(c) share capital and reserves (including undistributable reserves).

(2) In relation to a proposed distribution by a public company the interim accounts must have been properly prepared or have been so prepared subject only to matters which are not material, for determining, by reference to items mentioned in subsection (1), whether the distribution would contravene section 209 or 210.

(3) In this section—

"interim accounts" means those accounts necessary to enable a reasonable judgement to be made as to the amounts mentioned in paragraphs (a) to (c) of subsection (1) where a distribution would contravene section 209 or 210 if reference were made only to the company’s last annual accounts;

"properly prepared" in relation to interim accounts means that the accounts must comply with any requirements imposed by or under this Ordinance and any balance sheet comprised in the accounts must have been signed in accordance with section 177.

PART VI.
WINDING UP.

(A) PRELIMINARY.

Modes of Winding up.

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

(a) by the court; or

(b) voluntary; or

(c) subject to the supervision of the court.

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

Liability as contributories of present and past members.

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

(a) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up;

(b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;

(c) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Ordinance;

(d) in the case of a company limited by shares no contribution shall be required from any member exceeding the amount (if any) unpaid on the shares in respect of which he is liable as a present or past member;

(e) in the case of a company limited by guarantee, no contribution shall, subject to the provisions of subsection (3), be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;

(f) nothing in this Ordinance shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;
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(g) A sum due to any member of a company, in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

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

Provided that--

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

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

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

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

Definition of contributory.

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

Nature of liability of contributory.

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

Contributories in cases of death of member.

217. (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.

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

Contributories in case of bankruptcy of member.

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

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

(b) there may be proved against the estate of the bankrupt, the estimated value of his liability to future calls as well as calls already made.
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(B) WINDING UP BY THE COURT.

Jurisdiction.

(s.163). 219. The Supreme Court shall have jurisdiction to wind up any company registered in Gibraltar.

Cases in which Company may be Wound up by Court.

Circumstances in which company may be wound up by court.

(s.168). 220. A company may be wound up by the court if--

(a) the company has by special resolution resolved that the company be wound up by the court;

(b) default is made in delivering the statutory report to the Registrar or in holding the statutory meeting;

(c) the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;

(d) the number of members is reduced, in the case of a private company, below one, or, in the case of any other company, below seven;

(e) the company is unable to pay its debts;

(f) the court is of opinion that it is just and equitable that the company should be wound up.

Definition of inability to pay debts.

(1929 c.23, s.169). 221. A company shall be deemed to be unable to pay its debts--

(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding £500 then due, has served on the company by leaving it at the registered office of the company, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay
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the sum, or to secure or compound for it to the
reasonable satisfaction of the creditor; or

(b) if execution or other process issued on a 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) if it is proved to the satisfaction of the court that the
company is unable to pay its debts, and, in determining
whether a company is unable to pay its debts, the court
shall take into account the contingent and prospective
liabilities of the company.

Petition for Winding up and Effects Thereof.

Provisions as to applications for winding up.

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

Provided that—

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

(i) either the number of members is reduced, in the
case of a private company, below one, or, in the
case of any other company, below seven; or

(ii) the shares in respect of which he is a
contributory, or some of them, either were
originally allotted to him or have been held by
him, and registered in his name, for at least six
months during the eighteen months before the
commencement of the winding up, or have
devolved on him through the death of a former
holder; and

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

(c) the court shall not give a hearing to a winding-up petition presented by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable and until a prima facie case for winding up has been established to the satisfaction of the court.

(2) Where a company is being wound up voluntarily or subject to supervision, a winding-up petition may be presented by an official receiver of the court as well as by any other person authorized in that behalf under the other provisions of this section, but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

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

Powers of court on hearing petition.

(1929 c.23, s.171). 223. (1) On hearing a winding-up petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it thinks fit, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

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

(a) instead of making a winding-up order, direct that the statutory report shall be delivered or that a meeting shall be held; and

(b) order the costs to be paid by any persons who, in the opinion of the court, are responsible for the default.
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Power to stay or restrain proceedings against company.

224. At any time after the presentation of a winding-up petition, and before a winding-up order has been made, the company, or any creditor or contributory, may—

(a) where any action or proceeding against the company is pending in the court apply for a stay of proceedings therein; and

(b) where any other action or proceeding is pending against the company, apply to the court to 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.

Avoidance of dispositions of property after commencement of winding up.

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

Avoidance of attachments.

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

Commencement of Winding Up.

Commencement of winding up by the court.

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

Consequences of Winding-up Order.

Copy of order to be forwarded to Registrar.

(a.176). 228. On the making of a winding-up order, a copy of the order must forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute thereof in his books relating to the company.

Actions stayed on winding-up order.

(1929 c.23, s.177). 229. When a winding-up order has been made, or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court, and subject to such terms as the court may impose.

Effect of winding-up order.

(a.178). 230. An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.


Appointment of official receiver for winding up purposes.

(a.179). 231. (1) For the purposes of this Ordinance so far as it relates to the winding up of companies by the court, the term “official receiver” means an officer appointed for the purpose by the Governor.

(2) Such officer shall for the purpose of his duties under this Ordinance be styled “the official receiver” and shall give security for the due performance of his duties in such sum and in such manner as the Governor may think fit.

(3) Notwithstanding anything to the contrary in this Ordinance contained, the court shall, at any time after the presentation of a petition for the winding up of a company and upon the application of the official receiver, appoint a fit and proper person as liquidator and any such liquidator so appointed shall in addition to his duties as liquidator, be deemed to be, and to have all the duties of, the official
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receiver in the winding up of such company for all the purposes of this Ordinance.

(4) Where a person is appointed under subsection (3) he shall not be capable of acting as official receiver until he has given such security as may be specified in the notice of appointment.

(5) Where an appointment is made under subsection (3) notice of the appointment specifying the name and address of the liquidator so appointed shall be--

(a) filed in the court;

(b) served upon the company at its registered office; and

(c) published in the Gazette.

Statement of company’s affairs to be submitted to official receiver.

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

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

(a) who are or have been directors or officers of the company;

(b) who have taken part in the formation of the company at any time within one year before the relevant date;

(c) who are in the employment of the company, or have been in the employment of the company within the said
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year, and are, in the opinion of the official receiver, capable of giving the information required;

(d) who are or have been within the said year officers of or in the employment of a company, which is, or within the said year was, an officer of the company to which the statement relates.

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

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

(5) A person who, without reasonable excuse, makes default in complying with the requirements of this section, is guilty of an offence and is liable on summary conviction to a fine of £10 for every day during which the default continues.

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

(7) A person untruthfully so stating himself to be a creditor or contributory is guilty of a contempt of court and, on the application of the liquidator or of the official receiver, is punishable accordingly.

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

Report by official receiver.

(1929 c.23, s.182).

233. (1) In a case where a winding-up order is made, the official receiver shall, as soon as practicable after receipt of the statement to be submitted under section 232, or, in a case where the court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the court—
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(a) as to the amount of capital issued, subscribed and paid up, and the estimated amount of assets and liabilities; and

(b) if the company has failed, as to the causes of the failure; and

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

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

(3) If the official receiver states in any such further report that in his opinion a fraud has been committed, the court shall have the further powers provided in sections 263 and 264.

Liquidators.

Power of court to appoint liquidators.

234. For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the court may impose, the court may appoint a liquidator or liquidators. (1929 c.23, s.183).

Appointment and powers of provisional liquidator.

235. (1) Subject to the provisions of this section, the court may appoint a liquidator provisionally at any time after the presentation of a winding-up petition. (s.184).

(2) The appointment of a provisional liquidator may be made at any time before the making of a winding-up order, and either the official receiver or any other fit person may be appointed.

(3) Where a liquidator is provisionally appointed by the court, the court may limit and restrict his powers by the order appointing him.
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Appointment and style of liquidators.

(185). 236. The following provisions with respect to liquidators shall have effect on a winding-up order being made:—

(a) the official receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such;

(b) the official receiver shall summon separate meetings of the creditors and contributories of the company for the 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, the court shall decide the difference and make such order thereon as the court may think fit;

(d) in a case where a liquidator is not appointed by the court, the official receiver shall be the liquidator of the company;

(e) the official receiver shall by virtue of his office be the liquidator during any vacancy;

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

Provisions where person other than official receiver is appointed liquidator.

(1929 c.23, s.186). 237. 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
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security in the prescribed manner to the satisfaction of the court;

(b) shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties under this Ordinance.

General provisions as to liquidators.

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

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

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

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

(5) Subject to the provisions of section 318, the acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

Custody of company’s property.

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

Vesting of property of company in liquidator.

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

Powers of liquidator.

(1929 c.23, s.191). 241. (1) The liquidator in a winding up by the court shall have power with the sanction either of the court or of the committee of inspection—

(a) to bring or defend any action or other legal proceeding in the name and on behalf of the company;

(b) to carry on the business of the company, so far as may be necessary for the beneficial winding up thereof;

(c) to appoint a solicitor to assist him in the performance of his duties;

(d) to pay any classes of creditors in full;

(e) to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;

(f) to compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(2) The liquidator in a winding up by the court shall have power—

(a) to sell the real and personal property and things in action of the company by public auction or private contract,
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with power to transfer the whole thereof to any person or company, or to sell the same in parcels;

(b) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to seal or sign documents as provided for in section 47(1) using, if it exists, the company's seal or being deemed to be an authorized signatory:

(c) to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory, for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and ratably with the other separate creditors;

(d) to draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business;

(e) to raise on the security of the assets of the company, any money requisite;

(f) to take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself;

(g) to appoint an agent to do any business which the liquidator is unable to do himself;

(h) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

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

Exercise and control of liquidator's powers.

(1929 c.23, s.192). 242. (1) Subject to the provisions of this Ordinance, the liquidator of a company which is being wound up by the court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2) In the case of the liquidation of an institution licensed under the Banking Ordinance in default within the meaning of the Deposit Guarantee Scheme Ordinance, 1997, the liquidator shall—

(a) distribute to the Gibraltar Deposit Guarantee Board any sums available for distribution to any creditor who had a qualifying deposit in the institution in default and whose rights are subrogated to the Board, irrespective of whether the Board has pursued those rights; and

(b) comply with all requests for information about the institution made by the Gibraltar Deposit Guarantee Board, even if that information would normally remain confidential to the liquidator or one or more other creditors.

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

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

(5) Subject to the provisions of this Ordinance, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.
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If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court, and the court may confirm, reverse or modify the act or decision complained of, and make such order in the premises as it thinks just.

Books to be kept by liquidator.

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

Payments of liquidator into Savings Bank.

Every liquidator of a company shall, in such manner and at such times as the court may direct, pay the money received by him into the Government Savings Bank to the credit of a separate account to be opened and kept by the liquidator in his official name and any interest receivable in respect of the account shall be part of the assets of the company, and the Savings Bank shall open and keep such account.

If any such liquidator at any time retains for more than ten days before it is paid into the separate account mentioned in subsection (1) a sum exceeding £200, or such other amount as the court in any particular case authorizes him to retain, then, unless he explains the retention to the satisfaction of the court, he shall pay interest on the amount so retained in excess at the rate of twenty per cent per annum, and shall be liable to disallowance of all or such part of his remuneration as the court may think just, and to be removed from his office by the court, and shall be liable to pay any expenses occasioned by reason of his default.

A liquidator of a company shall not pay any sums received by him as liquidator into his private banking account.

Audit of liquidator's accounts.

Every liquidator of a company shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the court an account of his receipts and payments as liquidator.

The account shall be in a prescribed form, shall be made in duplicate and shall be verified by a statutory declaration in the prescribed form.
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(3) The accounts so sent shall be audited by the Principal Auditor and for the purpose of the audit the liquidator shall furnish the Principal Auditor with such vouchers and information as he may require, and the Principal Auditor may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4) When the account has been audited, one copy thereof shall be filed with the court, and the other copy shall be returned to the liquidator, and each copy shall be open to the inspection of any creditor, or of any person interested.

(5) The liquidator shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and contributory.

Release of liquidators.

(1) When the liquidator has realised all the property of the company, or so much thereof as can, in his opinion, be realized without needlessly protracting the liquidation, and has distributed a final dividend (if any) to the creditors, and adjusted the rights of the contributories among themselves, and made a final return (if any) to the contributories, or has resigned, or has been removed from his office, the court shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the court, shall take into consideration the report, and any objection which may be urged by any creditor or contributory, or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly.

(2) Where the release of a liquidator is withheld, the court may, on the application of any creditor or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(3) An order of the court releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.
Meetings of creditors and contributories to determine whether committee of inspection shall be appointed.

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

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

Constitution and proceedings of committee of inspection.

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

(2) A person nominated by the Gibraltar Deposit Guarantee Board shall be entitled to a seat on any committee of inspection or creditors' committee, and to receive any notice addressed to creditors, in respect of an institution licensed under the Banking Ordinance in default within the meaning of the Deposit Guarantee Scheme Ordinance, 1997.

(3) The committee shall meet at such times as they from time to time appoint, and failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(4) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present.
(5) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

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

(7) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories, of which seven days' notice has been given, stating the object of the meeting.

(8) On a vacancy occurring in the committee the liquidator shall, unless the court otherwise orders, forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy.

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

Powers of court where no committee of inspection.

(1929 c.23, s.200).

249. Where there is no committee of inspection, the court may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Ordinance authorized or required to be done or given by the committee.

General Powers of Court in Case of Winding Up by Court.

Power to stay winding up.

(1929 c.23, s.201).

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

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

251. (1) As soon as may be after making a winding-up order, the court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Ordinance, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities:

Provided that, where it appears to the court that it will not be necessary to make calls on or adjust the rights of contributories, the court may dispense with the settlement of a list of contributories.

(2) In settling the list of contributories, the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

Delivery of property to liquidator.

252. The court may, at any time after making a winding-up order, require any contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer forthwith, or within such time as the court directs, to the liquidator any money, property, or books and papers in his hands to which the company is prima facie entitled.

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

253. (1) The court may, at any time after making a winding-up order, make an order on any contributory for the time being on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Ordinance.

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

(a) in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and
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(b) in the case of a limited company, make to any director or manager whose liability is unlimited or to his estate the like allowance.

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

Power of court to make calls.

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

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

Payment into bank of moneys due to company.

255. (1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into a bank to be approved of by the court to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) All moneys and securities paid or delivered into such bank in the event of a winding up by the court shall be subject in all respects to the orders of the court.

Order on contributory conclusive evidence.

256. (1) An order made by the court on a contributory shall, subject to any right of appeal, be conclusive evidence that the money (if any) thereby appearing to be due or ordered to be paid is due.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings.
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Appointment of special manager.

257. (1) Where the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court, and the court may on such application, appoint a special manager of the estate or business to act during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court.

(2) The special manager shall give such security and account in such manner as the court may direct.

(3) The special manager shall receive such remuneration as may be fixed by the court.

Exclusion of creditors not proving in time.

258. The court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved.

Adjustment of rights of contributories.

259. The court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

Inspection of books by creditors and contributories.

260. The court may, at any time after making a winding-up order, make such order for inspection of the books and papers of the company by creditors and contributories as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

Power to order costs of winding up to be paid out of assets.

261. The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding up in such order of priority as the court thinks just.
Power to summon persons suspected of having property of company.

262. (1) The court may, at any time after the appointment of a provisional liquidator or the making of a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company.

(2) The court may examine him on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The court may require him to produce any books and papers in his custody or power relating to the company, but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having a lawful impediment (made known to the court at the time of its sitting, and allowed by it), the court may cause him to be apprehended and brought before the court for examination.

Power to order public examination of promoters and directors.

263. (1) Where an order has been made for winding up a company by the court, and the official receiver has made a further report under this Ordinance stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the court may, after consideration of the report, direct that that person, director or officer shall attend before the court on a day appointed by the court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director or officer thereof.

(2) The official receiver shall take part in the examination, and for that purpose may, if specially authorized by the court in that behalf, employ a solicitor with or without counsel.
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(3) The liquidator, where the official receiver is not the liquidator, and any creditor or contributory, may also take part in the examination either personally or by solicitor or counsel.

(4) The court may put such questions to the person examined as the court thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the court may put or allow to be put to him.

(6) A person ordered to be examined under this section shall at his own cost, before his examination, be furnished with a copy of the official receiver’s report, and may at his own cost employ a solicitor with or without counsel, who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him:

Provided that, if any such person applies to the court to be exculpated from any charges made or suggested against him, it shall be the duty of the official receiver to appear on the hearing of the application and call the attention of the court to any matters which appear to the official receiver to be relevant, and if the court, after hearing any evidence given or witnesses called by the official receiver, grants the application, the court may allow the applicant such costs as in its discretion it may think fit.

(7) Notes of the examination shall be taken down in writing and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(8) The court may, if it thinks fit, adjourn the examination from time to time.

Power to restrain fraudulent persons from managing companies.

264. (1) Where an order has been made for winding up a company by the court, and the official receiver has made a further report under this Ordinance stating that, in his opinion, a fraud has been committed by a person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the court may, on the application of the official receiver, order that that person, director or officer shall not, without the leave of the court, be a director of or in any way, whether directly or indirectly, be concerned in or take part in the management of a

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company for such period, not exceeding five years, from the date of the report as may be specified in the order.

(2) The official receiver shall, where he intends to make an application under subsection (1), give not less than ten days' notice of his intention to the person charged with the fraud, and on the hearing of the application that person may appear and himself give evidence or call witnesses.

(3) It shall be the duty of the official receiver to appear on the hearing of an application by him for an order under this section and on an application for leave under this section and to call the attention of the court to any matters which appear to him to be relevant, and on any such application the official receiver may himself give evidence or call witnesses.

(4) A person who acts in contravention of an order made under this section, is guilty of an offence and is liable on conviction on indictment to imprisonment for two years, or on summary conviction to imprisonment for six months and to a fine of £500.

(5) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made.

Power to arrest absconding contributory.

(1929 c.23, s.218). 265. The court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit Gibraltar, or otherwise to abscond, or to remove or conceal any of his property for the purpose of evading payment of calls, or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested, and his books and papers and movable personal property to be seized, and him and them to be safely kept until such time as the court may order.

Powers of court cumulative.

(s.219). 266. Any powers by this Ordinance conferred on the court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.
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Dissolution of company.

267. (1) When the affairs of a company have been completely wound up, the court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) The order shall within fourteen days from the date thereof be reported by the liquidator to the Registrar who shall make in his books a minute of the dissolution of the company.

(3) A liquidator who makes default in complying with the requirements of this section, is guilty of an offence and is liable on summary conviction to a fine of one half of the amount at level 1 on the standard scale for every day during which he is in default.

Companies in default since 1st January 1993.

267A.(1) Subject to the provisions of subsections (2) to (4), the Registrar may strike off the register the name of any company, other than a public limited company, in respect of which no annual return has been filed contrary to the requirements of section 153 or section 154, as the case may be, in the previous three calendar years.

(2) Where the Registrar proposes to strike off the name of any company he shall publish in the Gazette the name of that company and notice of his intention to strike off the name and shall not strike the name off the register before the expiration of three calendar months from the date of publication.

(3) Unless the Registrar receives within 3 months of the date of publication written representations showing cause to the contrary he may strike off the name of the company.

(4) If the Registrar has received written representations under subsection (3) he may decide not to strike off the name of the company and, if he so decides, he may require the company to take such action and pay such fees as he sees fit to satisfy the requirements of section 153 or section 154, as the case may be, in respect of the years since the annual return was last filed and the date of the publication of the notice in the Gazette under subsection (2).
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(C) VOLUNTARY WINDING UP.

Resolutions for, and Commencement of Voluntary Winding Up.

Circumstances in which company may be wound up voluntarily.

(1929 c.23, s.225).

268. (1) A company may be wound up voluntarily—

(a) when the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;

(b) if the company resolves by special resolution that the company be wound up voluntarily;

(c) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

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

Notice of resolution to wind up voluntarily.

(1929 c.23, s.226).

269. (1) When a company has passed a resolution for voluntary winding up, it shall, within seven days after the passing of the resolution, give notice of the resolution by advertisement in the Gazette.

(2) If default is made in complying with this section, the company and every officer of the company who is in default are guilty of offences and are liable on summary conviction to a default fine, and for the purposes of this subsection the liquidator of the company is to be deemed to be an officer of the company.

Commencement of voluntary winding up.

(1929 c.23, s.227).

270. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up.
**Effect of voluntary winding up on company.**

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

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

**Transfer after commencement of voluntary winding up.**

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

**Declaration of Solvency.**

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

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

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

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

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Provisions applicable to a Members' Voluntary Winding Up.

Application of sections 275 to 279.

(1929 c.23, s.231). 274. The provisions contained in sections 275 to 279 (both inclusive) shall apply in relation to a members' voluntary winding up.

Power to appoint and fix remuneration of liquidators.

(s.232). 275. (1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.

(2) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof.

Power to fill vacancy in office of liquidator.

(s.233). 276. (1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner provided by this Ordinance or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

Power of liquidator to accept shares as consideration for sale of property of company.

(s.234). 277. (1) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Ordinance or not (in this section referred to as “the transferee company”) the liquidator of the first-mentioned company (in this section referred to as “the transferor company”) may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in
compensation or part compensation for the transfer policies or other like interests in the transferee distribution among the members of the transferor company may enter into any other arrangement whereby the transferor company may, in lieu of receiving cash, sl other like interests, or in addition thereto, participate or receive any other benefit from the transferee comp

(2) Any sale or arrangement in pursuance of this binding on the members of the transferor company.

(3) If any member of the transferor company with favour of the special resolution expresses his dis writing addressed to the liquidator, and left at the reg the company within seven days after the passing of the may require the liquidator either to abstain from resolution into effect, or to purchase his interest a determined by agreement or by arbitration in manner section.

(4) If the liquidator elects to purchase the member purchase money must be paid before the company is raise by the liquidator in such manner as may be special resolution.

(5) A special resolution shall not be invalid for this section by reason that it is passed before or conta resolution for voluntary winding up or for appointing if an order is made within a year for winding up the subject to the supervision of the court, the special res be valid unless sanctioned by the court.

(6) For the purposes of an arbitration under the provisions of the Arbitration Ordinance shall be incor Ordinance, and any appointment of an arbitrator, may the hand of the liquidator, or if there is more than one of any two or more of the liquidators.

Duty of liquidator to call general meeting at end of 278. (1) In the event of the winding up continuing for year, the liquidator shall summon a general meeting at the end of the first year from the commencement of and of each succeeding year, or as soon thereafter, convenient, and shall lay before the meeting an account dealings and of the conduct of the winding up in i
(2) A liquidator who fails to comply with the duties imposed on him in a liquidation, commits an offence and is liable on summary conviction to a fine of one half of the amount at the standard scale.

Final meeting and dissolution.

(s.236) 279. (1) As soon as the affairs of the company have been conducted and disposed of, and thereupon shall be held a final meeting of the members of the company for the purpose of laying before them an account of the winding up, and any explanation thereof.

(2) The meeting shall be called by the liquidator at least one week before the meeting specifying the time, place and object thereof, and the members shall be given at least one week’s notice of the meeting.

(3) Within one week after the meeting has been held the liquidator shall make up an account of the winding up and shall deliver a copy of the account to the Registrar, and shall also deliver a certificate of the holding of the meeting and of its proceedings, and of the manner in which the account was made up.

Provided that, if a quorum is not present at the meeting, the meeting shall be adjourned, and shall, in lieu of the return hereinbefore required to be delivered to the Registrar, be held in due course at a later date, and not later than three months from the date of the first meeting, of the holding of the meeting and of the proceedings thereat, and upon such a return being delivered the Registrar may, if he thinks fit, specify any subsection as to the making of the return that was not complied with.

(4) The Registrar on receiving the returns hereinbefore mentioned shall forthwith, or within the expiration of three months from their delivery, cause the company to be dissolved, and the company shall be deemed to be dissolved on the giving of notice under the said return.

Provided that the court may, on the application of any other person who appears to the court to be justly entitled to make such application, by order deferring the date at which the dissolution takes effect for such time as the court thinks fit, suspend the operation of any such section as to the making of the return that was not complied with.

(5) It shall be the duty of the person to whom the order of the court under this section is addressed to deliver to the company at least one week’s notice of the meeting held for the purpose of considering the application to the court, and for the making of the return.
an offence and is liable on summary conviction to a fine not exceeding the amount at level 1 on the standard scale for every day on which the default continues.

Provisions Applicable to a Creditors' Voluntary Winding Up

Application of sections 281 to 288.

280. The provisions contained in sections 281 to 288 shall apply in relation to a creditors' voluntary winding up.

Meeting of creditors.

281. (1) The company shall cause a meeting 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 a resolution for voluntary winding up is to be proposed, and shall cause a notice of the meeting of creditors to be sent by post to every creditor of the company, simultaneously with the sending of the notices of the meeting of the company.

(2) The company shall cause notice of the meeting of creditors to be advertised once in the Gazette and once in another newspaper published in Gibraltar.

(3) The directors of the company shall—

(a) cause a full statement of the position of the affairs of the company and the estimated amount of the liabilities of the company to be laid before the meeting of creditors aforesaid; and

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

(4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside at it.

(5) If the meeting of the company at which a resolution for voluntary winding up is to be proposed is adjourned and a resolution is passed at an adjourned meeting, any resolution for voluntary winding up passed at an adjourned meeting of the creditors held in pursuance of subsection (3) shall be deemed to have effect as if it had been passed immediately after the resolution for winding up the company.
(6) If default is made—

(a) by the company in contempt;

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

(c) by any director of the company in subsection (4),

the company, directors or director, as the case may be, is guilty of an offence and liable on summary conviction in the case of default by the company, who is in default is liable on summary conviction.

Appointment of liquidator.

(1929 c.23, s.239). 282. The creditors and the company mentioned in section 281 may nominate the purpose of winding up the affairs of the company; and if the creditors and the company nominate persons, the person nominated by the creditors if no person is nominated by the company shall be liquidator.

Provided that in the case of different director, member or creditor of the company who is in default after the date on which the nomination is made, and in the case of different person or persons, the person nominated by the company shall be liquidator.

Appointing a committee of inspection.

(1929 c.23, s.240). 283. (1) The creditors at the meeting mentioned in section 281 or at any subsequent meeting may appoint a committee of inspection consisting of such number of persons and if such a committee is appointed at the meeting at which the resolution is passed or at any time subsequently in good number of persons as they think fit to act after the date on which the nomination is made, shall have power to appoint or jointly with the person nominated by the company some other person to be liquidator instead of the creditors.

Appointment of committee of inspection.

(1929 c.23, s.240). 283. (1) The creditors at the meeting mentioned in section 281 or at any subsequent meeting may appoint a committee of inspection consisting of such number of persons and if such a committee is appointed at the meeting at which the resolution is passed or at any time subsequently in good number of persons as they think fit to act after the date on which the nomination is made, shall have power to appoint or jointly with the person nominated by the company some other person to be liquidator instead of the creditors.
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Provided that the creditors may, if they think fit, remove any of the persons so appointed by the company, or declare any of the members of the committee of inspection, and, if they so resolve, the persons mentioned in the resolution shall, unless the court otherwise directs, be qualified to act as members of the committee, and on any application to the court under this section the court may, if it thinks fit, appoint other persons to act in place of the persons mentioned in the resolution.

(2) Subject to the provisions of this section and the provisions of section 248 (except subsection (2)) apply with respect to a committee of inspection appointed in a winding up by the court as they apply with respect to a committee appointed in a winding up by the court.

Fixing of liquidators' remuneration and cesseion of powers.

284. (1) The committee of inspection, or if there be no such committee, the creditors, may fix the remuneration of the liquidator or liquidators.

(2) On the appointment of a liquidator, all the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction thereof.

Power to fill vacancy in office of liquidator.

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

Application of section 277 to a creditors' voluntary winding up.

286. The provisions of section 277 shall apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up, with the modification that the powers under that section shall not be exercised except with the concurrence of the court or of the committee of inspection.

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

287. (1) In the event of the winding up continuing for a year, the liquidator shall summon a general meeting.
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 commencement of the winding up, and soon thereafter as may be convenient, meetings an account of his acts and dealing with the winding up during the preceding year.

(2) A liquidator who fails to comply with this section is guilty of an offence and is liable on summary conviction to a fine not exceeding the standard scale.

Final meeting and dissolution.

(245) 288. (1) As soon as the affairs of the company have been wound up, the liquidator shall make up an account of the winding up has been conducted and has been disposed of, and thereupon shall call the company and a meeting of the creditors, account before the meetings, and giving an account of their dates, and if the copy is not in accordance with this subsection the liquidator shall, in lieu of the return hereunder, be deemed to have been committed an offence.

(2) Each such meeting shall be called by the Gazette, specifying the time, place and date, at least one month at least before the meeting.

(3) Within one week after the date of the meeting, the liquidator shall send to the Registrar the account, and shall make a return to him of the time and of their dates, and if the copy is not in accordance with this subsection the liquidator shall, in lieu of the return hereunder, be deemed to have been committed an offence.

Provided that, if a quorum is not present, the liquidator shall, in lieu of the return hereunder, return that the meeting was duly summoned to, and present thereat, and upon such a return be deemed to have been committed an offence.

(4) The Registrar on receiving the account of the winding up of such meeting either of the returns hereunder, shall forthwith register them, and on the expiration of one month after registration thereof the company shall be deemed to have been dissolved.

Provided that the court may, on the application of any other person who appears to the court

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order deferring the date at which the dissolution of take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whom order of the court under this section is made, within the making of the order, to deliver to the Registrar the order for registration, and if that person fails so to an offence and is liable on summary conviction to an the amount at level 1 on the standard scale for every the default continues.

Provisions Applicable to Every Voluntary Winding Up

Application of sections 290 to 297.

289. The provisions contained in sections 290 to 297 shall apply to every voluntary winding up whether creditors’ winding up.

Distribution of property of company.

290. Subject to the provisions of this Ordinance payments, the property of a company shall, on it applied in satisfaction of its liabilities pari passu, and application, shall, unless the articles otherwise provide, among the members according to their rights and company.

Powers and duties of liquidator in voluntary winding up.

291. (1) The liquidator may–

(a) in the case of a members’ voluntary winding sanction of an extraordinary resolution and, in the case of a creditors’ volun with the sanction of either the court or inspection, exercise any of the powers paragraphs (d), (e) and (f) of section liquidator in a winding up by the court;

(b) without sanction, exercise any of the this Ordinance given to the liquidator in the court;

(c) exercise the power of the court under
Compani contributories shall be prima facie liable for the personal liability of the persons
contributories;

(d) exercise the power of the company;

(e) summon general meetings of the company for the purpose of obtaining the special or extraordinary resolution for the purpose he may think fit.

(2) The liquidator shall pay the debts of the company to the utmost of his power, and adjust the rights of the contributories among themselves.

(3) When several liquidators are appointed to wind up the affairs of the company, this Ordinance may be exercised by such number of them as may be determined at the time of their appointment, by any number not less than two.

Appointment and removal of liquidator

(s.249).

292. (1) If from any cause whatever the affairs of the company cannot be wound up in manner provided for by this Ordinance, the court may appoint a liquidator.

(2) The court may, on cause shown to it, appoint another liquidator.

Notice by liquidator of his appointment

(1929 c.23, s.250).

293. (1) The liquidator shall, within seven days after his appointment, deliver to the Registrar for incorporation the notice of his appointment in the prescribed form.

(2) A liquidator who fails to comply with the provisions of this section, is guilty of an offence and is liable on summary conviction to a fine of one half of the amount at large, and for every day during which the default continues.

Arrangement when binding on creditors

(s.251).

294. (1) Any arrangement entered into by or in the course of being wound up, to the right of appeal under this section, sanctioned by an extraordinary resolution acceded to by three-fourths in number of the contributories and creditors, shall be binding on the company and on all its contributions.
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(2) Any creditor or contributory may, within the completion of the arrangement, appeal to the court; the court may thereupon, as it thinks just, amend, vary, or rescind the arrangement.

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

295. (1) The liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up of the company, or to exercise, as respects the enforcing of creditors' claims and rights, or the required exercise of power, as respects the enforcing of creditors' claims and rights, all or any of the powers which the court might have had if the company were being wound up by the court.

(2) The court, if satisfied that the determination of the question or the required exercise of power will be just and reasonable, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order as it thinks just.

Costs of voluntary winding up.

296. All costs, charges and expenses properly incurred in the voluntary winding up, including the remuneration of the liquidator, shall be paid out of the assets of the company in priority to all other claims.

Saving for rights of creditors and contributories.

297. The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the court. In the case of an application by a contributory, the court may determine that the rights of the contributories will not be prejudiced by the application for the winding up.

(D) WINDING UP SUBJECT TO SUPERVISION

Power to order winding up subject to supervision.

298. When a company has passed a resolution for voluntary winding up, the court may make an order that the voluntary winding up continue but subject to such supervision of the court as the court shall think fit. The liberty for creditors, contributories or others to apply to the court generally on such terms and conditions, as the court thinks fit.
Effect of petition for winding up subject to the supervision of the court (s.257).

299. A petition for the continuance of the jurisdiction to the court over actions, in winding up by the court.

Application of sections 225 and 226 (s.258).

300. A winding up subject to the supervision of the court for the purposes of sections 225 and 226, be by the court.

Power of court to appoint or remove liquidators (s.259).

301. (1) Where an order is made for winding up by the court, the court may by that or an additional liquidator.

(2) A liquidator appointed by the court, have the same powers, be subject to the same, and respectively stand in the same position, as if the court had the same powers, be subject to the same, and respectively stand in the same position, as if the court had appointed liquidators in a voluntary winding up.

(3) The court may remove any liquidator appointed by the court or any liquidator continued under an order of the court, in the same manner as if the liquidator had been appointed by the court.

Effect of supervision order. (1929 c.23, s.260).

302. (1) Where an order is made for winding up by the court, the liquidator may, subject to the sanction of the court, exercise all his powers, with the same powers, be subject to the same, and respectively stand in the same position, as if the liquidator had been appointed by the court or the committee of inspection.

Provided that the powers specified in section 241(1) shall not be exercised by the liquidator without the sanction of the court or, in a case where the order was a creditors’ voluntary winding up, the court or the committee of inspection.

(2) A winding up subject to the supervision of the court for the purposes of sections 225 and 226, be by the court.
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order for a winding up subject to supervision shall for deemed to be an order for winding up by the court:

Provided that, where the order for winding up subject was made in relation to a creditors’ voluntary winding committee of inspection had been appointed, the deemed to be an order for winding up by the court for section 248 (except subsection (1) thereof), except operation of that section is excluded in a voluntary general rules.

(E) PROVISIONS APPLICABLE TO EVERY WINDING UP.

Proof and Ranking of Claims.

Debts of all descriptions to be proved.

303. In every winding up (subject in the case of inso to the application in accordance with the provisions of the law of bankruptcy) all debts payable on a contract claims against the company, present or future, certain ascertained or sounding only in damages, shall be admin against the company, a just estimate being made, so far the value of such debts or claims as may be subject to or sound only in damages, or for some other reason certain value.

Application of bankruptcy rules in winding up.

304. In the winding up of an insolvent company the prevai and be observed with regard to the respective r and unsecured creditors and to debts provable and to annuities and future and contingent liabilities as are time being under the law of bankruptcy, and all pers such case would be entitled to prove for and receive of the assets of the company may come in under the w make such claims against the company as they respecta to by virtue of this section.

 Preferential payments.

305. (1) In a winding up there shall be paid in prior debts—
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(a) all local rates due from and having become due

(aa) all taxes specified for the Income Tax Ordinance

(b) all wages or salary (whether part by way of commission or otherwise) respect of services rendered in twelve months next before that exceeding £1000;

(c) all wages of any workman of any work exceeding £1000, whether payable respect of services rendered in twelve months next before that

Provided that, where a person has entered into a contract with a company to pay his wages in a lump sum, he shall have priority in that sum, or a part thereof, according to the contract, provided that the payment up to the relevant date;

(d) all amounts, not exceeding £1000, payable by the company under the provisions of theOrdinance, the liability being calculated up to the relevant date;

(e) all amounts payable by way of contributions as the employer under the Social Security (Employer's Contributions) Ordinance and under the

(2) Where any payment on account made to any clerk, servant, workman of a company out of money advanced by that person shall in a winding up have been entitled to priority in the winding up reason of the payment having been made...
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(3) The foregoing debts shall—

(a) rank equally among themselves and unless the assets are insufficient to meet case the debts specified in paragraph shall have priority and shall abate in ec and once those debts have been paid, th in paragraph (aa) shall have priority and has been settled the debts specified in and (e) shall rank equally between the paid in full unless the assets are insuf them, in which case the debts specified in and (e) shall abate in equal proportions; a

(b) so far as the assets of the company payment of general creditors are insuf them, have priority over the claims debentures under any floating charge on company, and be paid accordingly out of comprised in or subject to that charge.

(4) Subject to the retention of such sums as may be the costs and expenses of the winding up, the foregoing discharged forthwith so far as the assets are sufficient to

(5) In the event of a landlord or other person having distrained on any goods or effects of the company months next before the date of a winding-up order, the prority is given by this section shall be a first charge on effects so distrained on, or the proceeds of the sale thereof

Provided that, in respect of any money paid under any the landlord or other person shall have the same rights the person to whom the payment is made.

(6) In this section "the relevant date" means—

(a) in the case of a company ordered to be compulsorily which had not previously be wound up voluntarily, the date of the order; and

(b) in any other case, the date of the commencing winding up.
Effect of Winding Up on Antecedent Fraudulent preference.

(1929 c.23, s.265). 306. (1) Any conveyance, mortgage, charge, execution or other act relating to property done by or against an individual, be fraudulent preference, shall, if made or done in the event of its being wound up of its creditors, and be invalid accordingly.

(2) For the purposes of this section winding up shall be deemed to correspond bankruptcy petition in the case of an individual.

(3) Any conveyance or assignment of property to trustees for the benefit of all creditors, all intents.

Effect of floating charge.

(1929 c.23, s.266). 307. Where a company is being wound up of the undertaking or property of the company immediately after the creation of a floating charge, together with interest on that amount per annum.

Disclaimer of onerous property in case

(s.267). 308. (1) Where any part of the property wound up consists of land of any type of covenants, of shares or stock in company, or of any other property that is unsaleable reason of its binding the possessor thereof onerous act, or to the payment of any sum due to the company, notwithstanding that he has taken possession of the property, or executed relation thereto, may, with the leave of the provisions of this section, by writing signed twelve months after the commencement of the extended period as may be allowed by the Court.
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Provided that, where any such property has no knowledge of the liquidator within one month after the of the winding up, the power under this section of property may be exercised at any time within twelve has become aware thereof or such extended period as by the court.

(2) The disclaimer shall operate to determine, as disclaimer, the rights, interests and liabilities of the cc property of the company, in or in respect of the prop but shall not, except so far as is necessary for the purp the company and the property of the company from lia rights or liabilities of any other person.

(3) The court, before or on granting leave to require such notices to be given to persons interested, a terms as a condition of granting leave, and make such the matter as the court thinks just.

(4) The liquidator shall not be entitled to disclaim under this section in any case where an application in was made to him by any persons interested in the property r decide whether he will or will not disclaim, and the liquid within a period of twenty-eight days after the receipt of or such further period as may be allowed by the court, the applicant that he intends to apply to the court for leave and, in the case of a contract, if the liquidator, application as aforesaid, does not within the said period disclaim the contract, the company shall be de adopted it.

(5) The court may, on the application of any per against the liquidator, entitled to the benefit or subject to a contract made with the company, make an order on contract on such terms as to payment by or to either party for the non-performance of the contract, or otherwise thinks just, and any damages payable under the order person may be proved by him as a debt in the winding up.

(6) The court may, on an application by any pers claims any interest in any disclaimed property or is und not discharged by this Ordinance in respect of any disclaim and on hearing any such persons as it thinks fit, make a vesting of the property in or the delivery of the propert entitled thereto, or to whom it may seem just that the pl be delivered by way of compensation for such liability or a trustee for him, and on such terms as the court thin
any such vesting order being made, shall vest accordingly in the person, without any conveyance or assignment.

Provided that where the property disposed of by the court shall not make a vesting order in respect of the company, whether claiming under the company, whether by demise, including a chargee by way of mortgage, or under-lessee declining to vest the estate and interest of the person liable either personally or in the winding up; or

(a) subject to the same liability which the company would have respect of the property if it were winding up; or

(b) if the court thinks fit, subject to such terms and obligations as if the person at that date,

and in either event (if the case so comprised only the property comprised by demise, including a chargee by way of mortgage, or under-lessee declining to vest the estate and interest of the person liable either personally or in the winding up; or

(7) Any person injured by the operation of this section shall be deemed to be a creditor in respect of the amount of the injury, and may accordingly claim payment of such amount in the winding up.

Restriction of rights of creditor as to case of company being wound up.

(1929 c.23, s.268). 309. (1) Where a creditor has issued a writ for the land of a company or has attached an execution or attachment before the company is subsequently wound up, he shall retain the benefit of the execution or attachment in the winding up of the company.
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(a) where any creditor has had notice of a meeting of the company called at which a resolution for the winding up is to be proposed, the date on which notice was given shall for the purposes of this Ordinance be substituted for the date of commencement of the winding up; and

(b) a person who purchases in good faith the goods of a company on which an execution has been levied shall in all cases acquire them against the liquidator.

(2) For the purposes of this Ordinance—

(a) an execution against goods is completed by a sale or by the making of a charge order under the Charging Orders Ordinance, 1914;

(b) an attachment of a debt is completed by the payment of the debt; and

(c) an execution against land is completed by the appointment of a receiver, or by the making of a charging order under the said section 3.

(3) In this section, “goods” include all chattels, “marshal” includes any officer charged with the execution of other process.

Duties of marshal as to goods taken in execution.

310. (1) Where any goods of a company are taken in execution before the sale thereof or the completion of the execution, or in the receipt or recovery of the full amount of the levy, notice of the same shall be served on the marshal that a provisional liquidator has been appointed, a winding-up order has been made or that a resolution for the winding up has been passed, and the marshal shall, on being so notified, deliver the goods and any money seized or received in respect thereof to the liquidator, but the costs of the execution may be a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.

(2) Where under an execution in respect of a judgment or order for the payment of £200 or more the goods of a company are sold as security for the payment of the debt, the proceeds of the sale shall be applied in payment of the debt; and if any balance remains after payment of the debt, it shall be delivered to the company.
from the proceeds of the sale or the money paid for fourteen days, and if within that time a petition for the winding up of the company is made or a resolution for the voluntary winding up is passed, as the case may be, of a meeting having been called at which a resolution for the voluntary winding up of the company, the marshal shall pay the moneys to the person who shall be entitled to retain it as against other process.

(3) In this section, “goods” includes any officer charged with the execution of any process, “marshall” includes any officer charged with the execution of any other process.

Offences Antecedent to or in Course of Winding Up

311. (1) A person who, being a past or present officer of a company which at the time of the alleged offence is being wound up, supervises the court or voluntarily, or is wound up by the court or subsequently, by voluntary winding up—

(a) does not to the best of his knowledge and truly discover to the liquidators and personal, of the company and for what consideration disposed of any part thereof or been disposed of in the ordinary course of the company; or

(b) does not deliver up to the liquidators such part of the real and personal property of the company as is in his custody or which he is required by law to deliver up; or

(c) does not deliver up to the liquidators books and papers in his custody belonging to the company and which he is required by law to deliver up; or

(d) within twelve months next before the winding up or at any time after the winding up, part of the property of the company.
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or upwards, or conceals any debt due to the company; or

(e) within twelve months next before the commencement of the winding up or at any time thereafter, removes any part of the property of the company of the value of £50 or upwards; or

(f) makes any material omission in any statement of the affairs of the company; or

(g) knowing or believing that a false debt or other asset exists, by any person under the winding up, fails to give such information within a month to inform the liquidator thereof;

(h) after the commencement of the winding up, destroys, mutilates or falsifies, or conceals, destroys, mutilates or falsifies, or removes any book or paper affecting or relating to the property or affairs of the company; or

(i) within twelve months next before the commencement of the winding up or at any time thereafter, destroys, mutilates or falsifies, or conceals, destroys, mutilates or falsifies, any book or paper affecting or relating to the property or affairs of the company; or

(j) within twelve months next before the commencement of the winding up or at any time thereafter, privy to the making of any false entry in, any document affecting or relating to the property or affairs of the company; or

(k) within twelve months next before the commencement of the winding up or at any time thereafter, parts with, alters or makes any omission in, any document affecting or relating to the property or affairs of the company; or

(l) after the commencement of the winding up, meeting of the creditors of the company by fictitious losses or expenses of the company by fictitious losses or expenses
thereafter, by any false report obtained any property for or on credit which the company for; or

(n) within twelve months next before the winding up or at any time pretence that the company obtains on credit, for or on property which the company for; or

(o) within twelve months next before the winding up or at any time or disposes of any property been obtained on credit and such pawning, pledging or way of the business of the company

(p) is guilty of any false repre purpose of obtaining the company or any of them to to the affairs of the company, is guilty of an offence and is, in the case respectively in paragraphs (m), (n) and (o) conviction on indictment to imprisonment; summary conviction to imprisonment for the case of any other offence is liable on conviction to imprisonment for two years, or on imprisonment for twelve months:

Provided that it shall be a good defenc paragraphs (a), (b), (c), (d), (f), (n) and (c) he had no intent to defraud, and to a char (h), (i) and (j), if he proves that he had no affairs of the company or to defeat the law.

(2) Where any person pawns, pledge: in circumstances which amount to an offt subsection (1), a person who takes in property knowing it to be paw in such circumstances as aforesaid is guilt on conviction to be punished in the same p property knowing it to have been obtained to an offence.
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(3) For the purposes of this section, "director" means a person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

Penalty for falsification of books.

312. A director, manager or other officer, or any person, being a director of a company being wound up who destroys, mutilates, alters, falsifies, or privy to any book, paper, or security or makes or is privy to any false or fraudulent entry in any register, book, or document belonging to the company with intent to defraud any person, is guilty of an offence, and liable on conviction to imprisonment for two years.

Frauds by officers of companies which have gone into voluntary winding up.

313. A person who, being at the time of the commission of an offence a director, manager or other officer of a company subsequently ordered to be wound up by the court, or who passes a resolution for voluntary winding up, if

(a) has by false pretences or by means of a false document induced any person to give credit to the company;

(b) with intent to defraud creditors of the company, made or caused to be made any gift of property, charge on, or has caused or connived at, the passing of any execution against, the property of the company;

(c) with intent to defraud creditors of the company, concealed or removed any part of the property of the company since, or within two months before the date on which any unsatisfied judgment or order for payment obtained against the company,

is guilty of an offence and is liable on conviction to imprisonment for two years, or on summary conviction to imprisonment for twelve months.

Liability where proper accounts not kept.

314. (1) If where a company is wound up it is shown at the examination that books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the examination, every director, manager or other officer of the company, knowingly a party to or connived at the default of the company, unless he shows that he was not in a position to prevent the omission, is liable on conviction to imprisonment for twelve months.
which the business of the company was
excusable, guilty of an offence and
indictment to imprisonment for one year,
imprisonment for six months.

(2) For the purposes of this section
shall be deemed not to have been kept if
there have not been kept such books or
exhibit and explain the transactions and finance
or business of the company, including day to day in sufficient detail of all cash
where the trade or business has involved one of the annual stocktakings and (except in way of ordinary retail trade) of all goods enable those goods and those buyers and sellers.

Responsibility of directors for fraudulent

315. (1) If in the course of the winding up it
that any business of the company has been
defraud creditors of the company or credit for any fraudulent purpose, the court, on the receiver, or the liquidator or any creditors of the company, may, if it thinks proper so to do, directors, whether past or present, or knowingly parties to the carrying on aforesaid shall be personally responsible for all or any of the debts or other liability, for all or any of the debts or other as the court may direct.

(2) Where the court makes any such further directions as it thinks proper for that declaration, and in particular may make
liability of any such director under the debt or obligation due from the company, or charge or any interest in any mortgage of the company held by or vested in him, on his behalf, or any person claiming as his director, company or person, and may further order as may be necessary for the charge imposed under this subsection.

For the purpose of this subsection, “assign whom or in whose favour, by the direction or obligation, mortgage or charge was created by or vested in him, or as the court may direct.”
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collection (not including collection by way of
in good faith and without notice of any of the matters
which the declaration is made.

(3) Where any business of a company is carr
intent or for such purpose as is mentioned in sub
director of the company who was knowingly a party
of the business in manner aforesaid, is guilty of an of
on conviction on indictment to imprisonment for one

(4) The court may, in the case of any person in r,
declaration has been made under subsection (1), c
convicted of an offence under subsection (3), order
shall not, without the leave of the court, be a director
whether directly or indirectly, be concerned in or
management of a company for such period, not exce
from the date of the declaration or of the conviction,
be, as may be specified in the order, and any per
contravention of an order made under this subsection
each offence, liable on conviction on indictment to in
two years, or on summary conviction to imprisonmen
and to a fine at level 5 on the standard scale.

(5) For the purposes of this section “director
person in accordance with whose directions or
directors of a company have been accustomed to act.

(6) The provisions of this section shall
notwithstanding that the person concerned may be cri
respect of the matters on the ground of which the de
made, and where the declaration under subsection
declaration shall be deemed to be a final judgment wi
of paragraph (g) of section 3(1) of the Bankruptcy Ord

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

Power of court to assess damages against delinquent

316. (1) If in the course of winding up a company it is
person who has taken part in the formation or pres
company, or any past or present director, manager or l
officer of the company, has misapplied or retained or b
accountable for any money or property of the company,
of any misfeasance or breach of trust in court may, on the application of the liquidator, or of any creditor or contributor of the promoter, director, manager, liquidator, or of any creditor or contributor of the promoter, director, manager, liquidator, or of any creditor or contributo him to repay or restore the money or respectively with interest at such rate and contribute such sum to the assets of the compensation in respect of the misapplication, breach of trust as the court thinks just.

(2) The provisions of this section notwithstanding that the offence is one for criminally liable.

(3) Where in the case of a winding up money is made under this section, the order of the final judgment within the meaning of paragraph 13 of the Bankruptcy Ordinance.

Prosecution of delinquent officers and 317. (1) If it appears to the court in the subject to the supervision of, the court or director, manager or other officer or any be guilty of any offence in relation to criminally liable, the court may, either or of its own either himself to prosecute the offender, or Attorney-General.

(2) If it appears to the liquidator in winding up that any past or present director, or any member, of the company has been guilty of any offence in relation to the company for which he forthwith report the matter to the Attorney-General such information to and facilities for inspecting and taking the possession or under the control of the matter in question, as he may require.

(3) If on any report to the Attorney-General it appears to him that the case is not one it be taken by him, he shall inform the thereupon, subject to the previous sanction, may himself take proceedings against the
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(4) If it appears to the court in the course of a vote that any past or present director, manager or other member, of the company has been guilty as aforementioned, and the report with respect to the matter has been made by the Attorney-General under subsection (2), the court, on application of any person interested in the winding up motion, direct the liquidator to make such a report, being made accordingly the provisions of this section as though the report had been made in pursuance of the subsection (2).

(5) If, where any matter is reported or referred to the Attorney-General under this section, he considers that the case is one in which prosecution ought to be instituted and, further, that it is in the public interest that the proceedings in the prosecution are conducted by him, he shall institute proceedings accordingly and it shall be the duty of the liquidator and of every officer of the company past and present (other than the defendant in the proceedings) to give him all assistance in connection with the proceedings and is reasonably able to give.

For the purposes of this subsection, “agent” in relation to any person employed by the company as auditor, who is or is not an officer of the company.

(6) If any person fails or neglects to give assistance required by subsection (5), the court may, on the application of the Attorney-General, direct that person to comply with the requirements of that subsection, and where any such application is made to a liquidator the court may, unless it appears or neglect to comply was due to the liquidator not having sufficient assets of the company to enable him so to do, order the costs of the application shall be borne by the liquidator.

(7) The court may direct that the whole or any part of the costs and expenses properly incurred by the liquidator in pursuing the proceedings brought by him under this section shall be defrayed out of the funds.

Subject to any direction under this subsection and to the giving or charges on the assets of the company and any other priority is given by section 305, all such costs and expenses payable out of those assets in priority to all other liabilities thereout.
supervision of the court or in a voluntary appointment made in contravention of this section.

(2) A body corporate which acts knowingly and wilfully to conceal, abstract or remove documents of a company guilty of an offence and is liable on summary conviction to a level 3 on the standard scale.

Enforcement of duty of liquidator to deliver notification

319. (1) If any liquidator, who has failed to deliver or make any return, account, give, give, fails to make good the default within such time as is by law required under the application made to the court by any other director of the company or by the Registrar, make an order.

(2) Any such order may provide that the application shall be borne by the liquidator.

(3) Nothing in this section shall affect the operation of any enactment imposing a penalty in respect of any such default.

Notification that a company is in liquidation

320. (1) Where a company is being wound up under the supervision of the court or voluntarily by the liquidator of the company, or a receiver or manager of the company, being a document on which the company appears, shall contain a statement that the company is in liquidation.

(2) If default is made in compliance with this section by the company and every director, manager or any other officer of the company and every liquidator of the company and every person who knowingly and wilfully authorizes...
Companies

guilty of offences and are each liable on summary conviction at level 1 on the standard scale.

Exemption of certain documents from stamp duty on the winding up of companies.

321. (1) In the case of a winding up by the court or voluntary winding up—

(a) every assurance relating solely to freehold property, or to any mortgage, charge, encumbrance on, or, any estate, right or interest in real or personal property, which forms part of the company and which, after the expiration of the assurance, either at law or in equity, is or may become an asset of the company; and

(b) every power of attorney, proxy paper, certificate, affidavit, bond or other instrument relating solely to the property of any company being so wound up, or to any proceeding under a winding up,

shall be exempt from duties chargeable under the enactments to stamp duties.

(2) In this section, “assurance” includes deed, assignment and surrender.

Books of company to be evidence.

322. Where a company is being wound up, all books and papers of the company and of the liquidators shall, as between the company, be prima facie evidence of the truth of any matter purporting to be therein recorded.

Disposal of books and papers of company.

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

(a) in the case of a winding up by, or supervised by, the court in such way as the
Company

and, in the case of a crevency, such way as the committe, as the direct.

(2) After five years from the dissolution, the responsibility shall rest on the company to whom the custody of the books and papers not being on reason of any book or paper not being claiming to be interested therein.

(3) Provision may be made by the court to prevent, for such period (not dissoliation of the company) as the destruction of the books and papers wound up, and for enabling any crevency company to make representations to the

(4) A person who acts in contrave for the purposes of this section is guilt for summary conviction to a fine at level 3

Information as to pending liquidation

(1929 c.23, s.284).

324. (1) If where a company is being wound up, concluded within one year after its wound up, shall, at such intervals as may be prescribed, send to the Registrar a statement containing the prescribed particulars with and position of the liquidation.

(2) Any person stating himself in contributory of the company shall be agent, at all reasonable times, on pay inspect the statement, and to receive therefrom.

(3) A liquidator who fails to compl by an offence and is liable on summary conviction to the standard scale for each day during which, any person untruthfully stating himself in contributory is guilty of a contempt application of the liquidator or of the court accordingly.
Companies

Unclaimed assets to be paid to Companies Liquidators

325. (1) If it appears either from any statement sent under section 324 or otherwise that a liquidator has under his control any money representing unclaimed assets of the company which have remained undistributed for six months after the date of the liquidation, the liquidator shall forthwith pay the money into the Government Bank to the Companies Liquidation Account. The Directors shall furnish him with a certificate of receipt paid and that certificate shall be an effectual discharge respect thereof.

(2) For the purpose of ascertaining and getting in the sums payable into the Government Savings Bank in pursuance of this section, the like powers may be exercised, and by the like powers may be exercisable under section 114 of the Bankruptcy Code, for the purpose of ascertaining and getting in the sums, funds referred to in that section.

(3) Any person claiming to be entitled to any money payable into the Government Savings Bank in pursuance of this section, may apply to the court for payment thereof, and the court may, on the application of the liquidator that the person claiming is entitled, make an order for payment to that person, of the sum due.

Resolutions passed at adjourned meetings of creditors or contributories.

326. Where a resolution is passed at an adjourned meeting of creditors or contributories of a company, the resolution, for the purposes, be treated as having been passed on the date in fact passed, and shall not be deemed to have been passed on an earlier date.

Supplementary Powers of Court.

Meetings to ascertain wishes of creditors or contributories.

327. (1) The court may, as to all matters relating to the conduct of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any sufficient evidence, it thinks fit, for the purpose of ascertaining those opinions, conduct the meetings of the creditors or contributories to be conducted in any manner.
Company

person to act as chairman of any such adjournment to the court.

(2) In the case of creditors, regard being had to each creditor’s debt.

(3) In the case of contributories, the number of votes conferred on each contributor under the articles of the company.

Judicial notice of signature of officers

328. In all proceedings under this Part of these Rules, or under the Act, judicially acting, and all officers, judicially or otherwise, and all duly authorised to act judicially, or employed in enforcing the process of the Act, or under these Rules, shall be deemed to be bound by the official seal or stamp of the office or any person employed therein, to or impressed on any document made necessary by the provisions of this Part, or any official copy of any record or return required by these Rules or under the Act.

Affidavits in Gibraltar, United Kingdom, and Commonweal th, etc.

329. (1) Any affidavit required to be sworn shall be sworn for the purposes of this Part of these Rules, or under the Act, before a judge or person lawfully authorized to take any oath, or any person authorized to act judicially, within the United Kingdom or elsewhere within the Commonwealth or protectorate, or before any person authorized to administer an oath, or to be used for the purposes of the Act, out of the Commonwealth or protectorate, or before any person authorized to administer an oath or to be used for the purposes of the Act, or any other document to be used for the purposes of the Act, or any other document to be used for the purposes of the Act, or any other document to be used for the purposes of the Act.

(2) All courts, judges, justices, officers judicially or otherwise, and all duly authorized to act judicially, or employed in enforcing the provisions of the Act, or under these Rules, shall be deemed to be bound by the official seal or stamp of the office or any person employed therein, to or impressed on any document made necessary by the provisions of this Part, or any official copy of any record or return required by these Rules or under the Act.

Provisions as to Dissolution of Company

Power of court to declare dissolution of company

330. (1) Where a company has been dissolved, and a Court may at any time within two years of the date of the dissolution, on an application being made for the purpose, order the dissolution of the company.
Companies

Court to be interested, make an order, upon such terms of the Court thinks fit, declaring the dissolution to have taken effect as if the company had not been dissolved.

(2) In case of the person on whose order the Registrar for registration an office copy of the order, the Registrar may strike the company off the Register. If the Registrar either-

(a) receives an answer to the effect that the company is carrying on business or in operation; or

(b) does not within one month after send receive any documents in respect of which, with the Registrar, a company is not carrying on business or in operation, he may publish in the Gazette, and send to the company notice that at the expiration of three months from the notice, the name of the company mentioned therein will be shown to the contrary, the company will be dissolved.

(4) If in any case where a company is being liquidated and the Registrar has reasonable cause to believe that the liquidation is incompletely or that the affairs of the company are not wound up, the Registrar may require to be made by the liquidator a return required to be made by the liquidator, and in case of such a period of six consecutive months, the Registrar shall
Company

Gazette and send to the company or the Registrar as is provided in subsection (3).

(5) At the expiration of the time referred to in subsection (4), Registrar may, unless cause to the contrary is shown by the company, strike its name off the register thereof in the Gazette, and on the publication of the notice the company shall be dissolved:

Provided that—

(a) the liability (if any) of every director and member of the company shall be enforced as if the company had not been dissolved;

(b) nothing in this subsection shall prevent the court from directing the liquidator to wind up a company whose name has been struck off the register.

(6) Omitted

(7) A notice to be sent under this section may be addressed to a liquidator, a director, the secretary of business, and a letter or notice to be sent under this section may be addressed to the company. If no office has been registered, to the chairman of the company, or, if there is no director of the company, to each of the persons who subscribed the memorandum of association of the company, or, if no such persons are known, to him at the address mentioned in the memorandum of association of the company.

Restoration of dissolved companies to the register

332. (1) A company or any member of it aggrieved by the company having been struck off the register may, before the expiration of the time referred to in subsection 331 of this Act, apply to the Registrar to restore the company to the register:

(2) An application made under this subsection shall be accompanied by—

(a) an affidavit of—

(i) the applicant's identity and address

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section 267A or 331, or section 267A or section 331, as the case may be.
Companies

(ii) a statement of the facts application is based;

(iii) where the company was—

(aa) licensed under the Fi:
Ordinance, 1989; or

(bb) authorized under the Ban:
1992 or the Financial Ser
1998; or

(cc) licensed or authorized in
a Community requiremen
falling within article (aa) 

evidence of the consent of the competen
the relevant legislation to the restorati
to the register;

(iv) the relief sought; and

(b) the fee prescribed in Schedule 8.

(3) The Registrar may, in his discretion, requi
making an application under subsection (1), give
application (including the facts on which the applica
the relief sought) to such other person as the Regist
being a person who appears to the Registrar to be con
an interest.

(4) On an application being made to the Regist
company, the Registrar shall cause a notice to be pr
Gazette to the effect that the applicant has made an ap
Registrar to restore the company to the register and th
objection is made to the Registrar within 30 days
publication, the Registrar may restore the company to th

(5) The Registrar shall not make a direction unde
restore the name of the company to the register or o
than 30 days after the date of publication of the noti
the purposes of subsection (4).

(6) On receipt of any written objection to the re
company, the Registrar shall forthwith notify the a
receipt of the objection, the terms of the objection, and
of the objector.
(7) On receipt of an application under this section, the Registrar may direct the name of the company to be struck off the register.

(8) A direction given under this section, the Registrar may include such provisions as seem just for placing persons in the same position as nearly as may be as if the company had not been struck off.

(9) On the Registrar restoring a company to the register, shall be deemed to have continued to have continued to have been struck off and the Registrar shall be deemed to have continued to have continued to have placed the company in the same position as nearly as may be as if the company had not been struck off.

(10) Where an application to restore a company to the register has been made under subsection (4), the Registrar may refuse to consider the application and refuse to restore the company.

(11) Where an application to restore a company to the register has been made under subsection (4), the Registrar may refuse to consider the application and refuse to restore the company.

(12) In any proceedings under this section, the court may, on application by the Registrar, order the Registrar to consider the application and order the Registrar to restore the company.

(13) The Registrar shall be entitled to apply to the court under this section for an order directing the court to consider the application and order the Registrar to restore the company.

(14) Any order made by the court shall be subject to any other orders made by the court under this section, and the Registrar shall act accordingly.

(15) After the expiration of the period of time prescribed by the Registrar of the Court on an application for the restoration of a company, the Registrar may refuse to consider the application and refuse to restore the company.
Companies

striking off carrying on business or in operation, or just that the company be restored to the register, or company to be restored to the register, and upon an order being delivered to the Registrar for registration shall be deemed to have continued in existence as if been struck off; and the Registrar of the Supreme Order give such directions and make such provision placing the company and all other persons in the nearly as may be as if the name of the company had off.

Property of dissolved company to be bona vacantia

333. Where a company is dissolved, all property and vested in or held on trust for the company immediately dissolution (including household property but not in held by the company on trust for any other person): without prejudice to any order which may at any time court under sections 330 and 332, be deemed to be it shall accordingly belong to the Crown, and shall vest with in the same manner as other bona vacantia accru

Rules, Fees and Remuneration of Office

Rules of court.

334. Subject to the approval of the Governor the Court make rules of court-

(a) prescribing the fees, percentages and costs in respect of proceedings under this Ordinance to be allowed to the office or other officers of the court; and

(b) generally for carrying into effect the provisions of this Ordinance.

Remuneration of officers.

335. The Governor shall direct whether any and what to be allowed to any person performing any duty under this Ordinance, and may from time to time vary, increase or decrease the remuneration.
PART VI
RECEIVERS AND MANAGERS

Disqualification for appointment as receiver

336. (1) A body corporate shall not be a receiver of the property of a company.

(2) A body corporate which acts as receiver for an offence and is liable on summary conviction to a fine at level 1 on the standard scale.

Power to appoint official receiver as manager

337. Where an application is made to the court on behalf of the debenture holders or creditors of a company which is being wound up by the court, the court may appoint a receiver.

Notification that receiver or manager has been appointed

338. (1) Where a receiver or manager has been appointed, every invoice, order, contract, advertisement, or notice issued by or on behalf of the company, the liquidator of the company, being a receiver or manager, who knowingly and wilfully makes default, are guilty of offences and are liable on summary conviction to a fine at level 1 on the standard scale.

Power of court to fix remuneration on application

339. The court may, on an application by the liquidator of a company, by order fix the remuneration to any person who, under a contract or instrument, has been appointed as receiver or manager, and may from time to time alter any order so made.