Evidence of financial position of company

(4) Upon the trial of a charge of an offence under this section, the opinion of any registered or public accountant as to the financial position of any company at any time or during any period in respect of which he has made an audit or examination of the affairs of the company according to recognised audit practice shall be admissible either for the prosecution or for the

defence as evidence of the financial position of the company at that time or during that period, notwithstanding that the opinion is based in whole or in part on book-entries, documents or vouchers or on written or verbal statements by other persons.

Penalty for carrying on business without registering a corporation and for improper use of words "Limited" and "Berhad"

405.—(1) If any person uses any name or title or trades or carries on business under any name or title of which "Limited", "Berhad", "Company", "Corporation" or "Incorporated" or any abbreviation, imitation or translation of any of those words is the final word, or in any way holds out that the business is registered or incorporated that person shall, unless at that time the business was duly incorporated under this Act or registered under the Limited Liability Partnerships Act 2005 (Act 5 of 2005) or the Business Registration Act (Cap. 32), be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.

[15/84; 13/87; 5/2005]

Restriction on the use of word "Private" or "Sendirian"

(2) A company shall not use the word "Private" or "Sendirian" or any abbreviation thereof as part of its name if it does not fulfil the requirements required by this Act to be fulfilled by private companies and every corporation and every officer of a corporation who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and also to a default penalty.

Frauds by officers

406. Every person who, while an officer of a company —

(*a*) has by deceitful or fraudulent or dishonest means 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; or

(*c*) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since or within 2 months before the date of any unsatisfied judgment or order for payment of money obtained against the company,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $15,000 or to imprisonment for a term not exceeding 3 years or to both.

[15/84]

[UK, 1948, s. 330; Aust., 1961, s. 302]

General penalty provisions

407.—(1) A person who —

(*a*) does that which under this Act he is forbidden to do;

(*b*) does not do that which under this Act he is required or directed to do; or

(*c*) otherwise contravenes or fails to comply with any provision of this Act,

shall be guilty of an offence.

(2) A person who is guilty of an offence under this Act shall be liable on conviction to a penalty or punishment not exceeding the penalty or punishment expressly mentioned as the penalty or punishment for the offence, or if a penalty or punishment is not so mentioned, to a fine not exceeding $1,000.

[15/84]

(3) Every summons issued for an offence committed by an officer of a company or other person under this Act or any regulations may, notwithstanding anything in this Act, be served —

(*a*) by delivering it to him;

(*b*) by delivering it to any adult person residing at his last known place of abode or employed at his last known place of business; or

(*c*) by forwarding it by registered post in a cover addressed to him at his last known place of abode or business or at any address furnished by him.

[15/84]

(4) In proving service by registered post, it shall be sufficient to prove that the registered cover containing the summons was duly addressed and posted.

[15/84]

[Aust., 1961, s. 379]

Default penalties

408.—(1) Where a default penalty is provided in any section of this Act, any person who is convicted of an offence under this Act or who has been dealt with under section 409(4) or (5) for an offence under this Act in relation to that section shall be guilty of a further offence under this Act if the offence continues after he is so convicted or after he has been so dealt with and liable to an additional penalty for each day during which the offence so continues of not more than the amount expressed in the section as the amount of the default penalty or, if an amount is not so expressed, of not more than $200.

[15/84]

(2) Where any offence is committed by a person by reason of his failure to comply with any provision of this Act under which he is required or directed to do anything within a particular period, that offence, for the purposes of subsection (1), shall be deemed to continue so long as the thing so required or directed to be done by him remains undone, notwithstanding that such period has elapsed.

(3) For the purposes of any provision of this Act which provides that an officer of a company or corporation who is in default is guilty of an offence under this Act or is liable to a penalty or punishment, the phrase "officer who is in default" or any like phrase means any officer of the company or corporation who knowingly and wilfully —

(*a*) is guilty of the offence; or

(*b*) authorises or permits the commission of the offence.

[UK, 1948, s. 440; Aust., 1961, s. 380]

Proceedings how and when taken

409.—(1) Except where provision is otherwise made in this Act, proceedings for any offence under this Act may, with the authorisation of the Public Prosecutor, be taken by the Registrar or with the written consent of the Minister by any person.

[15/2010 wef 02/01/2011]

(2) [*Deleted by Act 36 of 2000*]

(3) Proceedings for any offence under this Act, other than an offence punishable with imprisonment for a term exceeding 6 months, may be prosecuted in a Magistrate's Court and in the case of an offence punishable with imprisonment for a term of 6 months or more may be prosecuted in a District Court.

(4) The Registrar may, without instituting proceedings against any person for any offence under this Act or any subsidiary legislation made thereunder which is punishable only by a fine or a fine and a default penalty, demand and receive the amount of such fine or default penalty or such reduced amount as he thinks fit from that person, whereupon —

(*a*) if that person pays the amount to the Registrar within 14 days after the demand, no proceedings shall be taken against him in relation to the offence; or

(*b*) if that person does not so pay the amount so demanded, the Registrar may cause proceedings to be instituted in relation to the offence.

[36/2000]

(5) The powers conferred upon the Registrar under subsection (4) in relation to offences under this Act that are punishable by a fine or a fine and default penalty shall extend to an offence committed under section 201(1) even though such offence is punishable under section 204 by a fine or imprisonment.

[15/84]

(6) The power of the Registrar referred to in subsection (4) shall only be exercised where the person agrees, either by himself or an agent duly authorised by him, to the offence being dealt with under that subsection.

[12/2002]

(7) Any punishment authorised by this Act may be imposed by a District Court, notwithstanding that it is a greater punishment than that Court is otherwise empowered to impose.

(8) The Registrar and any officer authorised by him in writing shall have the right to appear and be heard before a Magistrate's Court or a District Court in any proceedings for an offence under this Act.

[15/84]

[UK, 1948, ss. 442, 445; Aust., 1961, s. 381]

Injunctions

409A.—(1) Where a person has engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute a contravention of this Act, the Court may, on the application of —

(*a*) the Registrar; or

(*b*) any person whose interests have been, are or would be affected by the conduct,

grant an injunction restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.

[13/87]

(2) Where a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that he is required by this Act to do, the Court may, on the application

of —

(*a*) the Registrar; or

(*b*) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing,

grant an injunction requiring the first-mentioned person to do that act or thing.

(3) Where an application is made to the Court for an injunction under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in subsection (1) pending the determination of the application.

(4) The Court may rescind or vary an injunction granted under subsection (1), (2) or (3).

(5) Where an application is made to the Court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the power of the Court to grant the injunction may be exercised —

(*a*) if the Court is satisfied that the person has engaged in conduct of that kind — whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

(*b*) if it appears to the Court that, in the event that an injunction is not granted, it is likely the person will engage in conduct of that kind — whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

(6) Where an application is made to the Court for a grant of an injunction requiring a person to do a particular act or thing, the power of the Court to grant the injunction may be exercised —

(*a*) if the Court is satisfied that the person has refused or failed to do that act or thing — whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or

(*b*) if it appears to the Court that, in the event that an injunction is not granted, it is likely the person will refuse or fail to do that act or thing — whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

(7) Where the Registrar makes an application to the Court for the grant of an injunction under this section, the Court shall not require the Registrar or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.

(8) Where the Court has power under this section to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may, either in addition to or in substitution for the grant of the injunction, order that person to pay damages to any other person.

Investigations by Commercial Affairs Department

409B. [*Repealed by Act 39 of 1999*]

Division 3 — Miscellaneous

Rules

410. The Rules Committee constituted under any law for the time being in force relating to the courts may, subject to and in accordance with the provisions of that law relating to the making of rules, make rules —

(*a*) with respect to proceedings and the practice and procedure of the Court under this Act;

(*b*) with respect to any matter or thing which is by this Act required or permitted to be prescribed by rules;

(*c*) without limiting the generality of this section, with respect to Court fees and costs and with respect to rules as to meetings ordered by the Court; and

(*d*) generally with respect to the winding up of companies.

[Aust., 1961, s. 383]

Regulations

411. The Minister may make regulations for or with respect to —

(*a*) the duties and functions of the Registrar, Deputy Registrars, Assistant Registrars and other persons appointed to assist with the administration of this Act;

(*b*) all matters connected with or arising out of the judicial management of a company by a judicial manager including the appointment of the judicial manager;

(*ba*) [*Deleted by Act 42 of 2001*]

(*c*) the lodging or registration of documents and the time and manner of submission of documents for lodging or registration;

(*d*) prescribing forms for the purposes of this Act;

(*e*) prescribing fees, not in any case exceeding $50, to be paid to the Registrar in respect of matters or things not provided for in the Second Schedule in respect of any document required to be lodged, filed, registered with or issued by the Registrar under this or any other Act or for any act required to be performed by the Registrar or for the inspection of any such document;

(*f*) prescribing times for the lodging of any documents with the Registrar; and

(*g*) all matters or things which by this Act are required or permitted to be prescribed otherwise than by rules or which are necessary or expedient to be prescribed for giving effect to this Act.

[15/84; 13/87; 40/89; 42/2001]

[Aust., 1961, s. 384]

FIRST SCHEDULE

Sections 3(1), 368(3)

REPEALED WRITTEN LAWS

Number in 1955 Edition	*Short Title*	*Extent of Repeal*
Cap. 15	The Foreign Corporations (Execution of Instruments under Seal) Ordinance	The whole.
Cap. 174	The Companies Ordinance	The whole.
Cap. 277	The Companies (Special Provisions) Ordinance	The whole.

SECOND SCHEDULE

Sections 8(5) and (6), 9(2), 205B(3) and 411

FEES TO BE PAID TO THE REGISTRAR

Item No.	*Section or other provision under which transaction is carried out*	*Transaction*	*Fees*
		Incorporation of Company	
1.	27(10), (11) and (12) and 28(2)	Application for reservation of name or approval of change of name (*applicable to both companies and foreign companies*)	$15 upon approval of each name
2.	27(10), (11) and (12) and 28(2)	Appeal for approval of name application or appeal for change of name (*applicable to both companies and foreign companies*)	$15 per appeal
3.	27(13)	Application for extension of reservation period for approved name (*applicable to both companies and foreign companies*)	$10
4.	19 and 143(1)	Incorporation of public company having a share capital	$300
5.	19 and 143(1)	Incorporation of public company not having a share capital	$600
6.	19 and 143(1)	Incorporation of private company	$300
7.	61(2)(*a*) and (*c*)	Lodgment of statement in lieu of prospectus and lodgment of declaration of compliance by company that has not issued prospectus	$10
		Company particulars (including changes to particulars)	
8.	26(2) and 28(2)	Lodgment of notice of resolution for change of company name	$10
9.	—	Lodgement of notice of resolution pertaining to any other matter	$10
10.	143(1) and 372(1)(*d*)	Lodgment of notice of change of situation of registered office or of office hours (*applicable to both companies and foreign companies*)	$10
11.	196(2) and (8) and 379(6)	Lodgment of notice of situation of the	$10

	and (7)	office where a branch register of members is kept, or of change in situation or discontinuance (*applicable to both companies, foreign companies and foreign entities*)	
12.	35(5) and 372(3)	Lodgment of notice of change in number of members (*applicable to both companies and foreign companies*)	$10
13.	30(2)	Application for conversion from an unlimited company to a company limited by shares under section 30(1)(*a*)	$30
14.	30(2)	Application for conversion from an unlimited company to a company limited by guarantee under section 30(1)(*a*)	$30
15.	30(2)	Application for conversion from a limited company to an unlimited company under section 30(1)(*b*)	$30
16.	31(1)	Application for conversion from a public company to a private company limited by shares	$30
17.	31(2)	Application for conversion from a private company to a public company limited by shares	$30
18.	26(2) and 34	Lodgment of resolution, order of Court, or other document affecting the memorandum of a company	$10
19.	33(9)	Lodgment of resolution for alteration of objects in memorandum of company	$10
20.		(*Deleted by S 55/2005*)	
21.	71(1A)	Lodgment of notice of alteration to share capital	$10
22.	372(2)	Lodgment of notice of increase in authorised share capital	$10
23.	31(3A) and 128A	Lodgment of notice of list of shareholders or transfer of shares	$10
24.	70(8)	Lodgment of notice of redemption of redeemable preference shares	$10
25.	76(9A)(*g*) and (9B)(*f*) and 76(10)(*c*) and (*e*)	Lodgment of notice of resolution, or notice of intention to propose special resolution, to give financial assistance for the acquisition of shares or units of shares in company	$10
26.	93(2)	Lodgment of notice of place or change of place where register of holders of debentures is kept	$10
27.	191(2)	Lodgment of notice of place or change of place where register of members and index is kept	$10

28.	179(7)	Lodgment of copy of minute by representative of holding company relating to proceedings of subsidiary company	$10
29.	174(5)	Lodgment of statutory report of public company	$10
30.	61(1)(*b*) (iii)	Lodgment of notice of compliance by company that has issued prospectus	$10
31.	76B(9)	Lodgment of notice of purchase or acquisition of ordinary shares or stocks	$10
32.	76B(9)	Lodgment of notice of purchase or acquisition of preference shares	$10
33.	63(1) and (5)	Lodgment of return of allotment of shares	$10
34.	173(6)	Lodgment of notice of appointment, cessation of appointment or change of particulars of a company's director, manager, secretary or auditor	$10
35.	173(6A)	Lodgment of notice of cessation of appointment of director by that director	$10
		Treasury shares	
35A.	76K(5)	Lodgment of notice of cancellation or disposal of treasury shares	$10
35B.	78C(3)(*c*)	Lodgment of copy of solvency statement together with special resolution	$10
35C.	78D(4)(*b*)	Giving of notice of creditor's application to the Court for cancellation of special resolution	$10
35D.	78E(1)(ii)	Lodgment of copy of solvency statement, directors' statement and notice containing reduction information	$30
35E.	78E(2)(i) and (ii)	Lodgment of directors' statement and notice containing reduction information	$30
35F.	78E(3)(iii)	Lodgment of directors' statement, copy of order of Court and notice containing reduction information	$30
35G.	78E(4)(iii)	Lodgment of directors' statement, copy of order of Court and notice containing reduction information	$30
35H.	78F(4)	Lodgment of notice of order of Court cancelling special resolution	$10
35I.	78I(3)	Lodgment of copy of order of Court and notice containing reduction information	$30
35J.	78I(3)	Application for extension of time to lodge copy of order of Court and notice containing reduction information	$30
35K.	78B(1)(*c*) and 78C(1)(*c*) and regulation 6 of the Companies Regulations (Rg 1)	Lodgment of documents for purposes of publicity requirements	$500

		Amalgamation	
35L.	215E(1)	Registration of amalgamation —	
		(*a*) where the amalgamated company is the same as one of the amalgamating companies; or	$400
		(*b*) where the amalgamated company is a new company	$700
		Lodgment of statement relating to charges for registration	
36.	131(1)	Lodgment of statement containing particulars of charge	$60
37.	131(5)	Lodgment of statement containing particulars of a series of debentures	$60
38.	131(6)	Lodgment of statement containing particulars of an issue of debentures where there is more than one issue of debenture in a series of debentures	$60
39.	133(1) and 141	Lodgment of statement of particulars in respect of property acquired by company or registered foreign company while the property is subject to charge	$60
40.	133(1)	Lodgment of statement in respect of charge created by foreign company before registration of foreign company in Singapore	$60
41.	133(1)	Lodgment of statement of particulars in respect of property acquired by foreign company while the property is subject to a charge before registration of foreign company in Singapore	$60
42.	regulation 40, Companies (Filing of Documents) Regulations (Rg 7)	Lodgment of form reporting variation of charges	$10
43.	136(1)	Lodgment of satisfaction of charges	$10
44.	139	Application for extension of time for lodgment of charge	$10
		Annual filing of forms and documents by company	
45.	197(1) and Eighth Schedule	Lodgment of annual return by company having a share capital	$20
46.	197(5)	Lodgment of annual return by company not having a share capital	$20
47.	[*Deleted by S 604/2007 wef 05/11/2007*]		
48.	[*Deleted by S 604/2007 wef 05/11/2007*]		
49.	201(2)	Application for extension of time for period of accounts	Up to $150
50.	175(2)	Application for extension of time to hold	Up to $150

		AGM	
51.	202(1)	Application for relief from requirements as to form and content of accounts and reports	$50
		Winding up, receivership and judicial management of company	
52.	223(1)(*c*), 227L(6), 270(1) and regulation 8 Companies (Filing of Documents) Regulations (Rg 7)	Lodgment of statement of affairs and affidavit verifying statement of affairs	$10
53.	221(1)	Lodgment of notice of appointment of receiver or manager	$10
54.	221(2)	Lodgment of notice by receiver or manager of cessation of office	$10
55.	225(1)(*a*)(i)	Lodgment of account of receipts and payments by receiver or manager	$10
56.	227B and regulation 28 Companies (Filing of Documents) Regulations (Rg 7)	Lodgment of notice of the application for judicial management order and copy of application for judicial management order	$10
57.	227H(7) and regulation 29 Companies (Filing of Documents) Regulations	Lodgment of notice of judicial management order and copy of judicial management order	$10
58.	Regulation 31 Companies (Filing of Documents) Regulations	Lodgment of notice by judicial manager of cessation of office under section 227J	$10
59.	227M(1), 227P(2) and regulation 27 Companies (Filing of Documents) Regulations	Lodgment of proposal or revised proposal by judicial manager	$10
60.	227N(3) and 227P(5)	Lodgment of notice of report of result of meeting of creditors on proposals or revised proposals of judicial manager	$10
61.	291(1)	Lodgment of declaration by directors of company's inability to continue business by reasons of its liabilities	$10
62.	293(3)(*c*)	Lodgment of declaration of solvency	$10
63.	295(4)	Lodgment of notice of holding of meeting of creditors	$10
64.	262(1)	Lodgment of notice of winding up order and particulars of the liquidator	$10
65.	262(2)	Lodgment of a copy of winding up order	$10
66.	308(3) and (4)	Lodgment of return by liquidator relating to final meeting	$10
67.	267 and 316(1)	Lodgment of notice of appointment and situation of office of provisional liquidator or liquidator	$10

68.	267 and 316(1)	Lodgment of notice of change in situation of office of provisional liquidator or liquidator	$10	
69.	267 and 316(3)	Lodgment of notice by provisional liquidator or liquidator of resignation or removal from office	$10	
70.	317	Lodgment of liquidator's account of receipts and payments and statement of the position in winding up	$10	
71.	344(1) and 377(6)	Application for striking off (*applicable to both companies and foreign companies*)	$35	
72.		Lodgment of order of Court for reinstatement of company which has been —	$10	
	343(2)	(*a*) dissolved; or		
	344(5) and 377	(*b*) struck off (*applicable to both companies and foreign companies*)		
73.	344(2) and 377(6)	Lodgment of objections to striking off (*applicable to both companies and foreign companies*)	$10	
74.	—	Lodgment of notice of intention to lodge objections to future striking off	$10	
75.	—	Lodgment of withdrawal of application to strike off	$30	
		Registration of foreign company		
76.	368	Registration of foreign company	(*a*)	$300 for foreign company having a share capital
			(*b*)	$1,200 for foreign company not having a share capital
77	Regulation 21(1) and (3) Companies (Filing of Documents) Regulations (Rg 7)	Application for extension of time to lodge any document required for the registration of a foreign company	$30	
		Changes to particulars of foreign company		
78.	372(1)(*f*)	Lodgment of notice of change of name of foreign company	$10	
79.	368(1)(*c*) and 372(1)(*b*)	Lodgment of return of particulars or change or alteration in particulars of directors	$10	
80.	370(3) and 372(1)(*c*)	Lodgment of notice of change or alteration in particulars of agent or appointment or cessation of agent of foreign company	$10	
81.	372(1)(*e*)	Lodgment of notice of change or alteration	$10	

		of address of registered office of foreign company in its place of incorporation or origin	
82.	372(1)(*a*)	Lodgment of notice of change or alteration in the charter, statute, memorandum or articles or other instruments of foreign company	$10
83.	372(1)(*g*)	Lodgment of notice of change or alteration in the powers of the resident directors of foreign company	$10
84.	372(1), (2) and (4)	Application for extension of time to lodge any particulars of change or alteration and such documents as the regulations require	$30
		Annual filing of forms and documents by foreign company	
85.	373(1), (2), (4) and (5)	Lodgment of balance-sheet and accompanying documents	$10
86.	201(2) and 373(4)	Application for extension of time for lodgment of balance- sheet and accompanying documents	$30
87.	373(7)	Application for relief from requirements as to form and content of accounts and reports	$30
88.	373(5)(*b*)	Application for waiver to lodge annual filing of forms and documents relating to the operations of foreign company in Singapore	$30
		Winding up, receivership and judicial management of foreign company	
89.	377(1)	Lodgment of notice by foreign company of cessation of business	$10
90.	377(2)	Lodgment of notice by agent of foreign company of liquidation or dissolution of company	$10
		Miscellaneous transactions	
91.	12B, 137, 210(5), 212(3), 215H, 216(5), 227G(9), 227K(1), 227N(5), 227Q(3), 227R(5), 269(3), 276(6), 279(3), 308(7), 343(2), 372(4) and others and regulation 41C of the Companies (Filing of Documents) Regulations (Rg 7)	Lodgment of order of Court	$10
92.		(*Deleted by S 55/2006*)	
93.	—	Application for filing annual return signed by one director where AGM is held	$30
94.	—	Application for filing annual return signed by one director where no AGM is held	$30

95.	—	Application for filing annual return where no AGM is held	$30
96.		(*Deleted by Act 5 of 2004*)	
97.	23(2)	Application for approval to hold or to sell, mortgage or transfer any land	$100
98.	29(1)	Application for the omission of the word "Limited" or "Berhad"	$100
99.	29(4)	Application for consent of Minister to alteration of memorandum and articles of association	$100
100.	12B(3)	Lodgment of notice of error in document lodged	$30
101.		Application for the following:	$50
	19(7)	(*a*) certificate confirming incorporation of company;	
	26(7)	(*b*) certificate confirming that company is incorporated in accordance with the alteration made to the memorandum;	
	28(5)	(*c*) certificate confirming incorporation of company under new name changed by special resolution;	
	30(2)	(*d*) certificate confirming conversion of company from — (i) unlimited to limited by guarantee; or (ii) unlimited to limited by shares;	
	31(3)	(*e*) certificate confirming conversion from — (i) public company to private company; or (ii) private company to public company;	
	371(2)	(*f*) certificate that foreign company is registered in Singapore;	
	23(2) and (5)	(*g*) certificate confirming approval to hold land;	
	29 (9)	(*h*) certificate confirming approval to register company with limited liability without the addition of "Limited" or "Berhad";	
	61(7)	(*i*) certificate that company is entitled to commence business and exercise	

		its borrowing powers;	
	134(3)	(*j*) certificate to confirm that charge is registered;	
	215F(4)	(*k*) certificate confirming amalgamation.	
102.	27(1) and 378(1)	Application for consent of the Minister to use of a name and order of the Minister granting consent to use of a name (*applicable to both companies and foreign companies*)	$100
103.	27(2A)	Application to Registrar to direct a change of company name	$30
104.	27(5)	Application for appeal to Minister against decision of Registrar to direct or not to direct a change of company name	$50
105.	—	On late lodging of any document under the Act after the period prescribed by law in addition to any other fee (*The Registrar, if satisfied that just cause existed for the late lodgment, may waive in whole or in part the additional fee*.)	Up to $350
106.	—	On submission of any other application to the Minister under the Act	$100
107.		(*Deleted by S 57/2005*)	
108.		(*Deleted by S 57/2005*)	
109.		(*Deleted by S 57/2005*)	
110.	200(2A) and (3)	Application to the Registrar with regard to the accounting periods of a company within the same group	$50
111.	200(9)	Application to the Minister to appeal against the decision of the Registrar	$100
112.	—	Lodgment of any other application to the Registrar, excluding an application under section 23(2), 200 or 202	$30
113.	9(2)	(*a*) Application to Minister for approval of a liquidator	$100
		(*b*) Application to Minister for renewal of approval of a liquidator	$40
114.	—	On lodging, registering, depositing or filing any other document with or by the Registrar under any Act (where the fee is not specified in any relevant Act or Regulation)	$10
115.	—	Lodgment of the first Memorial pursuant to any written law	$150
		Any subsequent Memorial on the	$75

		appointment of a new or other manager or any change in or addition to the facts stated in the first Memorial	
116.	—	Lodgment of affidavit or statutory declaration	$10
117.	—	(*a*) For taking an affidavit or statutory declaration, for each person making the same	$20
		(*b*) For each exhibit referred therein to be marked	$2 per exhibit
118.	227B	Lodgment of application with the Court	As prescribed by Rules of Court (Cap. 322, R 5)* *To be paid to the Court
119.	—	On every application to the Court for approval or sanction of a compromise, arrangement, scheme or proposal	As prescribed by Rules of Court or the Companies (Winding Up) Rules (R 1), whichever is applicable* *To be paid to the Court
		*Service charge for electronic filing of forms and documents by Registry of Companies and Businesses for applicants**	
		* The Registrar may, at his discretion, waive these charges.	
120. to 124.		(*Deleted by S 880/2005*)	
125.	—	For supplying electronic extracts of forms filed with the Registrar	$11 per form
126.	—	For supplying electronic extracts of forms including attachments filed with the Registrar	$26 per form
127.	—	For supplying company forms filed with the Registrar under the Companies Regulations (Rg 1) before 13th January 2003	$2 per page or part thereof
128.	—	Application for certification of company forms filed with the Registrar	$2 per page or part thereof
129. to 141.		(*Deleted by S 880/2005*)	

[S 718/2011 wef 01/01/2012]
[S 604/2007 wef 05/11/2011]
[5/2004; 21/2005; 42/2005; S 19/2003; S 75/2004; S 193/2004; S 262/2004; S 57/2005; S 880/2005; S 55/2006]

THIRD SCHEDULE

(*Repealed by Act 5 of 2004*)

FOURTH SCHEDULE

Sections 3(3), 36, 37(3), 177(4)

TABLE A

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES

Interpretation

1. In these Regulations —

"Act" means the Companies Act (Cap. 50);

"seal" means the common seal of the company;

"secretary" means any person appointed to perform the duties of a secretary of the company;

expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form;

words or expressions contained in these Regulations shall be interpreted in accordance with the provisions of the Interpretation Act (Cap. 1), and of the Act as in force at the date at which these Regulations become binding on the company.

Share capital and variation of rights

2. Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares but subject to the Act, shares in the company may be issued by the directors and any such shares may be issued with such preferred, deferred, or other special rights or such restrictions, whether in regard to dividend, voting, return of capital, or otherwise, as the directors, subject to any ordinary resolution of the company, determine.

3. Subject to the Act, any preference shares may, with the sanction of an ordinary resolution, be issued on the terms that they are, or at the option of the company are liable, to be redeemed.

4. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the company is being wound up, be varied with the consent in writing of the holders of 75% of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these Regulations relating to general meetings shall with the necessary modifications apply, but so that the necessary quorum shall be 2 persons at least holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll. To every such special resolution section 184 shall with such adaptations as are necessary apply.

5. The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking equally therewith.

6. The company may exercise the powers of paying commissions conferred by the Act, provided that the rate per cent or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the Act and the commission shall not exceed the rate of 10% of the price at which the shares in respect whereof the same is paid are issued or an amount equal to 10% of that price (as the case may be). Such commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in one way and partly in the other. The company may also on any issue of shares pay such brokerage as may be lawful.

7. Except as required by law, no person shall be recognised by the company as holding any share upon any trust, and the company shall not be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any share or unit of a share or (except only as by

these Regulations or by law otherwise provided) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.

8. Every person whose name is entered as a member in the register of members shall be entitled without payment to receive a certificate under the seal of the company in accordance with the Act but in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.

Lien

9. The company shall have a first and paramount lien on every share (not being a fully paid share) for all money (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a first and paramount lien on all shares (other than fully paid shares) registered in the name of a single person for all money presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this regulation. The company's lien, if any, on a share shall extend to all dividends payable thereon.

10. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless a sum in respect of which the lien exists is presently payable, nor until the expiration of 14 days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death or bankruptcy.

11. To give effect to any such sale the directors may authorise some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

12. The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue, if any, shall (subject to a like lien for sums not presently payable as existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

Calls on shares

13. The directors may from time to time make calls upon the members in respect of any money unpaid on their shares and not by the conditions of allotment thereof made payable at fixed times, provided that no call shall be payable at less than one month from the date fixed for the payment of the last preceding call, and each member shall (subject to receiving at least 14 days' notice specifying the time or times and place of payment) pay to the company at the time or times and place so specified the amount called on his shares. A call may be revoked or postponed as the directors may determine.

14. A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed and may be required to be paid by instalments.

15. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

16. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment thereof to the time of actual payment at such rate not exceeding 8% per annum as the directors may determine, but the directors shall be at liberty to waive payment of that interest wholly or in part.

17. Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date shall for the purposes of these Regulations be deemed to be a call duly made and payable on the date on which by the terms of issue the same becomes payable, and in case of non-payment all the relevant provisions of these Regulations as to payment of interest and expenses, forfeiture, or otherwise shall apply as if the sum had become payable by virtue of a call duly made and notified.

18. The directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

19. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the money uncalled and unpaid upon any shares held by him, and upon all or any part of the money so advanced may (until the same would, but for the advance, become payable) pay interest at such rate not exceeding (unless the company in general meeting shall otherwise direct) 8% per annum as may be agreed upon between the directors and the member paying the sum in advance.

Transfer of shares

20. Subject to these Regulations, any member may transfer all or any of his shares by instrument in writing in any usual or common form or in any other form which the directors may approve. The instrument shall be executed by or on behalf of the transferor and the transferor shall remain the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the register of members in respect thereof.

21. The instrument of transfer must be left for registration at the registered office of the company together with such fee, not exceeding $1 as the directors from time to time may require, accompanied by the certificate of the shares to which it relates and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer, and thereupon the company shall subject to the powers vested in the directors by these Regulations register the transferee as a shareholder and retain the instrument of transfer.

22. The directors may decline to register any transfer of shares, not being fully paid shares to a person of whom they do not approve and may also decline to register any transfer of shares on which the company has a lien.

23. The registration of transfers may be suspended at such times and for such periods as the directors may from time to time determine not exceeding in the whole 30 days in any year.

Transmission of shares

24. In case of the death of a member the survivor or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where he was a sole holder, shall be the only persons recognised by the company as having any title to his interest in the shares; but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.

25. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such evidence being produced as may from time to time properly be required by the directors and subject as hereinafter provided, elect either to be registered himself as holder of the share or to have some person nominated by him registered as the transferee thereof, but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by that member before his death or bankruptcy.

26. If the person so becoming entitled elects to be registered himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects. If he elects to have another person registered he shall testify his election by executing to that person a transfer of the share. All the limitations, restrictions, and provisions of these Regulations relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.

27. Where the registered holder of any share dies or becomes bankrupt his personal representative or the assignee of his estate, as the case may be, shall, upon the production of such evidence as may from time to time be properly required by the directors in that behalf, be entitled to the same dividends and other advantages, and to the same rights (whether in relation to meetings of the company, or to voting, or otherwise), as the registered holder would have been entitled to if he had not died or become bankrupt; and where 2 or more persons are jointly entitled to any share in consequence of the death of the registered holder they shall, for the purposes of these Regulations, be deemed to be joint holders of the share.

Forfeiture of shares

28. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the

directors may, at any time thereafter during such time as any part of the call or instalment remains unpaid serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

29. The notice shall name a further day (not earlier than the expiration of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

30. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect. Such forfeiture shall include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.

31. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

32. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all money which, at the date of forfeiture, was payable by him to the company in respect of the shares (together with interest at the rate of 8% per annum from the date of forfeiture on the money for the time being unpaid if the directors think fit to enforce payment of such interest), but his liability shall cease if and when the company receives payment in full of all such money in respect of the shares.

33. A statutory declaration in writing that the declarant is a director or the secretary of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share.

34. The company may receive the consideration, if any, given for a forfeited share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale, or disposal of the share.

35. The provisions of these Regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time as if the same had been payable by virtue of a call duly made and notified.

Conversion of shares into stock

36. The company may by ordinary resolution passed at a general meeting convert any paid-up shares into stock and reconvert any stock into paid-up shares.

37. The holders of stock may transfer the same or any part thereof in the same manner and subject to the same regulations as and subject to which the shares from which the stock arose might previously to conversion have been transferred or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of stock transferable and restrict or forbid the transfer of fractions of that minimum.

38. The holders of stock shall according to the amount of the stock held by them have the same rights, privileges and advantages as regards dividends voting at meetings of the company and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company and in the assets on winding up) shall be conferred by any such aliquot part of stock which would not if existing in shares have conferred that privilege or advantage.

39. Such of the regulations of the company as are applicable to paid-up shares shall apply to stock, and the words “share” and “shareholder” therein shall include “stock” and “stockholder”.

Alteration of capital

40. The company may from time to time by ordinary resolution do one or more of the following:

(*a*) increase the share capital by such sum as the resolution shall prescribe;

(*b*) consolidate and divide all or any of its share capital;

(*c*) subdivide its shares or any of them, so however that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

(*d*) cancel the number of 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 or which have been forfeited and diminish the amount of its share capital by the number of the shares so cancelled.

41. Subject to any direction to the contrary that may be given by the company in general meeting, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and, after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of those shares in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this regulation.

42. The company may by special resolution reduce its share capital in any manner and with, and subject to, any incident authorised, and consent required by law.

General meeting

43. An annual general meeting of the company shall be held in accordance with the provisions of the Act. All general meetings other than the annual general meetings shall be called extraordinary general meetings.

44. Any director may, whenever he thinks fit, convene an extraordinary general meeting, and extraordinary general meetings shall be convened on such requisition or in default may be convened by such requisitionists as provided by the Act.

45. Subject to the provisions of the Act relating to special resolutions and agreements for shorter notice, 14 days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and in case of special business the general nature of that business shall be given to such persons as are entitled to receive such notices from the company.

46. All business shall be special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the accounts, balance-sheets, and the report of the directors and auditors, the election of directors in the place of those retiring, and the appointment and fixing of the remuneration of the auditors.

Proceedings at general meetings

47. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. Except as herein otherwise provided, 2 members present in person shall form a quorum. For the purposes of this regulation member includes a person attending as a proxy or as representing a corporation or a limited liability partnership which is a member.

48. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the directors may determine.

49. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, the members present shall elect one of their number to be chairman

of the meeting.

50. The chairman may, with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Except as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

51. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded —

(*a*) by the chairman;

(*b*) by at least 3 members present in person or by proxy;

(*c*) by any member or members present in person or by proxy and representing not less than 10% of the total voting rights of all the members having the right to vote at the meeting; or

(*d*) by a member or members holding shares in the company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than 10% of the total sum paid up on all the shares conferring that right.

Unless a poll is so demanded a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn.

52. If a poll is duly demanded it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairman directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded, but a poll demanded on the election of a chairman or on a question of adjournment shall be taken immediately.

53. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second or casting vote.

54. Subject to any rights or restrictions for the time being attached to any class or classes of shares, at meetings of members or classes of members, each member entitled to vote may vote in person or by proxy or by attorney and on a show of hands every person present who is a member or a representative of a member shall have one vote, and on a poll every member present in person or by proxy or by attorney or other duly authorised representative shall have one vote for each share he holds.

55. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

56. A member who is mentally disordered or whose person or estate is liable to be dealt with in any way under the law relating to mental capacity may vote, whether on a show of hands or on a poll, by such other person as properly has the management of his estate, and any such person may vote by proxy or attorney.

[21/2008 wef 01/03/2010]

57. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

58. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

59. The instrument appointing a proxy shall be in writing, in the common or usual form, under the hand of the appointer or of his attorney duly authorised in writing or, if the appointer is a corporation or a limited liability partnership, either under seal or under the hand of an officer or attorney duly authorised. A proxy may but need

not be a member of the company. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

60. Where it is desired to afford members an opportunity of voting for or against a resolution the instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit:

I/We, , of being a member/members of the abovenamed company, hereby appoint , , of , or failing him, of , , as my/our proxy to vote for me/us on my/our behalf at the [annual or extraordinary, *as the case may be*] general meeting of the company, to be held on the day of 20 , and at any adjournment thereof.

Signed this day of 20 .

This form is to be used *in favour of / against the resolution.

*Strike out whichever is not desired. [Unless otherwise instructed, the proxy may vote as he thinks fit.]

61. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company, or at such other place in Singapore as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.

62. A vote given in accordance with the terms of an instrument of proxy or attorney shall be valid notwithstanding the previous death or mental disorder of the principal or revocation of the instrument or of the authority under which the instrument was executed, or the transfer of the share in respect of which the instrument is given, if no intimation in writing of such death, mental disorder, revocation, or transfer as aforesaid has been received by the company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used.

[21/2008 wef 01/03/2010]

Directors: Appointment, etc.

63. At the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not 3 or a multiple of 3, then the number nearest one-third, shall retire from office.

64. A retiring director shall be eligible for re-election.

65. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

66. The company at the meeting at which a director so retires may fill the vacated office by electing a person thereto, and in default the retiring director shall if offering himself for re-election and not being disqualified under the Act from holding office as a director be deemed to have been re-elected, unless at that meeting it is expressly resolved not to fill the vacated office or unless a resolution for the re-election of that director is put to the meeting and lost.

67. The company may from time to time by ordinary resolution passed at a general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

68. The directors shall have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these Regulations. Any director so appointed shall hold office only until the next following annual general meeting, and shall then be eligible for re-election but shall not be taken into account in determining the directors who are to retire by rotation at that meeting.

69. The company may by ordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead; the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

70. The remuneration of the directors shall from time to time be determined by the company in general meeting. That remuneration shall be deemed to accrue from day to day. The directors may also be paid all travelling, hotel, and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings of the company or in connection with the business of the company.

71. The shareholding qualification for directors may be fixed by the company in general meeting.

72. The office of director shall become vacant if the director —

(*a*) ceases to be a director by virtue of the Act;

(*b*) becomes bankrupt or makes any arrangement or composition with his creditors generally;

(*c*) becomes prohibited from being a director by reason of any order made under the Act;

(*d*) becomes disqualified from being a director by virtue of section 148, 149, 154 or 155;

(*e*) becomes mentally disordered and incapable of managing himself or his affairs or a person whose person or estate is liable to be dealt with in any way under the law relating to mental capacity;

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(*f*) subject to section 145, resigns his office by notice in writing to the company;

(*g*) for more than 6 months is absent without permission of the directors from meetings of the directors held during that period;

(*h*) without the consent of the company in general meeting, holds any other office of profit under the company except that of managing director or manager; or

(*i*) is directly or indirectly interested in any contract or proposed contract with the company and fails to declare the nature of his interest in manner required by the Act.

Powers and duties of directors

73.—(1) The business of a company shall be managed by or under the direction of the directors.

(2) The directors may exercise all the powers of a company except any power that this Act or the memorandum and articles of the company require the company to exercise in general meeting.

74. The directors may exercise all the powers of the company to borrow money and to mortgage or charge its undertaking, property, and uncalled capital, or any part thereof, and to issue debentures and other securities whether outright or as security for any debt, liability, or obligation of the company or of any third party.

75. The directors may exercise all the powers of the company in relation to any official seal for use outside Singapore and in relation to branch registers.

76. The directors may from time to time by power of attorney appoint any corporation, firm, limited liability partnership or person or body of persons, whether nominated directly or indirectly by the directors, to be the attorney or attorneys of the company for such purposes and with such powers, authorities, and discretions (not exceeding those vested in or exercisable by the directors under these Regulations) and for such period and subject to such conditions as they may think fit, and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors may think fit and may also authorise any such attorney to delegate all or any of the powers, authorities, and discretions vested in him.

77. All cheques, promissory notes, drafts, bills of exchange, and other negotiable instruments, and all receipts for money paid to the company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, by any 2 directors or in such other manner as the directors from time to time determine.

78. The directors shall cause minutes to be made —

(*a*) of all appointments of officers to be engaged in the management of the company's affairs;

(*b*) of names of directors present at all meetings of the company and of the directors; and

(*c*) of all proceedings at all meetings of the company and of the directors.

Such minutes shall be signed by the chairman of the meeting at which the proceedings were held or by the chairman of the next succeeding meeting.

Proceedings of directors

79. The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit. A director may at any time and the secretary shall on the requisition of a director summon a meeting of the directors.

80. Subject to these Regulations, questions arising at any meeting of directors shall be decided by a majority of votes and a determination by a majority of directors shall for all purposes be deemed a determination of the directors. In case of an equality of votes the chairman of the meeting shall have a second or casting vote.

81. A director shall not vote in respect of any contract or proposed contract with the company in which he is interested, or any matter arising thereout, and if he does so vote his vote shall not be counted.

82. Any director with the approval of the directors may appoint any person, whether a member of the company or not, to be an alternate or substitute director in his place during such period as he thinks fit. Any person while he so holds office as an alternate or substitute director shall be entitled to notice of meetings of the directors and to attend and vote thereat accordingly, and to exercise all the powers of the appointor in his place. An alternate or substitute director shall not require any share qualification, and shall ipso facto vacate office if the appointor vacates office as a director or removes the appointee from office. Any appointment or removal under this regulation shall be effected by notice in writing under the hand of the director making the same.

83. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be 2.

84. The continuing directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number or of summoning a general meeting of the company, but for no other purpose.

85. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within 10 minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be chairman of the meeting.

86. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.

87. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within 10 minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chairman of the meeting.

88. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chairman shall have a second or casting vote.

89. All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

90. A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or

more directors.

90A. Where the company has only one director, he may pass a resolution by recording it and signing the record.

Managing directors

91. The directors may from time to time appoint one or more of their body to the office of managing director for such period and on such terms as they think fit and, subject to the terms of any agreement entered into in any particular case, may revoke any such appointment. A director so appointed shall not, while holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors, but his appointment shall be automatically determined if he ceases from any cause to be a director.

92. A managing director shall, subject to the terms of any agreement entered into in any particular case, receive such remuneration, whether by way of salary, commission, or participation in profits, or partly in one way and partly in another, as the directors may determine.

93. The directors may entrust to and confer upon a managing director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and either collaterally with or to the exclusion of their own powers, and may from time to time revoke, withdraw, alter, or vary all or any of those powers.

Associate directors

94. The directors may from time to time appoint any person to be an associate director and may from time to time cancel any such appointment. The directors may fix, determine and vary the powers, duties and remuneration of any person so appointed, but a person so appointed shall not be required to hold any shares to qualify him for appointment nor have any right to attend or vote at any meeting of directors except by the invitation and with the consent of the directors.

Secretary

95. The secretary shall in accordance with the Act be appointed by the directors for such term, at such remuneration, and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.

Seal

96. The directors shall provide for the safe custody of the seal, which shall only be used by the authority of the directors or of a committee of the directors authorised by the directors in that behalf, and every instrument to which the seal is affixed shall be signed by a director and shall be countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.

Accounts

97. The directors shall cause proper accounting and other records to be kept and shall distribute copies of balance-sheets and other documents as required by the Act and shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or paper of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

Dividends and reserves

98. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

99. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

100. No dividend shall be paid otherwise than out of profits or shall bear interest against the company.

101. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the company may be properly applied, and pending any such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares in the company) as the directors may from time to time think fit. The directors may also without placing the same to reserve carry forward any profits which they may think prudent not to divide.

102. Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect of which the dividend is paid, but no amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this regulation as paid on the share. All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it shall rank for dividend as from a particular date that share shall rank for dividend accordingly.

103. The directors may deduct from any dividend payable to any member all sums of money, if any, presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.

104. Any general meeting declaring a dividend or bonus may direct payment of such dividend or bonus wholly or partly by the distribution of specific assets and in particular of paid-up shares, debentures or debenture stock of any other company or in any one or more of such ways and the directors shall give effect to such resolution, and where any difficulty arises in regard to such distribution, the directors may settle the same as they think expedient, and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any members upon the footing of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as may seem expedient to the directors.

105. Any dividend, interest, or other money payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one of 2 or more joint holders may give effectual receipts for any dividends, bonuses, or other money payable in respect of the shares held by them as joint holders.

Capitalisation of profits

106. The company in general meeting may upon the recommendation of the directors resolve that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the company's reserve accounts or to the credit of the profit and loss account or otherwise available for distribution, and accordingly that such sum be set free for distribution amongst the members who would have been entitled thereto if distributed by way of dividend and in the same proportions on condition that the same be not paid in cash but be applied either in or towards paying up any amounts for the time being unpaid on any shares held by such members respectively or paying up in full unissued shares or debentures of the company to be allotted, distributed and credited as fully paid up to and amongst such members in the proportion aforesaid, or partly in the one way and partly in the other, and the directors shall give effect to such resolution.

107. Whenever such a resolution as aforesaid shall have been passed the directors shall make all appropriations and applications of the undivided profits resolved to be capitalised thereby, and all allotments and issues of fully paid shares or debentures, if any, and generally shall do all acts and things required to give effect thereto, with full power to the directors to make such provision by the issue of fractional certificates or by payment in cash or otherwise as they think fit for the case of shares or debentures becoming distributable in fractions, and also to authorise any person to enter on behalf of all the members entitled thereto into an agreement with the company providing for the allotment to them respectively, credited as fully paid up, of any further shares or debentures to which they may be entitled upon such capitalisation, or, as the case may require, for the payment up by the company on their behalf, by the application thereto of their respective proportions of the profits

resolved to be capitalised, of the amounts or any part of the amounts remaining unpaid on their existing shares, and any agreement made under such authority shall be effective and binding on all such members.

Notices

108. A notice may be given by the company to any member either personally or by sending it by post to him at his registered address, or, if he has no registered address in Singapore, to the address, if any, in Singapore supplied by him to the company for the giving of notices to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting on the day after the date of its posting, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

109. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the register of members in respect of the share.

110. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or assignee of the bankrupt, or by any like description, at the address, if any, in Singapore supplied for the purpose by the persons claiming to be so entitled, or, until such an address has been so supplied, by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

111.—(1) Notice of every general meeting shall be given in any manner hereinbefore authorised to —

(*a*) every member;

(*b*) every person entitled to a share in consequence of the death or bankruptcy of a member who, but for his death or bankruptcy, would be entitled to receive notice of the meeting; and

(*c*) the auditor for the time being of the company.

(2) No other person shall be entitled to receive notices of general meetings.

Winding up

112. If the company is wound up, the liquidator may, with the sanction of a special resolution of the company, divide amongst the members in kind the whole or any part of the assets of the company, whether they consist of property of the same kind or not, and may for that purpose set such value as he considers fair upon any property to be divided as aforesaid and may determine how the division shall be carried out as between the members or different classes of members. The liquidator may, with the like sanction, vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the contributories as the liquidator, with the like sanction, thinks fit, but so that no member shall be compelled to accept any shares or other securities whereon there is any liability.

Indemnity

113. Every director, managing director, agent, auditor, secretary, and other officer for the time being of the company shall be indemnified out of the assets of the company 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 connection with any application under the Act in which relief is granted to him by the Court in respect of any negligence, default, breach of duty or breach of trust.

[Aust., 1961, 4th Sch.; Aust., 2001, s. 248B; Aust., 2002, s. 198A]

[8/2003; 5/2004; 5/2005; 21/2005; 42/2005]

FIFTH SCHEDULE

(*Repealed by S 236/2002*)

SIXTH SCHEDULE

Section 60(1)

STATEMENT IN LIEU OF PROSPECTUS

PART I

Statement in Lieu of Prospectus Lodged for Registration by

[Insert name of the company]

The issued share capital of the company	$	
		Shares of $
Divided into		Shares of $
		Shares of $
Amount (if any) of above capital which consists of redeemable preference shares		Shares of $
The date on or before which these shares are, or are liable, to be redeemed		
Names, descriptions, and addresses of directors or proposed directors		
If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively		
Number and amount of shares and debentures issued within the 2 years preceding the date of this statement or proposed or agreed to be issued as fully or partly paid up otherwise than in cash	1. 2. 3.	shares of $ fully paid shares upon which $ per share credited as paid debentures $
The consideration for the issue or intended issue of those shares and debentures	4.	Consideration:
Number, description, and amount of any shares or debentures which any person has or is entitled to be given an option to subscribe for, or to acquire from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale	1.	shares of $ and debentures of $
Period during which option is exercisable	2.	Until
Price to be paid for shares or debentures subscribed for or acquired under option	3.	$
Consideration for option or right to option	4.	Consideration:
Persons to whom option or right to	5.	Names and addresses:

option was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures	
Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the company except where the contract for the purchase or acquisition was entered into in the ordinary course of the business intended to be carried on by the company or the amount of the purchase money is not material.	
Amount (in cash, shares or debentures) payable to each separate vendor.	
Amount (if any) paid or payable (in cash, shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill	Total purchase price $ _____ Cash ... $ Shares ... $ Debentures ... $ _____ Goodwill ... $ _____
Short particulars of any transaction relating to any such property which was completed within the 2 preceding years and in which any vendor to the company or any person who is, or was at the time thereof, a promoter, director, or proposed director of the company had any interest direct or indirect	
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company; or	Amount paid: $ Amount payable: $
Rate of the commission	per cent
Amount or rate of brokerage	
The number of shares, if any, which persons have agreed for a commission to subscribe absolutely	
Amount or estimated amount of preliminary expenses	$
By whom those expenses have been paid or are payable	
Amount paid or intended to be paid to any promoter	Name of promoter: Amount: $
Consideration for the payment	Consideration:
Any other benefit given or intended to be given to any promoter	Name of promoter: Nature and value of benefit:
Consideration for giving of benefit	Consideration:
Dates of, parties to, and general nature of every material contract (other than contracts entered into in the ordinary	

course of the business intended to be carried on by the company or entered into more than 2 years before the delivery of this statement)

Time and place at which the contracts or copies thereof or (1) in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, and (2) in the case of a contract wholly or partly in a language other than English, a copy of a certified translation thereof in English or embodying a translation in English of the parts in a language other than English, as the case may be, may be inspected

Names and addresses of the auditors of the company

Full particulars of the nature and extent of the interest, direct or indirect, of every director, and of every expert, in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director or expert consists in being a partner in a firm or limited liability partnership or a holder of shares or debentures in a corporation, the nature and extent of the interest of the firm or limited liability partnership or corporation and where the interest of such a director or such an expert consists in a holding of shares or debentures in a corporation, a statement of the nature and extent of the interest of the director or expert in the corporation, with a statement of all sums paid or agreed to be paid to him or to the firm or limited liability partnership or corporation in cash or shares, or otherwise, by any person (in the case of a director) either to induce him to become, or to qualify him as a director or otherwise for service rendered by him or by the firm or limited liability partnership or corporation in connection with the promotion or formation of the company (in the case of an expert) for services rendered by him or the firm or limited liability partnership or corporation in connection with the promotion or formation of the company. For the purposes of this paragraph a director or expert shall be deemed to have an indirect interest in a corporation if he has any beneficial interest in shares or debentures of a corporation which has an interest in the promotion of, or in the property proposed to be acquired by the

company or if he has a beneficial interest in shares or debentures in a corporation which is by virtue of section 6 of the Act deemed to be related to that first-mentioned corporation

And also, in the case of a statement to be lodged by a private company on becoming a public company, the following items:

Rates of the dividends, if any, paid by the company in respect of each class of shares in the company in each of the 3 financial years immediately preceding the date of this statement or since the incorporation of the company, whichever period is the shorter

Particulars of the cases in which no dividends have been paid in respect of any class of shares in any of these years.

PART II

Reports to be set out

1. Where it is proposed to acquire a business or limited liability partnership, a report by a public accountant appointed as auditor of the company (who shall be named in the statement) with respect to —

(*a*) the profits or losses of the business or limited liability partnership in respect of each of the 3 financial years immediately preceding the lodging of the statement with the Registrar; and

(*b*) the assets and liabilities of the business or limited liability partnership at the last date to which the accounts of the business or limited liability partnership were made up.

2.—(1) Where it is proposed to acquire shares in a corporation which by reason of the acquisition or anything to be done in consequence thereof or in connection therewith will become a subsidiary of the company, a report by a public accountant appointed as auditor of the company (who shall be named in the statement) with respect to the profits and losses and assets and liabilities of the other corporation in accordance with sub-paragraph (2) or (3), as the case requires, indicating how the profits and losses of the other corporation dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company, and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired.

(2) If the other corporation has no subsidiaries, the report referred to in sub-paragraph (1) shall —

(*a*) so far as regards profits and losses, deal with the profits or losses of the other corporation in respect of each of the 3 financial years immediately preceding the delivery of the statement to the Registrar; and

(*b*) so far as regards assets and liabilities, deal with the assets and liabilities of the other corporation at the last date to which the accounts of the corporation were made up.

(3) If the other corporation has subsidiaries, the report referred to in sub-paragraph (1) shall —

(*a*) so far as regards profits and losses, deal separately with the other corporation's profits or losses as provided by sub-paragraph (2), and, in addition, deal as aforesaid either —

(i) as a whole with the combined profits or losses of its subsidiaries; or

(ii) individually with the profits or losses of each subsidiary,

or, instead of dealing separately with the other corporation's profits or losses, deal as aforesaid as a

whole with the profits or losses of the other corporation and with the combined profits or losses of its subsidiaries; and

(*b*) so far as regards assets and liabilities, deal separately with the other corporation's assets and liabilities as provided by sub-paragraph (2), and, in addition, deal as aforesaid either —

(i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the other corporation's assets and liabilities; or

(ii) individually with the assets and liabilities of each subsidiary,

and shall indicate as respects the profits or losses and the assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.

Note.—Where a company is not required to furnish any of the reports referred to in this Part, a statement to that effect giving the reasons therefor should be furnished.

(Signatures of the persons above-named as directors_____ or proposed directors or of their agents authorised_____ in writing)

Date:

PART III

Provisions applying to Parts I and II of this Schedule

3. In this Schedule "vendor" includes any person who is a vendor for the purposes of the repealed Fifth Schedule, and "financial year" has the meaning assigned to it in Part III of that Schedule.

4. If, in the case of a business which has been carried on or of a corporation or limited liability partnership which has been carrying on business for less than 3 years, the accounts of the business or corporation or limited liability partnership have only been made up in respect of 2 years or one year, Part II of this Schedule shall have effect as if references to 2 years or one year, as the case may be, were substituted for references to 3 years.

5. Any report required by Part II of this Schedule shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or shall make those adjustments and indicate that adjustments have been made.

[UK, 3rd and 5th Schs.; Aust., 6th Sch.]

[5/2004; 5/2005; 21/2005]

SEVENTH SCHEDULE

(*Repealed by S 236/2002*)

EIGHTH SCHEDULE

Sections 8(7) and 197(1)

ANNUAL RETURN OF A COMPANY HAVING A SHARE CAPITAL

Contents of Annual Return

1. The annual return under section 197(1) shall contain the following particulars:

(*a*) the name of the company;

(*b*) the registration number of the company;

(*c*) the address of the registered office of the company;

(*d*) in a case in which the register of members is kept elsewhere than at the registered office, the address of the place where it is kept;

(*e*) particulars of the amount of indebtedness of the company as at the relevant date in respect of all charges which are required to be registered with the Registrar, and a list of all registered charges of the company;

(*f*) a summary of the share capital and shares of the company, specifying —

(i) the amount of the share capital of the company and the types of shares in which it is divided;

(ii) the number of shares issued subject to payment wholly in cash;

(iii) the number of shares issued as fully paid up otherwise than in cash and the total amount, if any, agreed to be considered as paid on those shares which have been deemed issued as fully paid up otherwise than in cash;

(iv) in relation to shares issued as partly paid up otherwise than in cash —

(A) the number of shares;

(B) the total amount, if any, agreed to be considered as paid on those shares; and

(C) the total amount, if any, agreed to be considered as unpaid on those shares;

(v) the total number of shares forfeited since the date of the last return or, if none had been lodged previously, since the date of incorporation;

(vi) the total number of shares held as treasury shares;

(vii) additional calls paid since the date of the last return and the total amount of calls unpaid; and

(viii) the total amount of the sums, if any, paid by way of commission in respect of any debentures since the date of the last return or, if none had been lodged previously, since the date of incorporation;

(*g*) such particulars of the persons who, on the relevant date, are the directors, managers, secretaries and auditors of the company as are required by section 173 to be contained in the register of directors, managers, secretaries and auditors of the company;

(*h*) where the company is an unlisted company —

(i) in the case of a public company with more than 50 shareholders, a list of the 50 shareholders holding the largest number of shares in the company and their respective particulars and shareholdings; or

(ii) in any other case, a list of all shareholders of the company and their respective particulars and shareholdings;

(*i*) where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the list in paragraph (*h*) shall contain particulars as to the amount of stock or the number of stock units instead of the amount of shares, and an explanatory note shall be made in the return to that effect;

(*j*) in the case of a company keeping a branch register, the list in paragraph (*h*) need not include any particulars contained in the branch register, insofar as a copy of the entries containing those particulars is not received at the registered office of the company before the date of the list in question;

(*k*) the date of the last annual general meeting of the company or, in the case of a private company which has dispensed with the holding of its annual general meetings under section 175A(1), the date on which the resolution referred to in section 175(A)(1) was passed;

(*l*) the date to which the accounts of the company are made up and the date of the annual general meeting

at which those accounts were laid before the company;

(*m*) the name of the auditor who audited the accounts of the company, unless the company is exempt from audit requirements, and where the accounts have been lodged, a statement as to whether the accounts are unqualified;

[S 605/2007 wef 05/11/2007]

(*n*) either —

(i) where a company is dormant throughout the financial year, its principal activity or activities immediately before it turned dormant; or

(ii) in any other case, particulars of its principal activity or activities at the following dates:

(A) the date to which the accounts of the company are made up; and

(B) the date of the annual return;

[S 704/2013 wef 02/12/2013]

(*o*) [*Deleted by S 704/2013 wef 02/12/2013*]

(*p*) [*Deleted by S 704/2013 wef 02/12/2013*]

(*q*) a statement as to whether the company is listed on any securities exchange in Singapore or elsewhere;

(*r*) [*Deleted by S 704/2013 wef 02/12/2013*]

(*s*) where the annual return is accompanied by such of the relevant documents as may be applicable to the company, such information on the company contained in those documents as the Registrar may specify;

[S 704/2013 wef 02/12/2013]

(*t*) a statement as to whether the company or, where the company is a holding company, the group of companies to which the company belongs, has more than 50 employees; and

[S 704/2013 wef 02/12/2013]

(*u*) where the company is listed on a securities exchange in Singapore —

(i) either —

(A) where the public accountant who prepared the report under section 207 for the company on behalf of its auditor for the financial year in question, has prepared such reports for the company (whether on behalf of the same auditor or a different auditor) for 2 or more consecutive financial years including the financial year in question, the calendar year which coincides with the first of those financial years or, if the first of those financial years straddles more than one calendar year, the first of those calendar years; or

(B) where the public accountant who prepared the report under section 207 for the company on behalf of its auditor for the financial year in question, did not prepare such report for the company (whether on behalf of the same auditor or a different auditor) for the previous financial year, the calendar year which coincides with the financial year in question or, where the financial year in question straddles more than one calendar year, the first of those calendar years; and

(ii) such amount of fees (together with an itemised break down of the fees that are attributable to the provision of audit and non-audit services) paid to the auditors of the company and its subsidiaries for the financial period covered by the last balance-sheet and the last profit and loss accounts lodged together with the annual return, as is required to be disclosed in the annual report of the company by the securities exchange.

[S 704/2013 wef 02/12/2013]

2. For the purposes of paragraph 1, where the last return of a company consists of a summary of return and a main return, a reference to the last return of the company shall, unless the context requires otherwise, be construed as a reference to the last summary of return of the company.

[S 605/2007 wef 05/11/2007]

3. In paragraph 1, "relevant date" means a date specified by the person who lodges the return, being a date which is not more than 14 days before the date of lodgment of the return.

[S 605/2007 wef 05/11/2007]

4. In paragraph 1(*s*), "relevant documents", in relation to a company, means —

(*a*) the report and statement of its directors;

(*b*) the report of its auditors, unless the company is exempt from audit requirements and no report was prepared by the auditors;

(*c*) its last balance-sheet, which must be audited unless the company is exempt from audit requirements and no report was prepared by the auditors;

(*d*) its last profit and loss account, which must be audited unless the company is exempt from audit requirements and no report was prepared by the auditors; and

(*e*) the notes to the account.

[S 605/2007 wef 05/11/2007]

5. In paragraph 1(*t*), "group of companies" has the same meaning as in section 209A.

[S 704/2013 wef 02/12/2013]

6. For a period commencing on 2nd December 2013 and ending on 3rd March 2014, the annual return under section 197(1) may contain the particulars under paragraph 1(*n*), (*o*), (*p*) and (*r*) in force immediately before 2nd December 2013, in lieu of the particulars required under —

(*a*) paragraph 1(*n*) in force on 2nd December 2013;

(*b*) paragraph 1(*t*), read with paragraph 5; and

(*c*) paragraph 1(*u*).

[S 97/2014 wef 24/02/2014]

NINTH SCHEDULE

(*Repealed by Act 12 of 2002*)

TENTH SCHEDULE

(*Repealed by S 675/2001*)

ELEVENTH SCHEDULE

Section 227G(4)

POWERS OF JUDICIAL MANAGER

The judicial manager may exercise all or any of the following powers:

(*a*) power to take possession of, collect and get in the property of the company and, for that purpose, to take such proceedings as may seem to him expedient;

(*b*) power to sell or otherwise dispose of the property of the company by public auction or private contract;

(*c*) power to borrow money and grant security therefor over the property of the company;

(*d*) power to appoint a solicitor or accountant or other professionally qualified person to assist him in the performance of his functions;

(*e*) power to bring or defend any action or other legal proceedings in the name and on behalf of the company;

(*f*) power to refer to arbitration any question affecting the company;

(*g*) power to effect and maintain insurances in respect of the business and property of the company;

(*h*) power to use the company's seal;

(*i*) power to do all acts and to execute in the name and on behalf of the company any deed, receipt or other document;

(*j*) power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company;

(*k*) power to appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent and power to employ and dismiss employees;

(*l*) power to do all such things (including the carrying out of works) as may be necessary for the realisation of the property of the company;

(*m*) power to make any payment which is necessary or incidental to the performance of his functions;

(*n*) power to carry on the business of the company;

(*o*) power to establish subsidiaries of the company;

(*p*) power to transfer to subsidiaries of the company the whole or any part of the business and property of the company;

(*q*) power to grant or accept a surrender of a lease or tenancy of any of the property of the company, and to take a lease or tenancy of any property required or convenient for the business of the company;

(*r*) power to make any arrangement or compromise on behalf of the company;

(*s*) power to call up any uncalled capital of the company;

(*t*) power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the company and to receive dividends, and to accede to trust deeds for the creditors of any such person;

(*u*) power to make or defend an application for the winding up of a company;

(*v*) power to do all other things incidental to the exercise of the foregoing powers.

[13/87; 42/2005]

LEGISLATIVE SOURCE KEY

COMPANIES ACT
(CHAPTER 50)

Notes:—Unless otherwise stated, the abbreviations used in the references to other Acts and statutory provisions are references to the following Acts and statutory provisions. The references are provided for convenience and are not part of the Act.

UK, 1948: United Kingdom, Companies Act 1948 (Chapter 38)

UK, 1985: United Kingdom, Companies Act 1985 (Chapter 6)

UK, Bill, 2002: United Kingdom, Companies Bill published with White Paper on Modernising Companies Law in July 2002

UK, Treasury Shares: Companies (Acquisition of Own Shares) (Treasury Shares) Regulations 2003 (No. 1116)

Aust., 1961: Australia, Companies Act 1961 (Victoria No. 6839/1961)

Aust., Co. Law Rev. Act, 1998: Australia, Company Law Review Act 1998

Aust., Corporations: Australia, Corporations Law (in force before commencement of Australian Corporations Act 2001)

Aust., 2001: Australia, Corporations Act 2001

Aust., 2002: Australia, Corporations Act 2002

Canada, 1985: Canada Business Corporations Act (R.S. 1985, c. C-44)

NZ LRC: New Zealand, Company Law Reform: Transition and Revision (Report No. 16 of Law Commission, Sept 1990)

NZ, 1993: New Zealand, Companies Act, 1993

HK: Hong Kong, Companies Ordinance (Chapter 32)

HK S(DI): Hong Kong, Securities (Disclosure of Interests) Ordinance (Chapter 396, Revised Edition 1988)

Companies: Singapore, Companies Act (Chapter 50, 1994 Revised Edition)

LEGISLATIVE HISTORY

COMPANIES ACT
(CHAPTER 50)

This Legislative History is provided for the convenience of users of the Companies Act. It is not part of the Act.

1. Act 42 of 1967—Companies Act 1967

Date of First Reading	:	5 December 1966 (Bill No. 58/66 published on 12 December 1966)
Date of Second Reading	:	21 December 1966
Date Committed to Select Committee	:	21 December 1966
Date of Presentation of Select Committee Report	:	7 December 1967 (Parl. 11 of 1967)
Date of Third Reading	:	21 December 1967
Date of commencement	:	29 December 1967

2. 1970 Revised Edition—Companies Act

Date of operation	:	1 July 1971

3. Act 62 of 1970—Companies (Amendment) Act 1970

Date of First Reading	:	4 November 1970 (Bill No. 53/70 published on 10 November 1970)

Date of Second and Third Readings	:	30 December 1970
Date of commencement	:	1 October 1971

4. Act 49 of 1973—Companies (Amendment) Act 1973

Date of First Reading	:	25 July 1973 (Bill No. 46/73 published on 28 July 1973)
Date of Second and Third Readings	:	28 July 1973
Date of commencement	:	5 October 1973

5. Act 10 of 1974—Companies (Amendment) Act 1974

Date of First Reading	:	14 March 1974 (Bill No. 11/74 published on 15 March 1974)
Date of Second and Third Readings	:	27 March 1974
Date of commencement	:	15 November 1974

6. Act 19 of 1975—Companies (Amendment) Act 1975

Date of First, Second and Third Readings	:	19 August 1975 (Bill No. 44/75)
Date of commencement	:	23 August 1975

7. Act 39 of 1975—Companies (Amendment No. 2) Act 1975

Date of First Reading	:	11 November 1975 (Bill No. 56/75 published on 11 November 1975)
Date of Second and Third Readings	:	20 November 1975
Date of commencement	:	1 November 1975

8. 1979 Reprint—Companies Act

Date of operation	:	25 October 1979

9. G. N. No. S 177/1980—Companies Act (Amendment of Second Schedule) Notification 1980

Date of commencement	:	23 June 1980

10. G. N. No. S 228/1982—Companies Act (Amendment of Second Schedule) Notification 1982

Date of commencement	:	1 September 1982

11. Act 15 of 1984—Companies (Amendment) Act 1984

Date of First Reading	:	20 December 1983 (Bill No. 16/83 published on 27 December 1983)
Date of Second Reading	:	17 January 1984
Date Committed to Select Committee	:	17 January 1984

Date of Presentation of Select Committee Report	:	12 June 1984 (Parl. 3 of 1984)
Date of Third Reading	:	29 June 1984
Date of commencement	:	15 August 1984

12. G. N. No. S 215/1984—Companies Act (Amendment of Second Schedule) Notification 1984

Date of commencement	:	27 August 1984

13. 1985 Reprint—Companies Act

Date of operation	:	15 February 1985

14. Act 15 of 1986—Securities Industry Act 1986
(Consequential amendments made to Act by)

Date of First Reading	:	26 February 1986
		(Bill No. 3/86 published on 7 March 1986)
Date of Second and Third Readings	:	31 March 1986
Date of commencement	:	15 August 1986

15. G. N. No. S 263/1986—Companies Act (Amendment of Second Schedule) Notification 1986

Date of commencement	:	24 October 1986

16. 1985 Revised Edition—Companies Act

Date of operation	:	30 March 1987

17. G. N. No. S 337/1987—Revised Edition of the Laws (Rectification) Order 1987

Date of commencement	:	30 March 1987

18. G. N. No. S 22/1989—Revised Edition of the Laws (Rectification) Order 1989

Date of commencement	:	30 March 1987

19. G. N. No. S 143/1989—Revised Edition of the Laws (Rectification) Order 1989

Date of commencement	:	30 March 1987

20. Act 13 of 1987—Companies (Amendment) Act 1987

Date of First Reading	:	31 March 1986
		(Bill No. 9/86 published on 10 April 1986)
Date of Second Reading	:	5 May 1986
Date Committed to Select Committee	:	5 May 1986
Date of Presentation of Select Committee Report	:	12 March 1987 (Parl. 5 of 1987)
Date of Third Reading	:	26 March 1987
Date of commencement	:	15 May 1987

21. G. N. No. S 139/1987—Companies Act (Amendment of Second Schedule) Notification 1987

Date of commencement : 15 May 1987

22. 1988 Revised Edition—Companies Act

Date of operation : 30 April 1988

23. G. N. No. S 130/1988—Revised Edition of the Laws (Rectification) Order 1988

Date of commencement : 30 April 1988

24. G. N. No. S 203/1988—Companies Act (Amendment of Second Schedule) Notification 1988

Date of commencement : 5 August 1988

25. G. N. No. S 204/1988—Companies Act (Amendment of Eighth Schedule) Notification 1987

Date of commencement : 1 September 1988

26. G. N. No. S 7/1989—Companies Act (Amendment of Second Schedule) Notification 1989

Date of commencement : 13 January 1989

27. 1990 Revised Edition—Companies Act

Date of operation : 1 January 1990

28. G. N. No. S 107/1990—Companies Act (Amendment of Second Schedule) Notification 1990

Date of commencement : 16 March 1990

29. G. N. No. S 113/1990—Companies Act (Amendment of Second Schedule) (No. 2) Notification 1990

Date of commencement : 23 March 1990

30. Act 40 of 1989—Companies (Amendment) Act 1989

Date of First Reading : 22 March 1989

(Bill No. 24/89 published on 23 March 1989)

Date of Second Reading : 7 April 1989

Date Committed to Select Committee : 7 April 1989

Date of Presentation of Select Committee Report : 27 October 1989 (Parl. 4 of 1989)

Date of Third Reading : 30 November 1989

Date of commencement : 23 March 1990

31. G. N. No. S 429/1990—Companies Act (Amendment of Second Schedule) (No. 3) Notification 1990

Date of commencement : 1 December 1990

32. G. N. No. S 279/1991—Companies Act (Amendment of Second Schedule) Notification 1991

Date of commencement : 1 July 1991

33. G. N. No. S 339/1991—Companies Act (Amendment of Second Schedule) (No. 2) Notification 1991

Date of commencement	:	8 August 1991

34. Act 22 of 1993—Companies (Amendment) Act 1993

Date of First Reading	:	31 July 1992 (Bill No. 33/92 published on 1 August 1992)
Date of Second Reading	:	14 September 1992
Date Committed to Select Committee	:	14 September 1992
Date of Presentation of Select Committee Report	:	26 April 1993 (Parl. 2 of 1993)
Date of Third Reading	:	28 May 1993
Date of commencement	:	12 November 1993

35. Act 31 of 1993—Goods and Services Tax (Amendment) Act 1993
(Consequential amendments made to Act by)

Date of First Reading	:	26 February 1993 (Bill No. 14/93 published on 27 February 1993)
Date of Second Reading	:	19 March 1993
Date Committed to Select Committee	:	19 March 1993
Date of Presentation of Select Committee Report	:	7 September 1993 (Parl. 4 of 1993)
Date of Third Reading	:	12 October 1993
Dates of commencement	:	26 November 1993 (except paragraph (3) of Fifth Schedule)

36. 1994 Revised Edition—Companies Act

Date of operation	:	15 March 1994

37. G. N. No. S 227/1995—Revised Edition of the Laws (Rectification) Order 1995

Date of commencement	:	15 March 1994

38. Act 28 of 1994—National Registration (Amendment) Act 1994
(Consequential amendments made to Act by)

Date of First Reading	:	31 October 1994 (Bill No. 30/94 published on 1 November 1994)
Date of Second and Third Readings	:	5 December 1994
Date of commencement	:	1 March 1995

39. G. N. No. S 119/1995—Companies Act (Amendment of Second Schedule) Notification 1995

Date of commencement	:	1 April 1995

40. Act 15 of 1995—Bankruptcy Act 1995
(Consequential amendments made to Act by)

Date of First Reading	:	25 July 1994 (Bill No. 16/94 published on 29 July 1994)
Date of Second Reading	:	25 August 1994
Date Committed to Select Committee	:	25 August 1994
Date of Presentation of Select Committee Report	:	7 March 1995 (Parl. 1 of 1995)
Date of Third Reading	:	23 March 1995
Date of commencement	:	15 July 1995

41. Act 22 of 1995—Companies (Amendment) Act 1995

Date of First Reading	:	25 May 1995 (Bill No. 17/95 published on 26 May 1995)
Date of Second and Third Readings	:	7 July 1995
Date of commencement	:	4 August 1995

42. G. N. No. S 61/1997—Companies Act (Amendment of Second Schedule) Notification 1997

Date of commencement	:	15 February 1997

43. G. N. No. S 344/1997—Companies Act (Amendment of Second Schedule) (No. 2) Notification 1997

Date of commencement	:	1 August 1997

44. Act 7 of 1997—Statutes (Miscellaneous Amendments) Act 1997

Date of First Reading	:	11 July 1997 (Bill No. 6/97 published on 12 July 1997)
Date of Second and Third Readings	:	25 August 1997
Dates of commencement	:	1 October 1997 (except section 3)

45. Act 38 of 1998—Companies (Amendment) Act 1998

Date of First Reading	:	4 September 1998 (Bill No. 36/98 published on 5 September 1998)
Date of Second and Third Readings	:	12 October 1998
Date of commencement	:	18 November 1998

46. Act 37 of 1999—Bankruptcy (Amendment) Act 1999
(Consequential amendments made to Act by)

Date of First Reading	:	3 August 1999 (Bill No. 26/99 published on 4 August 1999)
Date of Second and Third Readings	:	18 August 1999
Date of commencement	:	

15 September 1999

47. Act 39 of 1999—Police Force (Amendment) Act 1999

(Consequential amendments made to Act by)

Date of First Reading	:	11 October 1999 (Bill No. 32/99 published on 12 October 1999)
Date of Second and Third Readings	:	23 November 1999
Date of commencement	:	10 January 2000

48. G. N. No. S 387/2000—Companies Act (Amendment of Second Schedule) Notification 2000

Date of commencement	:	29 August 2000

49. Act 36 of 2000—Companies (Amendment) Act 2000

Date of First Reading	:	9 October 2000 (Bill No. 28/2000 published on 10 October 2000)
Date of Second and Third Readings	:	13 November 2000
Date of commencement	:	22 January 2001

50. G. N. No. S 29/2001—Companies Act (Amendment of Second Schedule) Notification 2001

Date of commencement	:	22 January 2001

51. G. N. No. S 99/2001—Companies Act (Amendment of Fifth Schedule) Notification 2001

Date of commencement	:	22 February 2001

52. Act 26 of 2001—Statutes (Miscellaneous Amendments and Repeal) Act 2001

Date of First Reading	:	11 July 2001 (Bill No. 24/2001 published on 12 July 2001)
Date of Second and Third Readings	:	25 July 2001
Date of commencement	:	1 September 2001 (section 6)

53. Act 42 of 2001—Securities and Futures Act 2001

(Consequential amendments made to Act by)

Date of First Reading	:	25 September 2001 (Bill No. 33/2001 published on 26 September 2001)
Date of Second and Third Readings	:	5 October 2001
Date of commencement	:	1 January 2002 (Parts I, VIII, IX, X and XV (except sections 314 and 342 (1) and (3)), First Schedule, Second Schedule and items (4)(*o*) and (*q*) and (7)(*c*) of Fourth Schedule)

54. G. N. No. S 675/2001—Securities and Futures (Repeal of Provisions) Notification 2001

Date of commencement	:	1 January 2002

55. G. N. No. S 28/2002—Companies Act (Amendment of Second Schedule) Notification 2002

Date of commencement	:	15 January 2002

56. Act 42 of 2001—Securities and Futures Act 2001
(Consequential amendments made to Act by)

Date of First Reading	:	25 September 2001 (Bill No. 33/2001 published on 26 September 2001)
Date of Second and Third Readings	:	5 October 2001
Date of commencement	:	1 July 2002 (Parts XIII and XIV, and items (1)(*a*), (3)(*a*), (4)(*a*)(i), (iii) to (ix), (*b*), (*c*), (*f*), (*g*), (*h*), (*i*), (*l*), (*m*), (*t*) and (*u*), (7)(*b*), (12) and (13) of Fourth Schedule)

57. G. N. No. S 236/2002—Securities and Futures (Repeal of Provisions) Notification 2002

Date of commencement	:	1 July 2002

58. G. N. No. S 239/2002—Companies Act (Amendment of Second Schedule) (No. 2) Notification 2002

Date of commencement	:	1 July 2002

59. Act 12 of 2002—Companies (Amendment) Act 2002

Date of First Reading	:	23 May 2002 (Bill No. 16/2002 published on 24 May 2002)
Date of Second and Third Readings	:	8 July 2002
Dates of commencement	:	15 August 2002 (sections 2(*a*) and 36)

60. Act 42 of 2001—Securities and Futures Act 2001
(Consequential amendments made to Act by)

Date of First Reading	:	25 September 2001 (Bill No. 33/2001 published on 26 September 2001)
Date of Second and Third Readings	:	5 October 2001
Date of commencement	:	1 October 2002 (Parts II to VII, XI and XIII, sections 314 and 342(1) and (3), Third Schedule and items (1)(*b*), (2), (3)(*b*), (4)(*a*)(ii), (*d*), (*e*), (*j*), (k), (*n*), (*p*), (*r*), (*s*) and (*v*), (5), (6) and (7)(*a*) and (*d*) and (8) to (11) of Fourth Schedule).

61. Act 12 of 2002—Companies (Amendment) Act 2002

Date of First Reading	:	23 May 2002 (Bill No. 16/2002 published on 24 May 2002)
Date of Second and Third Readings	:	8 July 2002
Dates of commencement	:	1 January 2003 (sections 37 to 41, 55(*b*) and (*c*) and 61)

62. G. N. No. S 684/2002—Companies (Accounts of Public Listed Companies) (Substitution of Period) Order 2002

Date of commencement	:	1 January 2003

63. G. N. No. S 19/2003—Companies Act (Amendment of Second Schedule) Notification 2003

Date of commencement	:	13 January 2003

64. G. N. No. S 20/2003—Companies Act (Amendment of Eighth Schedule) Notification 2003

Date of commencement	:	13 January 2003

65. Act 12 of 2002—Companies (Amendment) Act 2002

Date of First Reading	:	23 May 2002 (Bill No. 16/2002 published on 24 May 2002)
Date of Second and Third Readings	:	8 July 2002
Dates of commencement	:	13 January 2003 (sections 2(*b*), 3 to 35, 42 to 54, 55(*a*), 56 to 60, 62, 63 and 64)

66. G. N. No. S 213/2003—Companies (Accounts of Public Listed Companies) (Substitution of Period) Order 2003

Date of commencement	:	28 April 2003

67. Act 8 of 2003—Companies (Amendment) Act 2003

Date of First Reading	:	28 February 2003 (Bill No. 3/2003 published on 1 March 2003)
Date of Second and Third Readings	:	24 April 2003
Date of commencement	:	15 May 2003

68. Act 9 of 2003—Statutes (Miscellaneous Amendments) Act 2003

Date of First Reading	:	20 March 2003 (Bill No. 7/2003 published on 21 March 2003)
Date of Second and Third Readings	:	24 April 2003

Date of commencement : 16 May 2003

69. G. N. No. S 75/2004—Companies Act (Amendment of Second Schedule) Notification 2004

Date of commencement : 1 March 2004

70. Act 3 of 2004—Accounting and Corporate Regulatory Authority Act 2004

(Consequential amendments made to Act by)

Date of First Reading : 5 January 2004

(Bill No. 1/2004 published on 6 January 2004)

Date of Second and Third Readings : 6 February 2004

Date of commencement : 1 April 2004

71. Act 5 of 2004—Companies (Amendment) Act 2004

Date of First Reading : 5 January 2004

(Bill No. 3/2004 published on 6 January 2004)

Date of Second and Third Readings : 6 February 2004

Dates of commencement : 1st April 2004

72. Act 4 of 2004—Accountants Act 2004

(Consequential amendments made to Act by)

Date of First Reading : 5 January 2004

(Bill No. 2/2004 published on 6 January 2004)

Date of Second and Third Readings : 6 February 2004

Date of commencement : 1 April 2004

73. G. N. No. S 193/2004—Companies Act (Amendment of Second Schedule) (No. 2) Notification 2004

Date of commencement : 1 April 2004

74. G. N. No. S 262/2004—Companies Act (Amendment of Second Schedule) (No. 3) Notification 2004

Date of commencement : 1 April 2004

75. Act 28 of 2004—Statutes (Miscellaneous Amendments) (No. 2) Act 2004

Date of First Reading : 15 June 2004

(Bill No. 27/2004 published on 16 June 2004)

Date of Second and Third Readings : 20 July 2004

Date of commencement : 1 April 2004 (section 3 only)

76. Act 5 of 2004—Companies (Amendment) Act 2004

Date of First Reading : 5 January 2004

(Bill No. 3/2004 published on 6 January 2004)

Date of Second and Third Readings : 6 February 2004

Dates of commencement : 1st October 2004 (Section 28(*a*) and (*c*))

77. G. N. No. S 57/2005—Companies Act (Amendment of Second Schedule) Notification 2005

Date of commencement : 1 February 2005

78. Act 5 of 2005—Limited Liability Partnerships Act 2005
(Consequential amendments made to Act by)

Date of First Reading : 19 October 2004

(Bill No. 64/2004 published on 20 October 2004)

Date of Second and Third Readings : 25 January 2005

Date of commencement : 11 April 2005

79. Act 17 of 2005—Statutes (Miscellaneous Amendments and Repeal) Act 2005

Date of First Reading : 18 April 2005

(Bill No. 7/2005 published on 19 April 2005)

Date of Second and Third Readings : 16 May 2005

Date of commencement : 15 July 2005

80. Act 42 of 2005—Statutes (Miscellaneous Amendments) (No. 2) Act 2005

Date of First Reading : 17 October 2005

(Bill No. 30/2005 published on 18 October 2005)

Date of Second and Third Readings : 21 November 2005

Dates of commencement : 30 January 2006 (sections 10, 12, 19 and 20(*c*))

81. Act 21 of 2005—Companies (Amendment) Act 2005

Date of First Reading : 18 April 2005

(Bill No. 11/2005 published on 19 April 2005)

Date of Second and Third Readings : 16 May 2005

Date of commencement : 30 January 2006

82. G. N. No. S 880/2005—Companies Act (Amendment of Second Schedule) (No. 2) Notification 2005

Date of commencement : 30 January 2006

83. G. N. No. S 55/2006—Companies Act (Amendment of Second Schedule) Notification 2006

Date of commencement	:	30 January 2006

84. G. N. No. S 56/2006—Companies Act (Amendment of Eighth Schedule) Notification 2006

Date of commencement	:	30 January 2006

85. Act 11 of 2005—Trust Companies Act 2005

Date of First Reading	:	25 January 2005 (Bill No. 1/2005 published on 26 January 2005)
Date of Second and Third Readings	:	18 February 2005
Date of commencement	:	1 February 2006

86. Act 9 of 2006—Residential Property (Amendment) Act 2006
(Consequential amendments made to Act by)

Date of First Reading	:	16 January 2006 (Bill No. 1/2006 published on 17 January 2006)
Date of Second and Third Readings	:	14 February 2006
Date of commencement	:	31 March 2006

87. Act 42 of 2005—Statutes (Miscellaneous Amendments) (No. 2) Act 2005

Date of First Reading	:	17 October 2005 (Bill No. 30/2005 published on 18 October 2005)
Date of Second and Third Readings	:	21 November 2005
Dates of commencement	:	1 April 2006 (items (2) to (7), (9), (11), (12), (13), (15), (16), (22), (25), (31), (34)(*a*) and (36) in First Schedule; and Third Schedule)

88. Act 1 of 2006—Payment Systems (Oversight) Act 2006

Date of First Reading	:	21 November 2005 (Bill No. 39/2005 published on 22 November 2005)
Date of Second and Third Readings	:	16 January 2006
Date of commencement	:	23 June 2006

89. 2006 Revised Edition—Companies Act

Date of operation	:	31 October 2006

90. Act 2 of 2007—Statutes (Miscellaneous Amendments) Act 2007

Date of First Reading	:	8 November 2006

(Bill No. 14/2006 published on 9 November 2006)

Date of Second and Third Readings : 22 January 2007

Dates of commencement : 1st March 2007
(with the exception of Sections 6, 8 and 11)

91. Act 1 of 2007—Banking (Amendment) Act 2007

Date of First Reading : 8 November 2006

(Bill No. 13/2006 published on 9 November 2006)

Date of Second and Third Readings : 22 January 2007

Date of commencement : 31 March 2007

92. Act 39 of 2007—Accounting Standards Act 2007
(Consequential amendments made to Act by)

Date of First Reading : 16 July 2007

(Bill No. 27/2007 published on 17 July 2007)

Date of Second and Third Readings : 27 August 2007

Date of commencement : 1 November 2007

93. G. N. No. S 604/2007—Companies Act (Amendment of Second Schedule) Notification 2007

Date of commencement : 5 November 2007

94. G. N. No. S 605/2007—Companies Act (Amendment of Eighth Schedule) Notification 2007

Date of commencement : 5 November 2007

95. Act 5 of 2008—Workmen's Compensation (Amendment) Act 2008
(Consequential amendments made to Act by)

Date of First Reading : 12 November 2007

(Bill No. 50/2007 published on 13 November 2007)

Date of Second and Third Readings : 22 January 2008

Date of commencement : 1 April 2008

96. Act 7 of 2009—Civil Law (Amendment) Act 2009
(Consequential amendments made to Act by)

Date of First Reading : 17 November 2008

(Bill No. 38/2008 published on 18 November 2008)

Date of Second and Third Readings : 19 January 2009

Dates of commencement : 1st March 2009

97. Act 5 of 2009—International Interests in Aircraft Equipment Act 2009

(Consequential amendments made to Act by)

Date of First Reading	:	17 November 2008
		(Bill No. 37/2008 published on 18 November 2008)
Date of Second and Third Readings	:	19 January 2009
Date of commencement	:	1 May 2009

98. Act 21 of 2008—Mental Health (Care and Treatment) Act 2008
(Consequential amendments made to Act by)

Date of First Reading	:	21 July 2008
		(Bill No. 11/2008 published on 22 July 2008)
Date of Second and Third Readings	:	16 September 2008
Date of commencement	:	1 March 2010

99. Act 22 of 2008—Mental Capacity Act 2008
(Consequential amendments made to Act by)

Date of First Reading	:	21 July 2008
		(Bill No. 13/2008 published on 22 July 2008)
Date of Second and Third Readings	:	15 September 2008
Date of commencement	:	1 March 2010

100. Act 15 of 2010—Criminal Procedure Code 2010
(Consequential amendments made to Act by)

Date of First Reading	:	26 April 2010
		(Bill No. 11/2010 published on 26 April 2010)
Date of Second and Third Readings	:	19 May 2010
Date of commencement	:	2 January 2011

101. Act 34 of 2010—Charities (Amendment) Act 2010
(Consequential amendments made to Act by)

Date of First Reading	:	18 October 2010
		(Bill No. 29/2010 published on 18 October 2010)
Date of Second and Third Readings	:	22 November 2010
Date of commencement	:	1 March 2011

102. Act 16 of 2011—Insurance (Amendment) Act 2011
(Consequential amendments made to Act by)

Date of First Reading	:	10 March 2011 (Bill No. 11/2011 published on 10 March 2011)
Date of Second and Third Readings	:	11 April 2011
Date of commencement	:	1 May 2011

103. G.N. No. S 718/2011—Companies Act (Amendment of Second Schedule) Notification 2011

Date of commencement	:	1 January 2012

104. Act 2 of 2009—Securities and Futures (Amendment) Act 2009
(Consequential amendments made to Act by)

Date of First Reading	:	15 September 2008 (Bill No. 23/2008 published on 16 September 2008)
Date of Second and Third Readings	:	19 January 2009
Date of commencement	:	19 November 2012 (Sections 2(*p*), (*t*), (*u*), (*v*) and (*w*), 42, 76, 113(*b*) and (*c*), 118(*a*) to (*e*) and (*h*) and 119)

105. Act 10 of 2013—Financial Institutions (Miscellaneous Amendments) Act 2013
(Consequential amendments made to Act by)

Date of First Reading	:	4 February 2013 (Bill No. 4/2013 published on 4 February 2013)
Date of Second and Third Readings	:	15 March 2013
Date of commencement	:	18 April 2013

106. Act 11 of 2013—Insurance (Amendment) Act 2013
(Consequential amendments made to Act by)

Date of First Reading	:	4 February 2013 (Bill No. 5/2013 published on 4 February 2013)
Date of Second and Third Readings	:	15 March 2013
Date of commencement	:	18 April 2013

107. Act 34 of 2012—Securities and Futures (Amendment) Act 2012
(Consequential amendments made to Act by)

Date of First Reading	:	15 October 2012 (Bill No. 31/2012 published on 15 October 2012)
Date of Second and Third Readings	:	15 November 2012
Date of commencement	:	1 August 2013

108. G.N. No. S 704/2013—Companies Act (Amendment of Eighth Schedule) Notification 2013

Date of commencement	:	2 December 2013

109. G.N. No. S 97/2014—Companies Act (Amendment of Eighth Schedule) Notification 2014

Date of commencement	:	24 February 2014

110. Act 5 of 2014—Subordinate Courts (Amendment) Act 2014
(Consequential amendments made to Act by)

Date of First Reading	:	11 November 2013 (Bill No. 26/2013 published on 11 November 2013)
Date of Second and Third Readings	:	21 January 2014
Date of commencement	:	7 March 2014

COMPARATIVE TABLE

COMPANIES ACT
(CHAPTER 50)

The following provisions in the 1994 Revised Edition of the Companies Act (Chapter 50) have been repealed.

This Comparative Table is provided for the convenience of users. It is not part of the Companies Act.

2006 Ed.	1994 Ed.	
—	**42**—	Prohibition of carrying on business with fewer than statutory minimum of members (*Repealed by Act 5 of 2004*)
—	**Part IV — Shares, Debentures and Charges** *Division 1 — Prospectuses*	
—	**43**—	Requirement to issue form of application for shares or debentures with a prospectus (*Repealed by S 236/2002*)
—	**44**—	As to invitations to the public to lend money to or to deposit money with a corporation (*Repealed by S 236/2002*)
—	**45**—	Contents of prospectuses (*Repealed by S 236/2002*)
—	**45A**—	Profile statement (*Repealed by S 236/2002*)
—	**46**—	Exemption from requirements as to form or content of prospectus or profile statement (*Repealed by S 236/2002*)
—	**47**—	Abridged prospectus for renounceable rights issues (*Repealed by S 236/2002*)
—	**48**—	Restrictions on advertisements, etc. (*Repealed by S 236/2002*)
—	**49**—	As to retention of over-subscriptions in debenture issues (*Repealed by S 236/2002*)
—	**50**—	Registration of prospectus

(*Repealed by S 236/2002*)

— **50A**— Lodging supplementary document or replacement document
(*Repealed by S 236/2002*)

— **51**— Exemption for certain governmental and international corporations as regards the signing of a copy of prospectus by all directors
(*Repealed by S 236/2002*)

— **52**— Document containing offer of shares for sale deemed prospectus
(*Repealed by S 236/2002*)

— **53**— Allotment of shares and debentures where prospectus indicates application to list on stock exchange
(*Repealed by S 236/2002*)

— **54**— Expert's consent to issue of prospectus containing statement by him
(*Repealed by S 236/2002*)

— **55**— Civil liability for false or misleading statements and omissions
(*Repealed by S 236/2002*)

— **55A**— Persons liable to inform person making offer or invitation about certain deficiencies
(*Repealed by S 236/2002*)

— **55B**— Defences
(*Repealed by S 236/2002*)

— **56**— Criminal liability for false or misleading statements and omissions
(*Repealed by S 236/2002*)

— *Division 2 — Restrictions on allotment and commencement of business*

— **57**— Prohibition of allotment unless minimum subscription received
(*Repealed by S 236/2002*)

— **58**— Application and moneys to be held by the company in trust in a separate bank account until allotment
(*Repealed by S 236/2002*)

— *Division 3 — Shares*

— **67**— Power to pay certain commissions, and prohibition of payment of all other commissions, discounts, etc.
(*Repealed by Act 21 of 2005*)

— **68**— Power to issue shares at a discount
(*Repealed by Act 21 of 2005*)

— **69**— Issue of shares at premium
(*Repealed by Act 21 of 2005*)

— **69A**— Relief from section 69
(*Repealed by Act 21 of 2005*)

— **69B**— Merger relief
(*Repealed by Act 21 of 2005*)

— **69C**— Relief from section 69 in respect of group reconstruction
(*Repealed by Act 21 of 2005*)

— **69D**— Retrospective relief from section 69 in certain circumstances
(*Repealed by Act 21 of 2005*)

— **69E**— Provisions supplementary to sections 69B and 69C
(*Repealed by Act 21 of 2005*)

— **69F**— Power to make provision extending or restricting relief from section 69
(*Repealed by Act 21 of 2005*)

— **73**— Special resolution for reduction of share capital
(*Repealed by Act 21 of 2005*)

— *Division 5 — Debentures*

— **97**— Qualifications of trustee for debenture holders
(*Repealed by S 236/2002*)

— **98**— Retirement of trustees
(*Repealed by S 236/2002*)

— **99**— Contents of trust deed
(*Repealed by S 236/2002*)

— **101**— Duties of trustees
(*Repealed by S 236/2002*)

— **102**— Powers of trustee to apply to Court for directions, etc.
(*Repealed by S 236/2002*)

— **103**— Obligations of borrowing corporation
(*Repealed by S 236/2002*)

— **104**— Obligation of guarantor corporation to furnish information
(*Repealed by S 236/2002*)

— **105**— Loans and deposits to be immediately repayable on certain events
(*Repealed by S 236/2002*)

— **106**— Liability of trustees for debenture holders
(*Repealed by S 236/2002*)

— *Division 5A — Exemptions from Divisions 1 and 5 in relation to Prospectus Requirements*

— **106A**— Interpretation
(*Repealed by S 236/2002*)

— **106B**— Offer made by or to certain persons or under certain circumstances
(*Repealed by S 236/2002*)

— **106C**— Offer made to certain institutions or persons
(*Repealed by S 236/2002*)

— **106D**— Offer to sophisticated investors
(*Repealed by S 236/2002*)

— **106E**— Circumstances in which a prospectus is not required on first sale of shares or debentures acquired pursuant to exemptions in section 106C or 106D
(*Repealed by S 236/2002*)

— **106F**— Stock exchange offer
(*Repealed by S 236/2002*)

— **106G**— Offer of international debentures
(*Repealed by S 236/2002*)

— **106H**— Offer of debentures made by the Government or international financial institutions
(*Repealed by S 236/2002*)

— **106I**— Reporting requirements
(*Repealed by S 236/2002*)

— **106J**— Revocation of exemption
(*Repealed by S 236/2002*)

— **106K**— Power to conduct investigations
(*Repealed by S 236/2002*)

— **106L**— Transactions under exempted offers subject to Division II of Part XII of this Act and Part IX of Securities Industry Act
(*Repealed by S 236/2002*)

— *Division 6 — Interests other than shares, debentures, etc.*

— **107**— Interpretation of this Division
(*Repealed by S 236/2002*)

— **108**— Approved deeds
(*Repealed by S 236/2002*)

— **109**— Approval of deeds
(*Repealed by S 236/2002*)

— **110**— Approval of trustees
(*Repealed by S 236/2002*)

— **111**— Covenants to be included in deeds
(*Repealed by S 236/2002*)

— **112**— Interests to be issued by companies only
(*Repealed by S 236/2002*)

— **113**— Statement to be issued
(*Repealed by S 236/2002*)

— **113A**— Restriction on issue, etc., of interest to public
(*Repealed by S 236/2002*)

— **114**— No issue without approved deed
(*Repealed by S 236/2002*)

— **115**— Register of interest holders
(*Repealed by S 236/2002*)

— **116**— Returns, information, etc., relating to interests
(*Repealed by S 236/2002*)

— **117**— Penalty for contravention of Division, etc.
(*Repealed by S 236/2002*)

— **118**— Winding up of schemes, etc.
(*Repealed by S 236/2002*)

— **119**— Power to exempt from compliance with Division and non-application of Division in certain circumstances
(*Repealed by S 236/2002*)

— **120**— Liability of trustees
(*Repealed by S 236/2002*)

— **Part V — Management and Administration**
Division 2 — Directors and officers

— **160A**— Substantial property transactions
(*Repealed by Act 38 of 1998*)

— **160B**— Exceptions from section 160A
(*Repealed by Act 38 of 1998*)

— **160C**—Liability arising from contravention of section 160A
(*Repealed by Act 38 of 1998*)

— **160D**— Interpretation
(*Repealed by Act 38 of 1998*)

— **167**— Prohibition of tax-free payments to directors
(*Repealed by Act 13 of 1987*)

— *Division 3 — Meetings and proceedings*

— **173A**— Interpretation of this Division
(*Repealed by Act 5 of 2004*)

— *Division 5 — Annual return*

— **198**— Exemption from filing list of members with annual return for certain public companies
(*Repealed by Act 12 of 2002*)

— **Part VI — Accounts and Audit**
Division 1 — Accounts

— **201A**— Consolidated accounts not to be issued, etc., until receipt of accounts of subsidiaries
(*Repealed by Act 5 of 2004*)

— *Division 2 — Audit*

— **209B**— Application of amendments made to sections 201 to 204 and 207 and new sections 201A and 209A
(*Repealed by Act 5 of 2004*)

— **Part VII — Arrangements, Reconstructions and Amalgamations**

— **213**— Take-over offers
(*Repealed by S 675/2001*)

— **214**— Variation of take-over offers
(*Repealed by S 675/2001*)

— **Part IX — Investigations**

— **234**— Investigation by resolution of company
(*Repealed by Act 13 of 1987*)

— **Part XI — Various Types of Companies, etc.**
Division 1 — Investment companies

— **355**— Interpretation of this Division
(Repealed by Act 8 of 2003)

— **356**— Restriction on borrowing by investment companies
(*Repealed by Act 8 of 2003*)

— **357**— Restriction on investments of investment companies
(*Repealed by Act 8 of 2003*)

— **358**— Restriction on underwriting by investment companies
(*Repealed by Act 8 of 2003*)

— **359**— Special requirements as to articles and prospectus
(*Repealed by Act 8 of 2003*)

— **360**— Not to hold shares in other investment companies
(*Repealed by Act 8 of 2003*)

— **361**— Not to speculate in commodities
(*Repealed by Act 8 of 2003*)

— **362**— Balance-sheets and accounts
(*Repealed by Act 8 of 2003*)

— **363**— Investment fluctuation reserve
(*Repealed by Act 8 of 2003*)

— **364**— Penalties
(*Repealed by Act 8 of 2003*)

— *Division 2 — Foreign companies*

— **374**— As to fee payable on registration of foreign company because of establishment of a share register in Singapore
(*Repealed by Act 12 of 2002*)

— **Part XII — General**
Division 2 — Offences

— **400**— Restriction on offering shares, debentures, etc., for subscription or purchase
(*Repealed by S 236/2002*)

— **409B**— Investigations by Commercial Affairs Department
(*Repealed by Act 39 of 1999*)

— **Third Schedule — Powers**
(*Repealed by Act 5 of 2004*)

— **Fifth Schedule — Prospectus**
(*Repealed by S 236/2002*)

— **Seventh Schedule — Statement required pursuant to Division 6 of Part IV** (*Repealed by S 236/2002*)

— **Ninth Schedule — Accounts and consolidated accounts**
(*Repealed by Act 12 of 2002*)

— **Tenth Schedule — Take-over offers** (*Repealed by S 675/2001*)