

SINGAPORE COMPANIES ACT (Cap. 50)

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 registered under the Insurance Act (Cap. 142).

[13/87]

(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 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 thereof 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 Minister charged with the responsibility for finance; or
- (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 has carried on banking business in Singapore in contravention of the provisions of any written law relating to banking;
- (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]

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.

[15/84]

[UK, 1948, s. 293; Aust., 1961, s. 260]

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.

[15/84]

[UK, 1948, ss. 289, 299; Aust., 1961, s. 271]

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.

[15/84]

[UK, 1948, ss. 290, 300; Aust., 1961, s. 272]

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.

[15/84]

[UK, 1948, s. 305; Aust., 1961, s. 280]

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.

[15/84]

[UK, 1948, s. 338; Aust., 1961, s. 283]

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.

[15/84]

[UK, 1948, ss. 340, 341; Aust., 1961, s. 284]

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 workmen's compensation under the Workmen's Compensation Act (Cap. 354) accrued before, on or after the commencement of the winding up;

(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 workmen's compensation; and

(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]

[END OF TEXT]