

PART VII

ARRANGEMENTS AND RECONSTRUCTIONS

Power to compromise with creditors and members.

210. —(1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them or between the company and its members or any class of them, the Court may, on the application in a summary way of the company or of any creditor or member of the company, or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors or of the members of the company or class of members to be summoned in such manner as the Court directs.

(2) A meeting held pursuant to an order of the Court made under subsection (1) may be adjourned from time to time if the resolution for adjournment is approved by a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members present and voting either in person or by proxy at the meeting.

(3) If a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members present and voting either in person or by proxy at the meeting or the adjourned meeting agrees to any compromise or arrangement, the compromise or arrangement shall, if approved by order of the Court, be binding on all the creditors or class of creditors or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(4) The Court may grant its approval to a compromise or arrangement subject to such alterations or conditions as it thinks just.

(5) An order under subsection (3) shall have no effect until a copy of the order is lodged with the Registrar, and upon being so lodged, the order shall take effect on and from the date of lodgment or such earlier date as the Court may determine and as may be specified in the order.

(6) Subject to subsection (7), a copy of every order made under subsection (3) shall be annexed to every copy of the memorandum of the company issued after the order has been made, or, in the case of a company not having a memorandum, to every copy so issued of the instrument constituting or defining the constitution of the company.

(7) The Court may, by order, exempt a company from compliance with the requirements of subsection (6) or determine the period during which the company shall so comply.

(8) Where any such compromise or arrangement (whether or not for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies) has been proposed, the directors of the company shall —

(a) if a meeting of the members of the company by resolution so directs, instruct such accountants or solicitors or both as are named in the resolution to report on the proposals and forward their report or reports to the directors as soon as possible; and

(b) make such report or reports available at the registered office of the company for inspection by the shareholders and creditors of the company at least 7 days before the date of any meeting ordered by the Court to be summoned as provided in subsection (1).

(9) Every company which makes default in complying with subsection (6) or (8) and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000.

15/84.

Power of Court to restrain proceedings.

(10) Where no order has been made or resolution passed for the winding up of a company and any such compromise or arrangement has been proposed between the company and its creditors or any class of such creditors, the Court may, in addition to any of its powers, on the application in a summary way of the company or of any member or creditor of the company restrain further proceedings in any action or proceeding against the company except by leave of the Court and subject to such terms as the Court imposes.

(11) In this section —

"arrangement" includes a reorganisation of the share capital of a company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both these methods;

"company" means any corporation or society liable to be wound up under this Act.

U.K.s.206.

Aust. s. 181.

Information as to compromise with creditors and members.

211. —(1) Where a meeting is summoned under section 210, there shall —

(a) with every notice summoning the meeting which is sent to a creditor or member, be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors, whether as directors or as members or as creditors of the company or otherwise, and the effect thereon of the compromise or arrangement in so far as it is different from the effect on the like interests of other persons; and

(b) in every notice summoning the meeting which is given by advertisement, be included either such a statement or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement.

(2) Where the compromise or arrangement affects the rights of debenture holders, the statement shall give the like explanation with respect to the trustee for the debenture holders as, under subsection (1), a statement is required to give with respect to the directors.

(3) Where a notice given by advertisement includes a notification that copies of such a statement can be obtained, every creditor or member entitled to attend the meeting shall on making application in the manner indicated by the notice be furnished by the company free of charge with a copy of the statement.

(4) Each director and each trustee for debenture holders shall give notice to the company of such matters relating to himself as may be necessary for the purposes of this section within 7 days of the receipt of a request in writing for information as to such matters.

(5) Where default is made in complying with any requirement of this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months.

15/84.

(6) For the purpose of subsection (5), the liquidator of the company and any trustee for debenture holders shall be deemed to be an officer of the company.

(7) Notwithstanding subsection (5), a person shall not be liable under that subsection if he shows that the default was due to the refusal of any other person, being a director or trustee for debenture holders, to supply the necessary particulars as to his interests.

U.K.s.207.

Aust. s. 182.

Provisions for facilitating reconstruction and amalgamation of companies.

212. —(1) Where an application is made to the Court under this Part for the approval of a compromise or arrangement and it is shown to the Court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (referred to in this section as the transferor company) is to be transferred to another company (referred to in this section as the transferee company), the Court may either by the order approving the compromise or arrangement or by any subsequent order provide for all or any of the following matters:

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

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

(3) Where an order is made under this section, every company in relation to which the order is made shall lodge within 7 days of the making of the order —

- (a) a copy of the order with the Registrar; and
 - (b) where the order relates to land, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land,
- and every company which makes default in complying with this section and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty.

15/84.

(4) No vesting order, referred to in this section, shall have any effect or operation in transferring or otherwise vesting land until the appropriate entries are made with respect to the vesting of that land by the appropriate authority.

(5) In this section —

"liabilities" includes duties;

"property" includes property, rights and powers of every description.

(6) Notwithstanding section 210 (11), "company" in this section does not include any company other than a company as defined in section 4.

U.K.s.208.

Aust. s. 183.

213. (*Repealed by S 675/2001, wef 01/01/2002.*)

214. (*Repealed by S 675/2001, wef 01/01/2002.*)

Power to acquire shares of shareholders dissenting from scheme or contract approved by 90% majority.

215. —(1) Where a scheme or contract involving the transfer of all of the shares or all of the shares in any particular class in a company (referred to in this section as the transferor company) to another company or corporation (referred to in this section as the transferee company) has, within 4 months after the making of the offer in that behalf by the transferee company, been approved as to the shares or as to each class of shares whose transfer is involved by the holders of not less than 90% in nominal value of those shares or of the shares of that class (other than shares already held at the date of the offer by the transferee company), the transferee company may at any time within two months, after the offer has been so approved, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares; and when such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given or within 14 days of a statement being supplied to a dissenting shareholder pursuant to subsection (2) (whichever is the later) the Court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms which, under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee company or if the offer contained two or more alternative sets of terms upon the terms which were specified in the offer as being applicable to dissenting shareholders.

(2) Where a transferee company has given notice to any dissenting shareholder that it desires to acquire his shares, the dissenting shareholder shall be entitled to require the company by a demand in writing served on that company, within one month from the date on which the notice was given, to supply him with a statement in writing of the names and addresses of all other dissenting shareholders as shown in the register of members, and the transferee company shall not be entitled or bound to acquire the shares of the dissenting shareholders until 14 days after the posting of the statement of such names and addresses to the dissenting shareholder.

(3) Where, in pursuance of any such scheme or contract, shares in a company are transferred to another company or its nominee and those shares together with any other shares in the first-mentioned company held by the transferee company at the date of the transfer comprise or include 90% in nominal value of the shares in the first-mentioned company or of any class of those shares, then —

(a) the transferee company shall within one month from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement) give notice of that fact in the prescribed manner to the holders of the

remaining shares or of the remaining shares of that class who have not assented to the scheme or contract; and

(b) any such holder may within 3 months from the giving of the notice to him require the transferee company to acquire the shares in question, and where a shareholder gives notice under paragraph (b) with respect to any shares, the transferee company shall be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to it, or on such other terms as are agreed or as the Court on the application of either the transferee company or the shareholder thinks fit to order.

(4) Where a notice has been given by the transferee company under subsection (1) and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, after the expiration of one month after the date on which the notice has been given or, after 14 days after a statement has been supplied to a dissenting shareholder pursuant to subsection (2) or if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company together with an instrument of transfer executed, on behalf of the shareholder by any person appointed by the transferee company, and on its own behalf by the transferee company, and pay, allot or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.

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

(6) Where any consideration other than cash is held in trust by a company for any person under this section, it may, after the expiration of two years and shall before the expiration of 10 years from the date on which such consideration was allotted or transferred to it, transfer such consideration to the Official Receiver.

(7) The Official Receiver shall sell or dispose of any consideration so received in such manner as he thinks fit and shall deal with the proceeds of such sale or disposal as if it were moneys paid to him in pursuance of section 322.

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

(9) For the purposes of this section, shares held or acquired —

(a) by a nominee on behalf of the transferee company; or

(b) by a related corporation of the transferee company or by a nominee of that related corporation,

shall be treated as held or acquired by the transferee company.

(10) The reference in subsection (1) to shares already held by the transferee company includes a reference to shares which the transferee company has contracted to acquire but that shall not be construed as including shares which are the subject of a contract binding the holder thereof to accept the offer when it is made, being a contract entered into by the

holder for no consideration and under seal or for no consideration other than a promise by the transferee company to make the offer.

(11) Where, during the period within which an offer for the transfer of shares to the transferee company can be approved, the transferee company acquires or contracts to acquire any of the shares whose transfer is involved but otherwise than by virtue of the approval of the offer, then, if —

(a) the consideration for which the shares are acquired or contracted to be acquired (referred to in this subsection as the acquisition consideration) does not at that time exceed the consideration specified in the terms of the offer; or

(b) those terms are subsequently revised so that when the revision is announced the acquisition consideration, at the time referred to in paragraph (a), no longer exceeds the consideration specified in those terms,

the transferee company shall be treated for the purposes of this section as having acquired or contracted to acquire those shares by virtue of the approval of the offer.

U.K.s.209.

Aust. s. 185.

15/84.

Personal remedies in cases of oppression or injustice.

216. —(1) Any member or holder of a debenture of a company or, in the case of a declared company under Part IX, the Minister may apply to the Court for an order under this section on the ground —

(a) that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or holders of debentures including himself or in disregard of his or their interests as members, shareholders or holders of debentures of the company; or

(b) that some act of the company has been done or is threatened or that some resolution of the members, holders of debentures or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the members or holders of debentures (including himself).

(2) If on such application the Court is of the opinion that either of such grounds is established the Court may, with a view to bringing to an end or remedying the matters complained of, make such order as it thinks fit and, without prejudice to the generality of the foregoing, the order may —

(a) direct or prohibit any act or cancel or vary any transaction or resolution;

(b) regulate the conduct of the affairs of the company in future;

(c) authorise civil proceedings to be brought in the name of or on behalf of the company by such person or persons and on such terms as the Court may direct;

(d) provide for the purchase of the shares or debentures of the company by other members or holders of debentures of the company or by the company itself;

(e) in the case of a purchase of shares by the company provide for a reduction accordingly of the company's capital; or

(f) provide that the company be wound up.

15/84.

(3) Where an order that the company be wound up is made pursuant to subsection (2) (f), the provisions of this Act relating to winding up of a company shall, with such

adaptations as are necessary, apply as if the order had been made upon a petition duly presented to the Court by the company.

(4) Where an order under this section makes any alteration in or addition to any company's memorandum or articles, then, notwithstanding anything in any other provision of this Act, but subject to the provisions of the order, the company concerned shall not have power, without the leave of the Court, to make any further alteration in or addition to the memorandum or articles inconsistent with the provisions of the order; but subject to the foregoing provisions of this subsection the alterations or additions made by the order shall be of the same effect as if duly made by resolution of the company.

(5) A copy of any order made under this section shall be lodged by the applicant with the Registrar within 14 days after the making of the order.

(6) Any person who fails to comply with subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

15/84.

(7) This section shall apply to a person who is not a member of a company but to whom shares in the company have been transmitted by operation of law as it applies to members of a company; and references to a member or members shall be construed accordingly.

15/84

13/87.

U.K.s.210.

Aust. s. 186.

22/93.

13/87.

Derivative or representative actions.

216A. —(1) In this section and section 216B —

"company" means a company other than a company that is listed on the securities exchange in Singapore;

"complainant" means —

(a) any member of a company;

(b) the Minister, in the case of a declared company under Part IX; or

(c) any other person who, in the discretion of the Court, is a proper person to make an application under this section.

(2) Subject to subsection (3), a complainant may apply to the Court for leave to bring an action in the name and on behalf of the company or intervene in an action to which the company is a party for the purpose of prosecuting, defending or discontinuing the action on behalf of the company.

(3) No action may be brought and no intervention in an action may be made under subsection (2) unless the Court is satisfied that —

(a) the complainant has given 14 days' notice to the directors of the company of his intention to apply to the Court under subsection (2) if the directors of the company do not bring, diligently prosecute or defend or discontinue the action;

(b) the complainant is acting in good faith; and

(c) it appears to be prima facie in the interests of the company that the action be brought, prosecuted, defended or discontinued.

(4) Where a complainant on an application can establish to the satisfaction of the Court that it is not expedient to give notice as required in subsection (3) (a), the Court may

make such interim order as it thinks fit pending the complainant giving notice as required.

(5) In granting leave under this section, the Court may make such orders or interim orders as it thinks fit in the interests of justice, including (but not limited to) the following:

(a) an order authorising the complainant or any other person to control the conduct of the action;

(b) an order giving directions for the conduct of the action; and

(c) an order requiring the company to pay reasonable legal fees and disbursements incurred by the complainant in connection with the action.

(6) Where an action has been commenced or is to be brought in the subordinate courts, an application for leave under subsection (2) shall be made in a District Court.

22/93.

Evidence of shareholders' approval not decisive — Court approval to discontinue action under section 216A.

216B. —(1) An application made or an action brought or intervened in under section 216A shall not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owned to the company has been or may be approved by the members of the company, but evidence of approval by the members may be taken into account by the Court in making an order under section 216A.

(2) An application made or an action brought or intervened in under section 216A shall not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the Court given upon such terms as the Court thinks fit and, if the Court determines that the interest of any complainant may be substantially affected by such stay, discontinuance, settlement or dismissal, the Court may order any party to the application or action to give notice to the complainant.

(3) In an application made or an action brought or intervened in under section 216A, the Court may at any time order the company to pay to the complainant interim costs, including legal fees and disbursements, but the complainant may be accountable for such interim costs upon final disposition of the application or action.

22/93.

PART VIII

RECEIVERS AND MANAGERS

Disqualification for appointment as receiver.

217. —(1) The following shall not be qualified to be appointed and shall not act as receiver of the property of a company:

(a) a corporation;

(b) an undischarged bankrupt;

(c) a mortgagee of any property of the company, an auditor of the company or a director, secretary or employee of the company or of any corporation which is a mortgagee of the property of the company; and

(d) any person who is neither an approved liquidator nor the Official Receiver.

(2) Nothing in subsection (1) (a) or (d) shall apply to any corporation authorised by any written law to act as receiver of the property of a company.

(3) Nothing in this section shall disqualify a person from acting as receiver of the property of a company if acting under an appointment validly made before 29th December 1967.

§ 258/67.
U.K.ss.366,367.
Aust. s. 187.
15/84.

Liability of receiver.

218. —(1) Any receiver or other authorised person entering into possession of any assets of a company for the purpose of enforcing any charge shall, notwithstanding any agreement to the contrary, but without prejudice to his rights against the company or any other person, be liable for debts incurred by him in the course of the receivership or possession for services rendered, goods purchased or property hired, leased, used or occupied.

(2) Subsection (1) shall not be so construed as to constitute the person entitled to the charge a mortgagee in possession.

Application for directions.

(3) A receiver or manager of the property of a company may apply to the Court for directions in relation to any matter arising in connection with the performance of his functions.

(4) Where a receiver or manager has been appointed to enforce any charge for the benefit of holders of debentures of the company, any such debenture holder may apply to the Court for directions in relation to any matter arising in connection with the performance of the functions of the receiver or manager.

U.K.s.369.
Aust. s. 188.

Power of Court to fix remuneration of receivers or managers.

219. —(1) The Court may, on application by the liquidator of a company, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the company.

(2) The power of the Court shall, where no previous order has been made with respect thereto —

(a) extend to fixing the remuneration for any period before the making of the order or the application therefor;

(b) be exercisable notwithstanding that the receiver or manager has died or ceased to act before the making of the order or the application therefor; and

(c) where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that fixed for that period, extend to requiring him or his personal representatives to account for the excess or such part thereof as may be specified in the order.

(3) The power conferred by subsection (2) (c) shall not be exercised as respects any period before the making of the application for the order unless in the opinion of the Court there are special circumstances making it proper for the power to be so exercised.

(4) The Court may from time to time, on an application made either by the liquidator or by the receiver or manager, vary or amend an order made under this section.

U.K.s.371.
Aust. s. 189.

Appointment of liquidator as receiver.

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

U.K.s.368.
Aust. s. 190.

Notification of appointment of receiver.

221. —(1) If any person obtains an order for the appointment of a receiver or manager of the property of a company or of the property in Singapore of any other corporation, or appoints such a receiver or manager under any powers contained in any instrument, he shall within 7 days after he has obtained the order or made the appointment lodge notice of the fact with the Registrar.

(2) Where any person appointed as receiver or manager of the property of a company or other corporation under the powers contained in any instrument ceases to act as such, he shall within 7 days thereafter lodge with the Registrar notice to that effect.

(3) Every person who makes default in complying with the requirements of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

15/84.
U.K.s.102.
Aust. s. 191.

Statement that receiver appointed.

222. —(1) Where a receiver or manager of the property of a corporation has been appointed, every invoice order for goods or business letter issued by or on behalf of the corporation or the receiver or manager or the liquidator of the corporation, being a document on or in which the name of the corporation appears, shall contain a statement immediately following the name of the corporation that a receiver or manager has been appointed.

(2) If default is made in complying with this section, the corporation and every officer and every liquidator of the corporation and every receiver or manager who knowingly and wilfully authorises or permits the default shall be guilty of an offence.

U.K.s.370.
Aust. s. 192.

Provisions as to information where receiver or manager appointed.

223. —(1) Where a receiver or manager of the property of a company (referred to in this section and in section 224 as the receiver) is appointed —

(a) the receiver shall forthwith send notice to the company of his appointment;

(b) there shall, within 14 days after receipt of the notice, or such longer period as may be allowed by the Court or by the receiver, be made out and submitted to the receiver in accordance with section 224 a statement in the prescribed form as to the affairs of the company; and

(c) the receiver shall within one month after receipt of the statement —

(i) lodge with the Registrar, a copy of the statement and of any comments he sees fit to make thereon;

(ii) send to the company, a copy of any such comments as aforesaid, or if he does not see fit to make any comment, a notice to that effect; and

(iii) where the receiver is appointed by or on behalf of the holders of debentures of the company send to the trustees, if any, for those holders, a copy of the statement and his comments thereon.

(2) Subsection (1) shall not apply in relation to the appointment of a receiver or manager to act with an existing receiver or manager or in place of a receiver or manager dying or ceasing to act, except that, where that subsection applies to a receiver or manager who dies or ceases to act before that subsection has been fully complied with, the references in paragraphs (b) and (c) thereof to the receiver shall (subject to subsection (3)) include references to his successor and to any continuing receiver or manager.

(3) Where the company is being wound up, this section and section 224 shall apply notwithstanding that the receiver or manager and the liquidator are the same person, but with any necessary modifications arising from that fact.

(4) If any person makes default in complying with any of the requirements of this section, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty.

15/84.

U.K.s.372.

Aust. s. 193.

Special provisions as to statement submitted to receiver.

224.—(1) The statement as to the affairs of a company required by section 223 to be submitted to the receiver shall show as at the date of the receiver's appointment the particulars of the company's assets, debts and liabilities, the names and addresses of its creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be prescribed.

(2) The statement shall be submitted by, and be verified by affidavit of, one or more of the persons who were at the date of the receiver's appointment the directors of the company and by the person who was at that date the secretary of the company, or by such of the persons, hereafter in this subsection mentioned, as the receiver may require to submit and verify the statement, that is to say —

(a) persons who are or have been officers;

(b) persons who have taken part in the formation of the company at any time within one year before the date of the receiver's appointment;

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

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

(3) Any person making the statement and affidavit shall be allowed and shall be paid by the receiver (or his successor) out of his receipts, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the receiver (or his successor) may consider reasonable, subject to an appeal to the Court.

(4) If any person makes default in complying with the requirements of this section, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

15/84.

(5) References in this section to the receiver's successor shall include a continuing receiver or manager.

U.K.s.373.

Aust. s. 194.

Lodging of accounts of receivers and managers.

225. —(1) Every receiver or manager of the property of a company or of the property in Singapore of any other corporation shall —

(a) within one month after the expiration of the period of 6 months from the date of his appointment and of every subsequent period of 6 months and within one month after he ceases to act as receiver or manager, lodge with the Registrar a detailed account in the prescribed form showing —

(i) his receipts and his payments during each period of 6 months, or, where he ceases to act as receiver or manager, during the period from the end of the period to which the last preceding account related or from the date of his appointment, as the case may be, up to the date of his so ceasing;

(ii) the aggregate amount of those receipts and payments during all preceding periods since his appointment; and

(iii) where he has been appointed pursuant to the powers contained in any instrument, the amount owing under that instrument at the time of his appointment, in the case of the first account, and at the expiration of every 6 months after his appointment and, where he has ceased to act as receiver or manager at the date of his so ceasing, and his estimate of the total value of all assets of the company or other corporation which are subject to that instrument; and

(b) before lodging such account, verify by affidavit all accounts and statements referred to therein.

(2) The Registrar may, of his own motion or on the application of the company or other corporation or a creditor, cause the accounts to be audited by an approved company auditor appointed by the Registrar and for the purpose of the audit the receiver or manager shall furnish the auditor with such vouchers and information as he requires and the auditor may at any time require the production of and inspect any books of account kept by the receiver or manager or any document or other records relating thereto.

(3) Where the Registrar causes the accounts to be audited upon the request of the company or other corporation or a creditor, he may require the applicant to give security for the payment of the cost of the audit.

(4) The costs of an audit under subsection (2) shall be fixed by the Registrar and be paid by the receiver unless the Registrar otherwise determines.

(5) Every receiver or manager who makes default in complying with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

15/84.

U.K.s.374.

Aust. s. 195.

Payments of certain debts out of assets subject to floating charge in priority to claims under charge.

226. —(1) Where a receiver is appointed on behalf of the holders of any debentures of a company secured by a floating charge or possession is taken by or on behalf of debenture holders of any property comprised in or subject to a floating charge, then, if the company is not at the time in the course of being wound up, debts which in every winding up are preferential debts and are due by way of wages, salary, retrenchment benefit or ex gratia payment, vacation leave or superannuation or provident fund payments and any amount which in a winding up is payable in pursuance of section 328 (4) or (6) shall be paid out of any assets coming to the hands of the receiver or other person taking possession in priority to any claim for principal or interest in respect of the debentures and shall be paid in the same order of priority as is prescribed by that section in respect of those debts and amounts.

(1A) In subsection (1), “floating charge” means a charge which, as created, was a floating charge.

22/93.

(2) For the purposes of subsection (1), the references in section 328 (1) (b), (c), (d) and (e) to the commencement of the winding up shall be read as a reference to the date of the appointment of the receiver or of possession being taken as aforesaid, as the case requires.

(3) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

U.K.s.94.
Aust. s. 196.
22/93.

Enforcement of duty of receiver, etc., to make returns.

227. —(1) If any receiver or manager of the property of a company who has made default in making or lodging any return, account or other document or in giving any notice required by law fails to make good the default within 14 days after the service on him by any member or creditor of the company or trustee for debenture holders of a notice requiring him to do so, the Court may, on an application made for the purpose by the person who has given the notice, make an order directing him to make good the default within such time as is specified in the order.

(2) If it appears that any receiver or manager of the property of a company has misapplied or retained or become liable or accountable for any money or property of the company or been guilty of any misfeasance or breach of trust or duty in relation to the company, the Court may on the application of any creditor or contributory or of the liquidator examine into the conduct of such receiver or manager and compel him to repay or restore the money or property or any part thereof with interest at such rate as the Court thinks just or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust or duty as the Court thinks just.

(3) This section shall have effect notwithstanding that the offence is one for which the offender is criminally liable.

U.K.s.375.
Aust. s. 197.

PART VIIIA

JUDICIAL MANAGEMENT

Application to Court for a company to be placed under judicial management and for appointment of a judicial manager 227A.

227A. Where a company or where a creditor or creditors of the company consider that —

- (a) the company is or will be unable to pay its debts; and
- (b) there is a reasonable probability of rehabilitating the company or of preserving all or part of its business as a going concern or that otherwise the interests of creditors would be better served than by resorting to a winding up,

an application may be made to the Court under section 227B for an order that the company should be placed under the judicial management of a judicial manager.

13/87.

Power of Court to make a judicial management order and appoint a judicial manager.

227B. —(1) Where a company or its directors (pursuant to a resolution of its members or the board of directors) or a creditor or creditors (including any contingent or prospective creditor or creditors or all or any of those parties, together or separately), pursuant to section 227A, makes an application, by way of petition, for an order that the company should be placed under the judicial management of a judicial manager, the Court may make a judicial management order in relation to the company if, and only if, —

- (a) it is satisfied that the company is or will be unable to pay its debts; and
- (b) it considers that the making of the order would be likely to achieve one or more of the following purposes, namely:
 - (i) the survival of the company, or the whole or part of its undertaking as a going concern;
 - (ii) the approval under section 210 of a compromise or arrangement between the company and any such persons as are mentioned in that section;
 - (iii) a more advantageous realisation of the company's assets would be effected than on a winding up.

(2) Any judicial management order made under subsection (1) shall direct that during the period in which the order is in force the affairs, business and property of the company shall be managed by a judicial manager appointed for the purpose by the Court; and such an order shall specify the purpose or purposes for whose achievement the order is made.

(3)

(a) In any application for a judicial management order under subsection (1), the applicant shall nominate a person who is an approved company auditor, who is not the auditor of the company, to act as a judicial manager.

(b) The Court may reject the nomination of the applicant and appoint another person in his stead.

(c) Where a nomination is made by the company, a majority in number and value of the creditors (including contingent or prospective creditors) may be heard in opposition to the nomination and the Court may, if satisfied as to the value of the creditors' claims and as to the grounds of opposition, invite the creditors to nominate a person in his stead and, if it sees fit, adopt their nomination.

(d) Nothing in this subsection shall prevent the Minister from himself nominating a person to act as a judicial manager if he considers that the public interest so requires and in such a case the Minister may be heard in support of his nomination and for this purpose may be represented.

(e) Notwithstanding paragraph (a), where a person is appointed by the Court or nominated by the Minister to act as a judicial manager that person need not be an approved company auditor.

(4) When a petition is presented to the Court, notice of the petition —

(a) shall be published in the *Gazette* and in an English and Chinese local daily newspaper and a copy thereof sent to the Registrar; and

(b) shall be given —

(i) to the company, in a case where a creditor is the petitioner; and

(ii) to any person who has appointed or is or may be entitled to appoint a receiver and manager of the whole (or substantially the whole) of a company's property under the terms of any debentures of a company secured by a floating charge or by a floating charge and one or more fixed charges. In the case of any such floating charge created by an instrument before 15th May 1987, it shall be deemed to contain a power to appoint a receiver and manager in the event that an application under this section is made for the appointment of a judicial manager with the result that the holder of that floating charge shall, in accordance with this paragraph, be given notice of the petition.

S 137/87.

(5) Subject to subsection (10), the Court shall dismiss a petition if it is satisfied that —

(a) a receiver and manager referred to in subsection (4) has been or will be appointed; or

(b) the making of the order is opposed by a person who has appointed or is entitled to appoint such a receiver and manager.

(6) On hearing the petition, the Court may dismiss the petition or adjourn the hearing conditionally or unconditionally or make an interim order or any other order that it thinks fit.

(7) A judicial management order shall not be made in relation to a company —

(a) after the company has gone into liquidation;

(b) where the company is a bank licensed under the Banking Act or is a finance company licensed under the Finance Companies Act; or

Cap. 19.

Cap. 108.

(c) where the company is an insurance company registered under the Insurance Act.

Cap. 142.

(8) A judicial management order shall, unless it is otherwise discharged, remain in force for a period of 180 days from the date of the making of the order but the Court may, on application of a judicial manager, increase this period subject to such terms as the Court may impose.

(9) The costs and expenses of any unsuccessful petition made under this section shall, unless the Court otherwise orders, be borne by the petitioner and, if the Court considers that the petition is frivolous or vexatious, it may make such orders, as it thinks just and equitable, to redress any injustice that may have resulted. (10) Nothing in this section shall preclude a Court —

- (a) from making a judicial management order and appointing a judicial manager if it considers the public interest so requires; or
 - (b) from appointing, after presentation of a petition and on the application of the petitioner, an interim judicial manager, pending the making of a judicial management order, and such interim judicial manager may, if the Court sees fit, be the person nominated in the petition. The interim judicial manager so appointed may exercise such functions, powers and duties as the Court may specify in the order.
- (11) For the purposes of this Part, “property” in relation to a company includes money, goods, things in action and every description of property, whether real or personal, and whether in Singapore or elsewhere, and also obligations and every description of interest whether present or future or vested or contingent arising out of, or incidental to, property.
- (12) The definition in section 254 (2) of “inability to pay debts” shall apply for the purposes of this section as it applies for the purposes of Division 2 Part X.

13/87.

Effect of application for a judicial management order.

227C. During the period beginning with the presentation of a petition for a judicial management order and ending with the making of such an order or the dismissal of the petition —

- (a) no resolution shall be passed or order made for the winding up of the company;
- (b) no steps shall be taken to enforce any charge on or security over the company’s property or to repossess any goods in the company’s possession under any hire-purchase agreement, chattels leasing agreement or retention of title agreement, except with leave of the Court and subject to such terms as the Court may impose; and
- (c) no other proceedings and no execution or other legal process shall be commenced or continued and no distress may be levied against the company or its property except with leave of the Court and subject to such terms as the Court may impose.

13/87.

Effect of judicial management order.

227D. —(1) On the making of a judicial management order —

- (a) any receiver or receiver and manager shall vacate office; and
 - (b) any petition for the winding up of the company shall be dismissed.
- (2) Where any receiver and manager has vacated office under subsection (1) (a) —
- (a) his remuneration and any expenses properly incurred by him; and
 - (b) any indemnity to which he is entitled out of the assets of the company,
- shall be charged on and, subject to subsection (4), paid out of any property which was in his custody or under his control at the time in priority to any security held by the person by or on whose behalf he was appointed.
- (3) Neither a receiver nor a receiver and manager of a company who vacates office under subsection (1) (a) shall be required on or after so vacating office to take steps to comply with any duty imposed on him by section 226.
- (4) During the period for which a judicial management order is in force —
- (a) no resolution shall be passed or order made for the winding up of the company;
 - (b) no receiver and manager of the kind referred to in section 227B (4) of the company shall be appointed;
 - (c) no other proceedings and no execution or other legal process shall be commenced or continued and no distress may be levied against the company or its property except with

the consent of the judicial manager or with leave of the Court and (where the Court gives leave) subject to such terms as the Court may impose; and

(d) no steps shall be taken to enforce security over the company's property or to repossess any goods under any hire-purchase agreement, chattels leasing agreement or retention of title agreement except with the consent of the judicial manager or with leave of the Court and (where the Court gives leave) subject to such terms as the Court may impose.

13/87.

Notification of judicial management order.

227E. —(1) Every invoice, order for goods or business letter which, at a time when a judicial management order is in force in relation to a company, is issued by or on behalf of the company or the judicial manager, being a document on or in which the company's name appears, shall contain a statement that the affairs, business and property of the company are being managed by the judicial manager.

(2) If default is made in complying with this section, the company, the judicial manager and any officer of the company who knowingly and wilfully authorises or permits the default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 and also to a default penalty.

13/87.

Vacancy in appointment of judicial manager.

227F. If a vacancy occurs by death, resignation or otherwise in the office of a judicial manager of a company, the Court may, on the application of the company or any creditor or creditors of the company or the Minister, by order, fill the vacancy.

13/87.

General powers and duties of judicial manager.

227G. —(1) On the making of a judicial management order, the judicial manager shall take into his custody or under his control all the property to which the company is or appears to be entitled.

(2) During the period for which a judicial management order is in force, all powers conferred and duties imposed on the directors by this Act or by the memorandum or articles of association of the company shall be exercised and performed by the judicial manager and not by the directors; but nothing in this subsection shall require the judicial manager to call any meetings of the company.

(3) The judicial manager of a company —

(a) shall do all such things as may be necessary for the management of the affairs, business and property of the company; and

(b) shall do all such other things as the Court may by order sanction.

(4) Without prejudice to the generality of subsection (3) (a), the powers conferred by that subsection shall include the powers specified in the Eleventh Schedule.

(5) The judicial manager may apply to the Court for directions in relation to any particular matter arising in connection with the carrying out of his functions.

(6) Nothing in this section shall be taken as authorising the judicial manager of a company to make any payment towards discharging any debt to which the company was subject on the making of the judicial management order unless —

(a) the making of the payment is sanctioned by the Court or the payment is made in pursuance of a compromise or arrangement so sanctioned; or

(b) the payment is made towards discharging sums secured by a security or payable under a hire-purchase agreement, chattels leasing agreement or retention of title agreement to which section 227H (2), (5) and (6) applies.

(7) The judicial manager of a company may, if he thinks fit, at any time summon a meeting of the company's creditors; and the judicial manager shall summon such a meeting if he is directed to do so by the Court.

(8) Any alteration in the company's memorandum or articles made by virtue of an order under subsection (3) (b) is of the same effect as if duly made by resolution of the company, and the provisions of this Act apply to the memorandum or articles as so altered accordingly.

(9) An office copy of an order under subsection (3) (b) sanctioning the alteration of the company's memorandum or articles shall, within 14 days from the making of the order, be delivered by the judicial manager to the Registrar.

(10) A person dealing with the judicial manager of a company in good faith and for value shall not be concerned to inquire whether the judicial manager is acting within his powers.

13/87.

Power to deal with charged property, etc.

227H. —(1) The judicial manager of a company may dispose of or otherwise exercise his powers in relation to any property of the company which is subject to a security to which this subsection applies as if the property were not subject to the security.

(2) Where, on application by the judicial manager of a company, the Court is satisfied that the disposal (with or without other assets) —

(a) of any property of the company subject to a security to which this subsection applies; or

(b) of any goods under a hire-purchase agreement, chattels leasing agreement or retention of title agreement,

would be likely to promote one or more of the purposes specified in the judicial management order, the Court may by order authorise the judicial manager to dispose of the property as if it were not subject to the security or to dispose of the goods as if all rights of the owner under the hire-purchase agreement, chattels leasing agreement or retention of title agreement were vested in the company.

(3) Subsection (1) applies to any security which, as created, was a floating charge and subsection (2) applies to any other security.

(4) Where any property is disposed of under subsection (1), the holder of the security shall have the same priority in respect of any property of the company directly or indirectly representing the property disposed of as he would have had in respect of the property subject to the security.

(5) It shall be a condition of an order made under subsection (2) that the net proceeds of the disposal shall be applied towards discharging the sums secured by the security or payable under the hire-purchase agreement, chattels leasing agreement or retention of title agreement and where the net proceeds of the disposal are less than the sums secured by the security or payable under any of those agreements, the holder of the security or the owner of the goods, as the case may be, may prove on a winding up for any balance due to him.

(6) Where a condition imposed in pursuance of subsection (5) relates to two or more securities, that condition shall require the net proceeds of the disposal to be applied towards discharging the sums secured by those securities in the order of their priorities.

(7)

(a) A copy of an order made under subsection (2) shall, within 14 days after the making of the order, be sent by the judicial manager to the Registrar.

(b) Seven days notice of an application by the judicial manager to the Court to dispose of property subject to a security under subsection (2) shall be given to the holder of the security or to the owner of the goods which are subject to any of the agreements mentioned in that subsection and the holder or the owner, as the case may be, may oppose the disposal of the property.

(8) If the judicial manager, without reasonable excuse, fails to comply with subsection (7), he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 and also to a default penalty.

(9) For the purposes of sections 227C and 227D and this section —

"chattels leasing agreement" means an agreement for the bailment of goods which is capable of subsisting for more than 3 months;

"hire-purchase agreement" means a hire-purchase agreement as defined in section 2 of the Hire-Purchase Act;

Cap. 125.

"retention of title agreement" means an agreement for the sale of goods to a company, being an agreement —

(a) which does not constitute a charge on the goods; but

(b) under which, if the seller is not paid and the company is wound up, the seller will have priority over all other creditors of the company as respects the goods or any property representing the goods.

(10) Nothing in this section shall be regarded as prejudicing an application to the Court under section 227R.

13/87.

Agency and liability for contracts.

227I. —(1) The judicial manager of a company —

(a) shall be deemed to be the agent of the company;

(b) shall be personally liable on any contract, including any contract of employment, entered into or adopted by him in the carrying out of his functions (except in so far as the contract or a notice under subsection (2) otherwise provides); and

(c) shall be entitled to be indemnified in respect of that liability, and to have his remuneration and expenses defrayed, out of the property of the company which is in his custody or under his control in priority to all other debts except those subject to a security to which section 227H (2) applies.

(2) Where a contract entered into by the company is adopted by the judicial manager, he may, by notice given to the other party, disclaim any personal liability under that contract.

(3) For the purpose of this section, the judicial manager is not to be taken to have adopted a contract entered into by the company by reason of anything done or omitted to be done within 28 days after the making of the judicial management order. (4) Nothing in this section shall —

(4)

- (a) limit the right of a judicial manager to seek an indemnity from any other person in respect of contracts entered into by him that are approved by the Court; or
- (b) make the judicial manager personally liable for payment of rent under leases held by the company at the time of his appointment.

13/87.

Vacation of office and release.

227J. —(1) The judicial manager of a company may at any time be removed from office by order of the Court and may, with leave of the Court and subject to such conditions as the Court may impose, resign his office by giving notice of his resignation to the Court.

(2) The judicial manager of a company shall vacate office if —

(a) being an approved company auditor at the time of his appointment, he ceases to be approved as such; or

(b) the judicial management order is discharged.

(3) Where at any time a person ceases to be a judicial manager of a company whether by virtue of this section or by reason of his death —

(a) any sums payable in respect of any debts or liabilities incurred while he was a judicial manager under contracts entered into by him in the carrying out of his functions; and

(b) any remuneration and expenses properly incurred by him,

shall be charged on and paid out of the property of the company in his custody or under his control in priority to all other debts, except those subject to a security to which section 227H (2) applies.

(4) Where a person ceases to be a judicial manager of a company, he shall, from such time as the Court may determine, be released from any liability in respect of any act or omission by him in the management of the company or otherwise in relation to his conduct as a judicial manager but nothing in this section shall relieve him of any of the liabilities referred to in section 227Q (4).

13/87.

Information to be given by and to judicial manager.

227K. —(1) Where a judicial management order has been made, the judicial manager shall —

(a) forthwith send to the Registrar a copy of the order;

(b) forthwith send to the company and publish a notice of the order in the *Gazette* and in an English and Chinese local daily newspaper; and

(c) within 28 days after the making of the order, unless the Court otherwise directs, send such a notice to all creditors of the company (so far as he is aware of the addresses), and the Registrar shall enter the copy of the order in his records of the company.

(2) A statement as to the affairs of the company shall be made out and submitted to the judicial manager in accordance with section 227L within 21 days after receipt by the company of the notice of the judicial management order. Any longer period allowed by the judicial manager shall not exceed two months.

(3) If a person, without reasonable excuse, fails to comply with this section he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 and also to a default penalty.

13/87.

Company's statement of affairs.

227L. —(1) The company's statement of affairs required by section 227K to be submitted to the judicial manager shall show as at the date of the judicial management order —

- (a) the particulars of the company's assets, debts and liabilities;
- (b) the names and addresses of its creditors;
- (c) the securities held by them respectively;
- (d) the dates when the securities were respectively given; and
- (e) such further or other information as may be prescribed.

(2) The statement shall be submitted by, and be verified by affidavit of one or more of the persons who are, at the date of the judicial management order, the directors and by the person who is at that date the secretary of the company, or by such of the persons mentioned in subsection (3) as the judicial manager may require to submit and verify the statement.

(3) The persons referred to in subsection (2) are —

- (a) those who are or have been officers of the company;
- (b) those who have taken part in the company's formation at any time within one year before the date of the judicial management order;
- (c) those who are in the company's employment, or have been in its employment, and are in the judicial manager's opinion capable of giving the information required, and in this subsection "employment" includes employment under a contract for services.

(4) If a person, without reasonable excuse, fails to comply with this section, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 and also to a default penalty.

(5) Any statement of affairs prepared under this section may be used in evidence against any person making or concurring in making it.

(6) A copy of the company's statement of affairs shall forthwith be delivered by the judicial manager to the Registrar.

(7) Any person making the statement and affidavit shall be allowed and shall be paid by the judicial manager, out of his receipts, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the judicial manager may consider reasonable, subject to an appeal to the Court.

13/87.

Statement of proposals.

227M. —(1) Where a judicial management order has been made, the judicial manager shall, within 60 days (or such longer period as the Court may allow) after the making of the order —

- (a) send to the Registrar and (so far as he is aware of their addresses) to all creditors a statement of his proposals for achieving one or more of the purposes mentioned in section 227B (1) (b) for whose achievement the order was made; and
- (b) lay a copy of the statement before a meeting of the company's creditors summoned for the purpose on not less than 14 days' notice.

(2) The judicial manager shall also, within 60 days (or such longer period as the Court may allow) after the making of the order, either —

- (a) send a copy of the statement (so far as he is aware of their addresses) to all members of the company; or

(b) publish a notice in an English and Chinese local daily newspaper stating an address to which members of the company should write for copies of the statement to be sent to them free of charge.

13/87.

Consideration of proposals by creditors' meeting.

227N. —(1) A meeting of creditors, summoned under section 227M, shall decide whether to approve the judicial manager's proposals.

(2) At such meeting the majority in number and value of creditors, present and voting either in person or by proxy whose claims have been accepted by the judicial manager, may approve the proposals with modifications but shall not do so unless the judicial manager consents to each modification.

(3) The judicial manager shall report the result of the meeting (which shall, subject to subsection (2), be conducted in accordance with regulations) to the Court and shall give notice of that result to the Registrar and to such other persons or bodies as the Court may approve.

(4) If a report is given to the Court under subsection (3) that the meeting has declined to approve the judicial manager's proposals (with or without modifications), the Court may by order discharge the judicial management order and make such consequential provision as it thinks fit, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit. A copy of any order of Court made under this subsection shall be published in an English and Chinese local daily newspaper.

(5) Where the judicial management order is discharged, the judicial manager shall forthwith send to the Registrar a copy of the order effecting the discharge.

(6) If the judicial manager, without reasonable excuse, fails to comply with subsection (5) he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 and also to a default penalty.

13/87.

Committee of creditors.

227O. —(1) Where a meeting of creditors summoned under section 227M has approved the judicial manager's proposals (with or without modifications), the meeting may, if it thinks fit, establish a committee to exercise the functions conferred on it under subsection (2).

(2) If such a committee is established, the committee may require the judicial manager to attend before it and furnish it with such information relating to the carrying out by him of his functions as it may reasonably require.

13/87.

Duty to manage company's affairs, etc., in accordance with approved proposals.

227P. —(1) Where the judicial manager's proposals have been approved by a meeting of creditors summoned under section 227M, then, subject to any order under section 227R, it shall be the duty of the judicial manager to manage the affairs, business and property of the company in accordance with the proposals as from time to time revised by him.

(2) Where the judicial manager proposes to make substantial revisions of his proposals as so approved, he shall —

(a) send to all creditors of the company (so far as he is aware of their addresses) a statement of his proposed revisions; and

(b) lay a copy of the statement before a meeting of the company's creditors summoned for the purpose on not less than 14 days' notice, and shall not make the proposed revisions unless they are approved by the majority in number and value of creditors present and voting in person or by proxy at the meeting whose claims have been accepted by the judicial manager.

(3) The judicial manager shall also either —

(a) send a copy of the statement (so far as he is aware of their addresses) to all members of the company; or

(b) publish a notice in an English and Chinese local daily newspaper stating an address to which members of the company should write for copies of the statement to be sent to them free of charge.

(4) A meeting of creditors summoned under subsection (2) (which shall, subject to subsection (2) and this subsection, be conducted in accordance with the regulations) may approve the proposed revisions with modifications but shall not do so unless the judicial manager consents to each modification.

(5) After the conclusion of a meeting summoned under subsection (2), the judicial manager shall give notice of the result of the meeting to the Registrar or to such other persons or bodies as the Court may approve.

13/87.

Duty to apply for discharge of judicial management order.

227Q. —(1) The judicial manager of a company shall apply to the Court for the judicial management order to be discharged if it appears to him that the purpose or each of the purposes specified in the order either has been achieved or is incapable of achievement.

(2) On the hearing of an application under this section, the Court may by order discharge the judicial management order and make such consequential provision as it thinks fit, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order it thinks fit.

(3) Where the judicial management order is discharged, the judicial manager shall forthwith send to the Registrar a copy of the order effecting the discharge.

(4) Where a judicial management order has been discharged under this Part or where a person ceases to be a judicial manager pursuant to section 227J, the judicial manager may apply to the Court for his release and the Court may, if it thinks fit, make an order releasing him from liability in respect of any act or omission by him in the management of the company or otherwise in relation to his conduct as judicial manager but any such release shall not relieve him from liability for any misapplication or retention of money or property of the company or for which he has become accountable or from any law to which he would be subject in respect of negligence, default, misfeasance, breach of trust or breach of duty in relation to the company.

13/87.

Protection of interests of creditors and members.

227R. —(1) At any time when a judicial management order is in force, a creditor or member of the company may apply to the Court by petition for an order under this section on the ground —

(a) that the company's affairs, business and property are being or have been managed by the judicial manager in a manner which is or was unfairly prejudicial to the interests of its creditors or members generally or of some part of its creditors or members (including at

least himself) or of a single creditor that represents one quarter in value of the claims against the company; or

(b) that any actual or proposed act or omission of the judicial manager is or would be so prejudicial.

(2) On a petition for an order under this section, the Court may make such order as it thinks fit for giving relief in respect of the matters complained of, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit.

(3) Subject to subsection (4), an order under this section may —

(a) regulate the future management by the judicial manager of the company's affairs, business and property;

(b) require the judicial manager to refrain from doing or continuing an act complained of by the petitioner or to do an act which the petitioner has complained he has omitted to do;

(c) require the summoning of a meeting of creditors or members for the purpose of considering such matters as the Court may direct;

(d) discharge the judicial management order and make such consequential provision as it thinks fit.

(4) An order under this section shall not prejudice or prevent the implementation of any composition or scheme approved under section 210.

(5) Where the judicial management order is discharged, the judicial manager shall forthwith send to the Registrar a copy of the order effecting the discharge.

(6) If the judicial manager, without reasonable excuse, fails to comply with subsection (5) he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 and also to a default penalty.

13/87.

Trade union representation on behalf of members who are creditors and employees of a company.

227S. —(1) Where employees of a company are creditors, by reason that wages or salary are payable to them whether by way of allowance or reimbursement under contracts of employment or any award or agreement regulating conditions of employment or otherwise, and where the employees are members of a trade union that is recognised by the company under the Industrial Relations Act, it shall be sufficient compliance by the judicial manager with sections 227K, 227M and 227N if the notice, statement of proposals or revised proposals referred to therein are sent to the trade union representing the employees.

(2) A trade union to which subsection (1) applies shall be entitled to represent any such employees at a meeting of creditors summoned under section 227M or, with leave of the Court, to petition the Court under section 227R on their behalf or may make

representations to the judicial manager on behalf of those employees in respect of —

(a) any matter connected with or arising from the continuation or termination of their contracts of employment under section 227I; or

(b) any matter relating to any award made by the Industrial Arbitration Court under the Industrial Relations Act or any collective agreement certified under that Act that affects those employees.

Cap. 136.

Cap. 136.

13/87.

Undue preference in case of judicial management.

227T. —(1) Subject to this Act and such modifications as may be prescribed, a settlement, a conveyance or transfer of property, a charge on property, a payment made or an obligation incurred by a company which if it had been made or incurred by a natural person would in the event of his becoming a bankrupt be void as against the Official Assignee under section 98, 99 or 103 of the Bankruptcy Act 1995 (read with sections 100, 101 and 102 thereof) shall, in the event of the company being placed under judicial management, be void as against the judicial manager.

15/95.

(2) For the purposes of subsection (1), the date that corresponds with the date of the petition in bankruptcy in the case of a natural person and the date on which a person is adjudged bankrupt is the date on which a petition for a judicial management order is made.

13/87.

Delivery and seizure of property.

227U. —(1) Where any of the persons mentioned in subsection (2) has in his possession or control any property, books, papers or records to which the company appears to be entitled, the Court may require that person forthwith (or within such period as the Court may direct) to pay, deliver, convey, surrender or transfer the property, books, papers or records to the judicial manager.

(2) The persons referred to in subsection (1) are —

- (a) a contributory or member of the company;
- (b) any person who has previously held office as receiver or receiver and manager of the company's property; and
- (c) any trustee for, or any banker, agent or officer of, the company.

(3) Where —

- (a) the judicial manager seizes or disposes of any property which is not the property of the company; and
 - (b) at the time of seizure or disposal the judicial manager believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the Court or otherwise) to seize or dispose of that property,
- the judicial manager shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the negligence of the judicial manager and the judicial manager shall have a lien on the property, or the proceeds of its sale, for such expenses as were incurred in connection with the seizure or disposal.

13/87.

Duty to co-operate with judicial manager.

227V. —(1) Each of the persons mentioned in subsection (2) shall —

- (a) give to the judicial manager such information concerning the company and its promotion, formation, business, dealings, affairs or property as the judicial manager may at any time after the date of the judicial management order reasonably require; and
- (b) attend on the judicial manager at such times as the judicial manager may reasonably require.

(2) The persons referred to in subsection (1) are —

- (a) those who are or have at any time been officers of the company;
- (b) those who have taken part in the formation of the company at any time within one year before the date of the judicial management order; and
- (c) those who are in the employment of the company, or have been in its employment, and are, in the judicial manager's opinion, capable of giving information which he requires.

(3) If a person, without reasonable excuse, fails to comply with any obligation imposed by this section, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 and also to a default penalty.

13/87.

Inquiry into company's dealings, etc.

227W. —(1) The Court may, on the application of the judicial manager, summon to appear before it —

- (a) any officer of the company;
- (b) any person known or suspected to have in his possession any property of the company or supposed to be indebted to the company; or
- (c) any person whom the Court thinks capable of giving information concerning the promotion, formation, business, dealings, affairs or property of the company, and the Court may require any such person as is mentioned in paragraphs (a) to (c) to submit an affidavit to the Court containing an account of his dealings with the company or to produce any books, papers or other records in his possession or under his control relating to the company or the matters mentioned in paragraph (c).

(2) In a case where a person, without reasonable excuse, fails to appear before the Court when he is summoned to do so under this section or there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding his appearance before the Court under this section, the Court may, for the purpose of bringing that person and anything in his possession before the Court, cause a warrant to be issued to a police officer —

- (a) for the arrest of that person; and
- (b) for the seizure of any books, papers, records, money or goods in that person's possession,

and may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held until that person is brought before the Court under the warrant or until such other time as the Court may order.

(3) Any person who appears or is brought before the Court under this section may be examined on oath, either orally or by interrogatories, concerning the company or the matters mentioned in subsection (1) (c).

(4) If it appears to the Court, on consideration of any evidence obtained under this section, that any person has in his possession any property of the company, the Court may, on the application of the judicial manager, order that person to deliver the whole or any part of the property to the judicial manager at such time, in such manner and on such terms as the Court thinks fit.

(5) If it appears to the Court, on consideration of any evidence obtained under this section, that any person is indebted to the company, the Court may, on the application of the judicial manager, after examining that person on the matter, order that person to pay to the judicial manager, at such time and in such manner as the Court may direct, the

whole or any part of the amount due, whether in full discharge of the debt or otherwise, as the Court thinks fit.

(6) The Court may, if it thinks fit, order that any person, who if within Singapore would be summoned to appear before it under this section, to be examined in a place outside Singapore.

13/87.

Application of certain provisions in Parts VII and X to a company under judicial management.

227X. At any time when a judicial management order is in force in relation to a company under judicial management —

(a) section 210 shall apply as if for subsections (1) and (3) thereof there were substituted the following:

(1) Where a compromise or arrangement is proposed between a company and its creditors, the Court may on the application of the judicial manager order a meeting of creditors to be summoned in such manner as the Court directs.

(3) If three-fourths in value of the creditors present and voting either in person or by proxy at the meeting agree to any compromise or arrangement, the compromise or arrangement, if approved by the Court, is binding on all the creditors and on the judicial manager.

; and

(b) sections 337, 340, 341 and 342 shall apply as if the company under judicial management were a company being wound up and the judicial manager were the liquidator, but this shall be without prejudice to the power of the Court to order that any other section in Part X shall apply to a company under judicial management as if applied in a winding up by the Court and any reference to the liquidator shall be taken as a reference to the judicial manager and any reference to a contributory as a reference to a member of the company.

13/87.

PART IX

INVESTIGATIONS

Application of this Part.

228. This Part does not authorise any investigation into the insurance business of a company or into the business of a banking corporation, unless specifically provided for in this Part.

Aust.s.168(1).
62/70.

Interpretation.

229. In this Part, unless the contrary intention appears —

"company" includes a foreign company which is a declared company;

"declared company" means a company or foreign company which the Minister has by order declared to be a company to which this Part applies;

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

(a) a director, banker, solicitor or auditor of the corporation;

- (b) a person who at any time —
 - (i) has been a person referred to in paragraph (a); or
 - (ii) has been otherwise employed or appointed by the corporation:
- (c) a person who —
 - (i) has in his possession any property of the corporation;
 - (ii) is indebted to the corporation; or
 - (iii) is capable of giving information concerning the promotion, formation, trading, dealings, affairs or property of the corporation; and
- (d) where there are reasonable grounds for suspecting or believing that a person is a person referred to in paragraph (c) — that person.

Aust.ss.168(2),172(1).

62/70

13/87.

Power to declare company or foreign company.

230. The Minister may by order declare that a company or foreign company is a company to which this Part applies if he is satisfied —

- (a) that a prima facie case has been established that, for the protection of the public, the holders of interests to which Division 6 of Part IV applies or the shareholders or creditors of the company or foreign company, it is desirable that the affairs of the company or foreign company should be investigated under this Part;
- (b) that it is in the public interest that allegations of fraud, misfeasance or other misconduct by persons who are or have been concerned with the formation or management of the company or foreign company should be investigated under this Part;
- (c) that for any other reason it is in the public interest that the affairs of the company or foreign company should be investigated under this Part; or
- (d) in the case of a foreign company, that the appropriate authority of another country has requested that a declaration be made pursuant to this section in respect of the company.

Aust.s.172(2),(3).

13/87.

Appointment of inspectors for declared companies.

231. —(1) Where a company or foreign company has been declared to be a company to which this Part applies, the Minister shall appoint one or more inspectors to investigate the affairs of that company, and to report his opinion thereon to the Minister.

(2) An inspector appointed under subsection (1) may, at any time in the course of his investigation, without the necessity of making an interim report, inform the Minister of matters coming to his knowledge as a result of the investigation which tend to show that an offence has been committed; and the Minister may thereafter take such steps as he may consider fit.

19/75.

(3) The expenses of and incidental to an investigation of a declared company shall be defrayed in the first instance out of moneys provided by Parliament.

(4) Where the Minister is of the opinion that the whole or any part of the expenses of and incidental to the investigation should be paid by the company or by any person who is convicted on a prosecution brought under section 233 (3) or who is ordered to pay damages or restore property in proceedings under section 233 (4) the Minister may by notification in the *Gazette* direct that the expenses be so paid.

13/87.

(5) A notification under subsection (4) may specify the time or times and the manner in which the payment of the expenses shall be made.

(6) Where a notification has been published by the Minister under subsection (5) the persons named in the notification to the extent therein specified shall be liable to reimburse the Minister in respect of such expenses.

(7) Action to recover any such expenses may be taken in the name of the Government in any court of competent jurisdiction.

(8) Where a notification under subsection (4) has been published for the payment of the whole or part of the expenses by a company and the company is in liquidation or subsequently goes into liquidation the expenses so ordered to be paid by the company shall be deemed to be part of the costs and expenses of the winding up for the purposes of section 328 (1) (a).

(9) The report of the inspector may if he thinks fit, and shall, if the Minister so directs, include a recommendation as to the terms of the notification which he thinks proper in the light of his investigation to be given by the Minister under subsection (4).

Aust.s.173.

Investigation of affairs of company by inspectors at direction of Minister.

232. —(1) The Minister may appoint one or more inspectors to investigate the affairs of a company or such aspects of the affairs of a company as are specified in the instrument of appointment and to report thereon in such manner as the Minister directs —

(a) in the case of a company having a share capital, on the application of —

(i) not less than 200 members or of members holding not less than 10% of the shares issued; or

(ii) holders of debentures holding not less than 20% in nominal value of debentures issued;

(b) in the case of a company not having a share capital, on the application of not less than 20% in number of the persons on the company's register of members; or

(c) in any case on the application of a company in pursuance of a special resolution.

13/87.

(2) An application under this section shall be supported by such evidence as the Minister requires as to the reasons for the application and the motives of the applicants in requiring the investigation, and the Minister may before appointing an inspector require the applicants to give security for such amount as he thinks fit for payment of the cost of the investigation.

Aust.s.169.

13/87.

As to reports of inspectors.

233. —(1) An inspector appointed by the Minister may, and if so directed by the Minister shall, make interim reports to the Minister and on the conclusion of the investigation the inspector shall report his opinion on or in relation to the affairs that he has been appointed to investigate together with the facts upon which his opinion is based to the Minister, and a copy of the report shall, subject to subsection (1B), be forwarded by the Minister to the registered office of the company, and a further copy shall, subject to that subsection (1B), at the request of the applicants be delivered to them.

(1A) Subject to subsections (1B) and (1C), the Minister shall give a copy of a report made under this Part to each person to whom in the opinion of the Minister the report ought to be given by reason that it relates to the affairs of that person to a material extent.

13/87.

(1B) The Minister is not bound to furnish a company, an applicant or any other person with a copy of the report or any part thereof if he is of the opinion that there is good reason for not divulging the contents of the report or any part thereof.

13/87.

(1C) Subject to subsection (1D), the Minister shall not give a copy of a report made under this Part to a person under subsection (1A) if he believes that legal proceedings that have been or, in his opinion, might be instituted, might be unduly prejudiced by giving the report to that person.

13/87.

(1D) A court before which legal proceedings are brought against a person for or in respect of matters dealt with in a report under this Part may order that a copy of the report or part thereof shall be given to that person.

13/87.

(2) The Minister may, if he is of the opinion that it is necessary in the public interest to do so, cause the report to be printed and published but shall refrain from so doing if the Attorney-General has certified in writing that publication of the report would be prejudicial to the administration of justice.

(3) If from any reports of an inspector appointed by the Minister it appears to the Minister that the case is one in which a prosecution ought to be instituted he shall cause a prosecution to be instituted accordingly and all officers and agents of the company (other than the defendant in the proceedings) shall on being required by the Minister to do so give all assistance in connection with the prosecution which they are reasonably able to give.

(4) If from any report of an inspector appointed by the Minister it appears to the Minister that proceedings ought in the public interest to be brought by any company, dealt with by the report, for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation of that company or in the management of its affairs or for the recovery of any property of the company which has been misapplied or wrongfully retained he may himself bring proceedings for that purpose in the name of the company.

Aust.s.169.

13/87.

234. *[Repealed by Act 13 of 1987].*

Investigation of affairs of related corporation.

235. Where an inspector thinks it necessary for the purposes of the investigation of the affairs of a company to investigate the affairs of a corporation which is or has at any relevant time been a corporation deemed to be related by virtue of section 6 to the company, he may, with the consent in writing of the Minister, investigate the affairs of that corporation.

62/70.

Procedure and powers of inspector.

236. —(1) If an inspector appointed to investigate the affairs of a company thinks it

necessary for the purposes of the investigation to investigate also the affairs of any other corporation which is or has at any relevant time been deemed to be or to have been related to that company by virtue of section 6, he shall have power to do so, and he shall report on the affairs of the other corporation so far as he thinks the results of the investigation thereof are relevant to the investigation of the affairs of the company.

(2) Every officer and agent of a corporation the affairs of which are being investigated under this Part shall, if required by an inspector appointed under this Part, produce to the inspector all books and documents in his custody or power and shall give to the inspector all assistance in connection with the investigation which he is reasonably able to give.

(3) An inspector may, by notice in the prescribed form, require any officer or agent of any corporation whose affairs are being investigated pursuant to this Part to appear for examination on oath or affirmation (which he is hereby authorised to administer) in relation to its business; and the notice may require the production of all books and documents in the custody or under the control of that officer or agent.

(4) An inspector who, pursuant to this section, requires the production of all books and documents in the custody or power or under the control of an officer or agent of any corporation whose affairs are being investigated under or pursuant to this Part —

(a) may take possession of all such books and documents;

(b) may retain all such books and documents for such time as he considers to be necessary for the purpose of the investigation; and

(c) shall permit such corporation to have access at all reasonable times to all such books and documents so long as they are in his possession.

(4A) If an inspector has reasonable grounds for believing that a director or past director of the company or of a corporation which is or has at any time been deemed to be or to have been related to that company by virtue of section 6 whose affairs the inspector is investigating maintains or has maintained a bank account of any description, whether alone or jointly with another person and whether in Singapore or elsewhere, into or out of which there has been paid any money which has been in any way connected with any act or omission or series of acts or omissions, which on the part of that director constituted misconduct (whether fraudulent or not towards that company or that related company or its members) an inspector may require the director to produce to him all documents in the director's possession or under his control relating to that bank account.

13/87.

(5) If any officer or agent of any corporation, the affairs of which are being investigated pursuant to this Part, fails to comply with the requirements of any notice issued under subsection (3) or fails or refuses to answer any question which is put to him by an inspector with respect to the affairs of the corporation or that officer or agent is a director or past director to whom subsection (4A) applies, if he fails to comply with a requirement of an inspector under that subsection, the inspector may certify the failure or refusal under his hand to the Court, which may thereupon inquire into the case and, after hearing any witnesses against or on behalf of the alleged offender and any statement offered in defence, punish the offender in like manner as if he had been guilty of contempt of the Court.

13/87.

(6) No person, who is or has formerly been an officer or agent of a corporation the affairs of which are being investigated under this Part, shall be entitled to refuse to answer any

question which is relevant or material to the investigation on the ground that his answer might tend to incriminate him but if he claims that the answer to any question might incriminate him and but for this subsection he would have been entitled to refuse to answer the question, the answer to the question shall not be used in any subsequent criminal proceedings except in the case of a charge against him for making a false statement in answer to that question.

(7) Subject to subsection (6), any person shall be entitled to refuse to answer a question on the ground that the answer might tend to incriminate him.

(8) An inspector may cause notes of any examination under this Part to be recorded and reduced to writing and to be read to or by and signed by the person examined and any such signed notes may except in the case of any answer which that person would not have been required to give but for subsection (6) thereafter be used in evidence in any legal proceedings against that person.

Aust.s.171(1) — (7).
13/87.

As to costs of investigations.

237. —(1) The expenses of and incidental to an investigation by an inspector appointed pursuant to sections 232 and 243 (including the costs of any proceedings brought by the Minister in the name of the company), shall be paid by the company investigated or if the Minister so directs by the applicants or in part by the company and in part by the applicants.

(2) Notwithstanding subsection (1) —

(a) if the company fails to pay the whole or any part of the sum which it is so liable to pay, the applicants shall make good the deficiency up to the amount by which the security given by them under this Part exceeds the amount, if any, which they have under subsection (1) been directed by the Minister to pay; and

(b) any balance of the expenses not paid either by the company or the applicants shall be paid out of moneys provided by Parliament.

Aust.s.171(8),(9).

Report of inspector to be admissible in evidence.

238. A copy of the report of any inspector appointed under this Part, certified as correct by the Minister, shall be admissible in any legal proceedings as evidence of the opinion of the inspector and of the facts upon which his opinion is based in relation to any matter contained in the report.

Aust.s.171(10).

Powers of inspector in relation to a declared company.

239. —(1) An inspector of a declared company may employ such persons as he considers necessary and in writing authorise any such person to do anything he could himself do, except to examine on oath or affirmation.

(2) Any officer or agent of a corporation who —

(a) refuses or fails to produce any book or document to any person who produces a written authority of an inspector given pursuant to subsection (1); or

(b) refuses or fails to answer any question lawfully put to him by any such person, shall be liable to be dealt with in the same manner as is provided in section 236 (5) for refusing or failing to comply with the request of an inspector.

Aust.s.173.

Suspension of actions and proceedings by declared company.

240. —(1) On and after the appointment of an inspector in respect of any declared company until the expiration of 3 months after the inspector has presented his final report to the Minister, no action or proceeding shall without the consent of the Minister (which may be given generally or in a particular case and which may be given subject to such conditions and limitations as he thinks fit) be commenced or proceeded with in any Court

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- (a) by the company upon or in respect of any contract, bill of exchange or promissory note; or
 - (b) by the holder or any other person in respect of any bill of exchange or promissory note made, drawn or accepted by or issued, transferred, negotiated or endorsed by or to the company unless the holder or other person —
 - (i) at the time of the negotiation, transfer, issue, endorsement or delivery thereof to him gave therefor adequate pecuniary consideration; and
 - (ii) was not at the time of the negotiation, transfer, issue, endorsement or delivery thereof to him or at any time within 3 years before that time a member, officer, agent or employee of the company or the wife or husband of any member, officer, agent or employee of the company.
- (2) Any action or proceeding which is commenced or proceeded with in contravention of this section shall be void and of no effect.

Aust.s.174.

Winding up of company.

241. —(1) An application to the Court —

- (a) in the case of a company, for the winding up of the company; or
 - (b) in the case of a foreign company, for the winding up so far as the assets of the company in Singapore are concerned of the affairs of the company, may be made on petition of the Minister at any time after a report has been made in respect of a declared company by an inspector whereupon the provisions of this Act shall with such adaptations as are necessary, apply as if —
 - (c) in the case of a company, a winding up petition had been duly presented to the Court by the company; and
 - (d) in the case of a foreign company, a petition for an order for the affairs of the company so far as assets in Singapore are concerned to be wound up in Singapore had been duly presented to the Court by a creditor or contributory of the company upon the liquidation of the company in the place in which it is incorporated.
- (2) Where, in the case of a foreign company, on any petition under subsection (1) an order is made for the affairs of the company so far as assets in Singapore are concerned to be wound up in Singapore the company shall not carry on business or establish or keep a place of business in Singapore.

Aust.s.175.

Penalties.

242. —(1) Any person who, with intent to defeat the purposes of this Part or to delay or obstruct the carrying out of an investigation under this Part —

- (a) destroys, conceals or alters any book, document or record of or relating to a declared company; or

(b) sends or attempts to send or conspires with any other person to send out of Singapore any such book, document or record or any property of any description belonging to or in the disposition or under the control of such a company,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years.

(2) If in any prosecution for an offence under this section it is proved that the person charged with the offence —

(a) has destroyed, concealed or altered any book, document or record of or relating to the company; or

(b) has sent or attempted to send or conspired to send out of Singapore any book, document or record or any property of any description belonging to or in the disposition or under the control of the company,

the onus of proving that in so doing he had not acted with intent to defeat the purposes of this Part or to delay or obstruct the carrying out of an investigation under this Part shall lie on him.

Aust.s.176.

15/84.

Appointment and powers of inspectors to investigate ownership of company.

243. —(1) Where it appears to the Minister that there is good reason to do so, he may appoint one or more inspectors to investigate and report on the membership of any corporation, whether or not it is a declared company, and otherwise with respect to the corporation for the purpose of determining the true persons who are or have been financially interested in the success or failure, real or apparent, of the corporation or able to control or materially to influence the policy of the corporation.

(2) The appointment of an inspector under this section may define the scope of his investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular may limit the investigation to matters connected with particular shares or debentures.

(3) Where an application for an investigation under this section with respect to particular shares or debentures of a corporation is made to the Minister by members of the corporation, and the number of applicants or the amount of the shares held by them is not less than that required for an application for the appointment of an inspector under section 232, the Minister shall appoint an inspector to conduct the investigation unless he is satisfied that the application is vexatious, and the inspector's appointment shall not exclude from the scope of his investigation any matter which the application seeks to have included therein, except in so far as the Minister is satisfied that it is unreasonable for that matter to be investigated.

(4) Subject to the terms of an inspector's appointment, his powers shall extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of his investigation.

(5) For the purposes of any investigation under this section, the provisions of this Part with respect to the investigation of declared companies shall apply with the necessary modifications of references to the affairs of the corporation or to those of any other corporation, but so that —

(a) this Part shall apply in relation to all persons who are or have been, or whom the inspector has reasonable cause to believe to be or to have been financially interested in the success or failure or the apparent success or failure of the corporation or any other corporation the membership of which is investigated with that of the corporation, or able to control or materially to influence the policy thereof, including persons concerned only on behalf of others, as they apply in relation to officers and agents of the corporation or of the other corporation, as the case may be; and

(b) the Minister shall not be bound to furnish the corporation or any other person with a copy of any report by an inspector appointed under this section or with a complete copy thereof if he is of opinion that there is good reason for not divulging the contents of the report or of parts thereof, but may, if he thinks fit, cause to be kept by the Registrar a copy of the report or, as the case may be, the parts of the report, as respects which he is not of that opinion.

13/87.

U.K.s.172.

Aust. s. 177.

Power to require information as to persons interested in shares or debentures.

244. —(1) Where it appears to the Minister that there is good reason to investigate the ownership of any shares in or debentures of a corporation and that it is unnecessary to appoint an inspector for the purpose, he may require any person whom he has reasonable cause to believe to have or to be able to obtain any information as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures.

(2) For the purposes of this section, a person shall be deemed to have an interest in a share or debenture if he has any right to acquire or dispose of the share or debenture or any interest therein or to vote in respect thereof, or if his consent is necessary for the exercise of any of the rights of other persons interested therein, or if other persons interested therein can be required or are accustomed to exercise their rights in accordance with his instructions.

62/70.

(3) Any person who fails to give any information required of him under this section, or who in giving any such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

62/70

15/84.

(4) This section shall apply to a banking corporation but nothing therein shall, subject to the provisions of the Banking Act, require disclosure by a banking corporation to the Minister of any information as to the affairs of any of its customers other than the corporation of which it is the banker.

62/70.

Cap. 19.

(5) The Minister may by notification in the *Gazette* delegate his powers under this section either generally or in any particular case to a committee of a securities exchange that has

been approved by him under any written law relating to the securities industry or to any body, panel or committee that has been established to advise him on matters connected with the securities industry.

49/73.

(6) A committee of a securities exchange or any body, panel or committee referred to in subsection (5) in the discharge of its powers under that subsection shall keep the Minister informed of any information obtained under this section.

49/73.

(7) Notwithstanding any delegation of his powers under this section, the Minister may exercise any of the powers conferred upon him under this section.

49/73.

62/70

13/87.

Power to impose restrictions on shares or debentures.

245. —(1) Where in connection with an investigation under section 243 or 244 it appears to the Minister that there is difficulty in finding out the relevant facts about any shares, whether issued or to be issued, the Minister may by order published in the *Gazette* direct that the shares are until further order subject to the following restrictions:

(a) that any transfer of those shares or any exercise of the right to acquire or dispose of those shares or in the case of unissued shares any transfer of the right to be issued therewith and any issue thereof, shall be void;

(b) that no voting rights shall be exercisable in respect of those shares;

(c) that no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder thereof; and

(d) that, except in a liquidation, no payment shall be made of any sums due from the company on those shares, whether in respect of capital or otherwise.

(2) Any order of the Minister directing that shares shall cease to be subject to the restrictions referred to in subsection (1) which is expressed to be made with a view to permitting a transfer of those shares may continue the application of subsection (1) (c) and (d), in relation to those shares, either in whole or in part, so far as those paragraphs relate to any right acquired or offer made before the transfer.

(3) Where any shares are for the time being subject to any restrictions referred to in subsection (1), any person who —

(a) having knowledge that the shares are subject to any such restrictions, exercises or purports to exercise any right to dispose of those shares, or of any right to be issued with the shares;

(b) votes in respect of those shares, whether as holder or proxy, or appoints a proxy to vote in respect thereof; or

(c) being the holder of any of those shares, fails to notify the fact of their being subject to those restrictions to any person whom he does not know to be aware of that fact but does know to be entitled, apart from those restrictions, to vote in respect of those shares whether as holder or proxy,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

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(4) Where shares in any company are issued in contravention of the restrictions imposed pursuant to subsection (1) the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months.

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(5) A prosecution shall not be instituted under this section except with the consent of the Public Prosecutor.

(6) This section shall apply in relation to debentures as it applies in relation to shares.

U.K.s.174.

Aust. s. 179.

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Inspectors appointed in other countries.

246. Where —

(a) under a corresponding law of another country an inspector has been appointed to investigate the affairs of a corporation; and

(b) the Minister is of the opinion that, in connection with that investigation, it is expedient that an investigation be made in Singapore,

the Minister may by notice declare that the inspector so appointed shall have the same powers and duties in Singapore in relation to the investigation as if the corporation were a declared company and the inspector had been appointed under section 231 and thereupon the inspector shall have those powers and duties.

Aust.s.180.

PART X

WINDING UP

Division 1 — Preliminary

Modes of winding up.

247. The winding up of a company may be either —

(a) by the Court; or

(b) voluntary.

Aust.s.216(1).

Application of this Division.

248. Unless inconsistent with the context or subject-matter, the provisions of this Act with respect to winding up shall apply to the winding up of a company in either of those modes.

Aust.s.216(2).

Government bound by certain provisions.

249. The provisions of this Part relating to the remedies against the property of a company, the priorities of debts and the effect of an arrangement with creditors shall bind the Government.

Aust.s.217.

Liability as contributories of present and past members.

250. —(1) On a company being wound up, every present and past member shall be liable

to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding up and for the adjustments of the rights of the contributories among themselves, subject to subsection (2) and the following qualifications:

- (a) a past member shall not be liable to contribute if he has ceased to be a member for one year or more before the commencement of the winding up;
- (b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;
- (c) a past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;
- (d) in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;
- (e) in the case of a company limited by guarantee, no contribution shall, subject to subsection (4), be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;
- (f) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted or whereby the funds of the company are alone made liable in respect of the policy or contract;
- (g) a sum due to any member in his character of a member by way of dividends, profits or otherwise shall not be a debt of the company payable to that member in a case of competition between himself and any other creditor not a member, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

U.K.s.212.

Aust. s. 218.

Unlimited liability of directors.

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

(3) Notwithstanding anything in subsection (2) —

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

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

Nature of liability of contributory.

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

U.K.s.214.
Aust. s. 219.

Contributories in case of death of member.

252. —(1) If a contributory dies, either before or after he has been placed on the list of contributories, his personal representatives shall be liable in due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly, and if they make default in paying any money ordered to be paid by them proceedings may be taken for administering the estate of the deceased contributory and for compelling payment thereof of the money due.

Contributories in case of bankruptcy of member.

(2) If a contributory becomes bankrupt or assigns his estate for the benefit of his creditors, either before or after he has been placed on the list of contributories —

U.K.s.216.

(a) his trustee shall represent him for all the purposes of the winding up and shall be a contributory accordingly; and

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

U.K.s.215.
Aust. s. 220.

Division 2 — Winding up by Court

Subdivision (1) — General

Application for winding up.

253. —(1) A company, whether or not it is being wound up voluntarily, may be wound up under an order of the Court on the petition —

(a) of the company;

(b) of any creditor, including a contingent or prospective creditor, of the company;

(c) of a contributory or any person who is the personal representative of a deceased contributory or the Official Assignee of the estate of a bankrupt contributory;

(d) of the liquidator;

(e) of the Minister pursuant to section 241 or on the ground specified in section 254 (1)

(d) or (l);

(f) of the judicial manager appointed pursuant to Part VIIIA;

(g) in the case of a company which is carrying on or has carried on banking business, of the Minister charged with the responsibility for finance; or

(h) of the Minister on the ground specified in section 254 (1) (m),

or of any two or more of those parties.

(2) Notwithstanding anything in subsection (1) —

(a) a person referred to in subsection (1) (c) may not present a petition on any of the grounds specified in section 254 (1) (a), (b), (c), (e) or (i), unless —

- (i) the number of members of the company, not being a company the whole of the issued shares of which are held by a holding company, is reduced below two; or
- (ii) the shares in respect of which the contributory was a contributory or some of them were originally allotted to the contributory, or have been held by him and registered in his name for at least 6 months during the 18 months before the presentation of the petition or have devolved on him through the death or bankruptcy of a former holder;
- (b) a petition shall not, if the ground of the petition is default in lodging the statutory report or in holding the statutory meeting, be presented by any person except a contributory or the Minister nor before the expiration of 14 days after the last day on which the meeting ought to have been held;
- (c) the Court shall not hear the petition if presented by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and a prima facie case for winding up has been established to the satisfaction of the Court; and
- (d) the Court shall not, where a company is being wound up voluntarily, make a winding up order unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories.

Aust.s.221.
49/73
15/84
13/87.

Circumstances in which company may be wound up by Court.

254. —(1) The Court may order the winding up if —

- (a) the company has by special resolution resolved that it be wound up by the Court;
- (b) default is made by the company in lodging the statutory report or in holding the statutory meeting;
- (c) the company does not commence business within a year from its incorporation or suspends its business for a whole year;
- (d) the number of members is reduced, in the case of a company other than a company the whole of the issued shares in which are held by a holding company, below two;
- (e) the company is unable to pay its debts;
- (f) the directors have acted in the affairs of the company in their own interests rather than in the interests of the members as a whole, or in any other manner whatever which appears to be unfair or unjust to other members;
- (g) an inspector appointed under Part IX has reported that he is of opinion —
 - (i) that the company cannot pay its debts and should be wound up; or
 - (ii) that it is in the interests of the public or of the shareholders or of the creditors that the company should be wound up;
- (h) when the period, if any, fixed for the duration of the company by the memorandum or articles expires or the event, if any, happens on the occurrence of which the memorandum or articles provide that the company is to be dissolved;
- (i) the Court is of opinion that it is just and equitable that the company be wound up;
- (j) the company has held a licence under any written law relating to banking, and that licence has been revoked or has expired and has not been renewed;
- (k) the company has carried on banking business in Singapore in contravention of the provisions of any written law relating to banking;

(l) the company has carried on multi-level marketing or pyramid selling in contravention of any written law that prohibits multi-level marketing or pyramid selling; or
(m) the company is being used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore or against national security or interest.
Definition of inability to pay debts.

(2) A company shall be deemed to be unable to pay its debts if —

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(a) a creditor by assignment or otherwise to whom the company is indebted in a sum exceeding \$10,000 then due has served on the company by leaving at the registered office a demand under his hand or under the hand of his agent thereunto lawfully authorised requiring the company to pay the sum so due, and the company has for 3 weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor;

(b) execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(c) it is proved to the satisfaction of the Court that the company is unable to pay its debts; and in determining whether a company is unable to pay its debts the Court shall take into account the contingent and prospective liabilities of the company.

(3) For the purpose of subsection (1) (m), a certificate issued by the Minister charged with the responsibility for internal security stating that he is satisfied that the company referred to in the certificate is being used for purposes against national security or interest shall be conclusive evidence that the company is being used for such purposes.

(4) Upon the presentation of a petition by the Minister under section 253 (1) (h) for the winding up of a company under subsection (1) (m) on the ground that it is being used for purposes against national security or interest, the Court, upon the application of the Minister, may, pending the hearing of the petition or the making of a winding up order, make —

(a) an order restraining the company or its directors, manager, officers or employees from doing any act or from carrying out any activity as may be specified in the order; and

(b) such other interim orders as the Court thinks fit.

(5) Any person who acts in contravention of an order made by the Court under subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

U.K.ss.222,223.

Aust. s. 222.

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Commencement of winding up.

255. —(1) Where before the presentation of the petition 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 shall be deemed to have commenced at the time of the presentation of the petition for the winding up.

U.K.s.229.

Payment of preliminary costs, etc.

256. —(1) The persons, other than the company itself or the liquidator thereof, on whose petition any winding up order is made, shall at their own cost prosecute all proceedings in the winding up until a liquidator has been appointed under this Part.

(2) The liquidator shall, unless the Court orders otherwise, reimburse the petitioner out of the assets of the company the taxed costs incurred by the petitioner in any such proceedings.

(3) Where the company has no assets or has insufficient assets, and in the opinion of the Minister any fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since the formation thereof, the taxed costs or so much of them as is not so reimbursed may, with the approval in writing of the Minister, to an extent specified by the Minister but not in any case exceeding \$3,000, be reimbursed to the petitioner out of moneys provided by Parliament for the purpose.

As to costs when order made on petition of company or liquidator.

(4) Where any winding up order is made upon the petition of the company or the liquidator thereof, the costs incurred shall, subject to any order of the Court, be paid out of assets of the company in like manner as if they were the costs of any other petitioner.

Aust.s.224.

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Powers of Court on hearing petition.

257. —(1) On hearing a winding up petition, the Court may dismiss it with or without costs or adjourn the hearing conditionally or unconditionally or make any interim or other order that it thinks fit, but the Court shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets or in the case of a petition by a contributory that there will be no assets available for distribution amongst the contributories.

(2) The Court may on the petition coming on for hearing or at any time on the application of the petitioner, the company, or any person who has given notice that he intends to appear on the hearing of the petition —

(a) direct that any notices be given or any steps taken before or after the hearing of the petition;

(b) dispense with any notices being given or steps being taken which are required by this Act, or by the rules made thereunder, or by any prior order of the Court;

(c) direct that oral evidence be taken on the petition or any matter relating thereto;

(d) direct a speedy hearing or trial of the petition or any issue or matter;

(e) allow the petition to be amended or withdrawn; and

(f) give such directions as to the proceedings as the Court thinks fit.

(3) Where the petition is presented on the ground of default in lodging the statutory report or in holding the statutory meeting, the Court may, instead of making a winding up order, direct that the statutory report shall be lodged or that a meeting shall be held and may order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.

U.K.s.225.

Aust. s. 225.

Power to stay or restrain proceedings against company.

258. 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, where any action or proceeding against the company is pending, apply to the Court to stay or restrain further proceedings in the action or proceeding, and the Court may stay or restrain the proceedings accordingly on such terms as it thinks fit.

U.K.s.226.

Aust. s. 226.

Avoidance of dispositions of property, etc.

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

U.K.s.227.

Aust. s. 227.

Avoidance of certain attachments, etc.

260. Any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding up by the Court shall be void.

U.K.s.228.

Aust. s. 228.

Petition to be lis pendens.

261. Any petition for winding up a company shall constitute a lis pendens within the meaning of any law relating to the effect of a lis pendens upon purchasers or mortgagees.

Aust.s.229.

Copy of order to be lodged, etc.

262. —(1) Within 7 days after the making of a winding up order, the petitioner shall lodge with the Registrar notice of —

- (a) the order and its date; and
- (b) the name and address of the liquidator.

(2) On the passing and entering of the winding up order, the petitioner shall within 7 days

-
- (a) lodge an office copy of the order with the Official Receiver and a copy of the order with the Registrar;
- (b) cause a copy to be served upon the secretary of the company or upon such other person or in such manner as the Court directs; and
- (c) deliver a copy to the liquidator with a statement that the requirements of this subsection have been complied with.

Actions stayed on winding up order.

(3) When a winding up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except —

- (a) by leave of the Court; and
- (b) in accordance with such terms as the Court imposes.

Effect of order.

(4) Subject to section 322A, an order for winding up a company shall operate in favour of all the creditors and contributories of the company as if made on the joint petition of a creditor and of a contributory.

(5) If default is made in complying with subsection (1) or (2), the petitioner shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

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U.K.ss.230 — 232.

Aust. s. 230.

Subdivision (2) — Liquidators

Appointment, style, etc., of liquidators.

263. The following provisions with respect to liquidators shall have effect on a winding up order being made:

- (a) if an approved liquidator, other than the Official Receiver, is not appointed to be the liquidator of the company, the Official Receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such;
- (b) if there is no liquidator appointed, the Official Receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the Court for appointing a liquidator in the place of the Official Receiver;
- (c) the Court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matter aforesaid, the Court shall decide the difference and make such order thereon as the Court may think fit;
- (d) in a case where a liquidator is not appointed by the Court, the Official Receiver shall be the liquidator of the company;
- (da) in a case where a winding up order is made under section 254 (1) (m) on the ground that the company is being used for purposes against national security or interest, the Official Receiver shall be the liquidator of the company;
- (e) the Official Receiver shall by virtue of his office be the liquidator during any vacancy;
- (f) any vacancy in the office of a liquidator appointed by the Court may be filled by the Court;
- (g) a liquidator shall be described, where a person other than the Official Receiver is liquidator, by the style of “the liquidator”, and, where the Official Receiver is liquidator, by the style of “the Official Receiver and liquidator”, of the particular company in respect of which he is appointed, and not by his individual name.

Provisions where person other than Official Receiver is appointed liquidator.

264. Where in the winding up of a company by the Court, a person other than the Official Receiver, is appointed liquidator, that person —

- (a) shall not be capable of acting as liquidator until he has notified his appointment to the Registrar and given security in the prescribed manner to the satisfaction of the Official Receiver; and

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

Control of unofficial liquidators by Official Receiver.

265. —(1) Where in the winding up of a company by the Court, a person, other than the Official Receiver, is the liquidator the Official Receiver shall take cognizance of his conduct and if the liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by any written law or otherwise with respect to the performance of his duties, or if any complaint is made to the Official Receiver by any creditor or contributory in regard thereto, the Official Receiver shall inquire into the matter, and take such action thereon as he may think expedient.

(2) The Official Receiver may at any time require any such liquidator of a company which is being wound up by the Court to answer any inquiry in relation to any winding up in which he is engaged, and may, if the Official Receiver thinks fit, apply to the Court to examine him or any other person on oath concerning the winding up.

(3) The Official Receiver may also direct a local investigation to be made of the books and vouchers of such liquidator.

Control of Official Receiver by Minister.

266. The Minister shall take cognizance of the conduct of the Official Receiver and of all Assistant Official Receivers who are concerned in the liquidation of companies, and if any such person does not faithfully perform his duties and duly observe all the requirements imposed on him by any written law or otherwise with respect to the performance of his duties, or if any complaint is made to the Minister by any creditor or contributory in regard thereto, the Minister shall inquire into the matter, and take such action thereon as he may think expedient, and may direct a local investigation to be made of the books and vouchers of such person.

Provisional liquidator.

267. The Court may appoint the Official Receiver or an approved liquidator provisionally at any time after the presentation of a winding up petition and before the making of a winding up order and the provisional liquidator shall have and may exercise all the functions and powers of a liquidator, subject to such limitations and restrictions as may be prescribed by the Rules or as the Court may specify in the order appointing him.

Aust.s.231(2).

General provisions as to liquidators.

268. —(1) A liquidator appointed by the Court may resign or on cause shown be removed by the Court.

(2) A provisional liquidator, other than the Official Receiver, shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is determined by the Court.

(3) A liquidator, other than the Official Receiver, shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is determined —

(a) by agreement between the liquidator and the committee of inspection, if any;

(b) failing such agreement, or where there is no committee of inspection by a resolution passed at a meeting of creditors by a majority of not less than 75% in value and 50% in number of the creditors present in person or by proxy and voting at the meeting and whose debts have been admitted for the purpose of voting, which meeting shall be

convened by the liquidator by a notice to each creditor to which notice shall be attached a statement of all receipts and expenditure by the liquidator and the amount of remuneration sought by him; or

(c) failing a determination in a manner referred to in paragraph (a) or (b), by the Court.

(4) Where the salary or remuneration of a liquidator is determined in the manner specified in subsection (3) (a), the Court may, on the application of a member or members whose shareholding or shareholdings represents or represent in the aggregate not less than 10% of the issued capital of the company, confirm or vary the determination.

(5) Where the salary or remuneration of a liquidator is determined in the manner specified in subsection (3) (b), the Court may, on the application of the liquidator or a member or members referred to in subsection (4), confirm or vary the determination.

(6) Subject to any order of the Court, the Official Receiver when acting as a liquidator or provisional liquidator of a company shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is prescribed.

(7) If more than one liquidator is appointed by the Court, the Court shall declare whether anything by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(8) Subject to this Act, the acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

U.K.s.242.

Aust. s. 232.

Custody and vesting of company's property.

269.—(1) Where a winding up order has been made or a provisional liquidator has been appointed, the liquidator or provisional liquidator shall take into his custody or under his control all the property and things in action to which the company is or appears to be entitled.

(2) The Court may, on the application of the liquidator, by order direct that all or any part of the property of whatever description belonging to the company or held by trustees on its behalf shall vest in the liquidator and thereupon the property to which the order relates shall vest accordingly and the liquidator may, after giving such indemnity, if any, as the Court directs, bring or defend any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

(3) Where an order is made under this section, every liquidator of a company in relation to which the order is made shall lodge within 7 days of the making of the order —

(a) a copy of the order with the Registrar; and

(b) where the order relates to land, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land, and every liquidator who makes default in complying with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty.

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(4) No vesting order referred to in this section shall have any effect or operation in transferring or otherwise vesting land until an appropriate entry or memorandum thereof is made by or with the appropriate authority.

Statement of company's affairs to be submitted to Official Receiver.

270. —(1) There shall be made out and verified in the prescribed form and manner and submitted to the Official Receiver or the liquidator, as the case requires, a statement as to the affairs of the company as at the date of the winding up order showing —

- (a) the particulars of its assets, debts and liabilities;
- (b) the names and addresses of its creditors;
- (c) the securities held by them respectively;
- (d) the dates when the securities were respectively given; and
- (e) such further information as is prescribed or as the Official Receiver or the liquidator requires.

(2) The statement shall be submitted by one or more of the persons who are, at the date of the winding up order, directors, and by the secretary of the company, or by such of the persons hereinafter mentioned as the Official Receiver or the liquidator, subject to the direction of the Court, requires, that is to say, persons —

- (a) who are or have been officers of the company;
- (b) who have taken part in the formation of the company at any time within one year before the date of the winding up order; or
- (c) who are or have been within that period officers of or in the employment of a corporation which is, or within that period was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within 14 days after the date of the winding up order or within such extended time as the Official Receiver or the liquidator or the Court for special reasons specifies, and the Official Receiver or the liquidator shall within 7 days after its receipt cause a copy of the statement to be filed with the Court and lodged with the Registrar and, where the Official Receiver is not the liquidator, shall cause a copy to be lodged with the Official Receiver.

(4) Any person making or concurring in making the statement required by this section may, subject to the rules, be allowed, and be paid, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement as the Official Receiver or the liquidator considers reasonable subject to an appeal to the Court.

(5) Every person who, without reasonable excuse, makes default in complying with the requirements of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both and also to a default penalty.

Report by liquidator.

271. —(1) The liquidator shall as soon as practicable after receipt of the statement of affairs submit a preliminary report to the Court or if the liquidator is not the Official Receiver, to the Official Receiver —

- (a) as to the amount of capital issued, subscribed and paid up and the estimated amount of assets and liabilities;

(b) if the company has failed, as to the causes of the failure; and
(c) whether, in his opinion, further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company or the conduct of the business thereof.
(2) The liquidator may also, if he thinks fit, make further reports to the Court or if the liquidator is not the Official Receiver, to the Official Receiver stating the manner in which the company was formed and whether in his opinion any fraud has been committed or any material fact has been concealed by any person in its promotion or formation or by any officer in relation to the company since its formation, and whether any officer of the company has contravened or failed to comply with any of the provisions of this Act, and specifying any other matter which in his opinion it is desirable to bring to the notice of the Court.

U.K.s.236.
Aust. s. 235.
13/87.

Powers of liquidator.

272. —(1) The liquidator may with the authority either of the Court or of the committee of inspection —

- (a) carry on the business of the company so far as is necessary for the beneficial winding up thereof, but the authority shall not be necessary to so carry on the business during the 4 weeks next after the date of the winding up order;
- (b) subject to section 328 pay any class of creditors in full;
- (c) make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;
- (d) compromise any calls and liabilities to calls, debts and liabilities capable of resulting in debts and any claims present or future, certain or contingent, ascertained or sounding only in damages subsisting, or supposed to subsist, between the company and a contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as are agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof; and
- (e) appoint a solicitor to assist him in his duties.

(2) The liquidator may —

- (a) bring or defend any action or other legal proceeding in the name and on behalf of the company;
- (b) compromise any debt due to the company, other than calls and liabilities for calls and other than a debt where the amount claimed by the company to be due to it exceeds \$1,500;
- (c) sell the immovable and movable property and things in action of the company by public auction, public tender or private contract with power to transfer the whole thereof to any person or company or to sell the same in parcels;
- (d) do all acts and execute in the name and on behalf of the company all deeds, receipts and other documents and for that purpose use when necessary the company's seal;

- (e) prove, rank and claim in the bankruptcy of any contributory or debtor for any balance against his estate, and receive dividends in the bankruptcy in respect of that balance as a separate debt due from the bankrupt, and rateably with the other separate creditors;
 - (f) draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business;
 - (g) raise on the security of the assets of the company any money required;
 - (h) take out letters of administration of the estate of any deceased contributory or debtor, and do any other act necessary for obtaining payment of any money due from a contributory or debtor or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall for the purposes of enabling the liquidator to take out the letters of administration or recover the money be deemed due to the liquidator himself;
 - (i) appoint an agent to do any business which the liquidator is unable to do himself; and
 - (j) do all such other things as are necessary for winding up the affairs of the company and distributing its assets.
- (3) The exercise by the liquidator of the powers conferred by this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

U.K.s.245.
Aust. s. 236.

Exercise and control of liquidator's powers.

- 273.** —(1) Subject to this Part, the liquidator shall in the administration of the assets of the company and in the distribution thereof among its creditors have regard to any directions given by resolution of the creditors or contributories at any general meeting or by the committee of inspection, and any directions so given by the creditors or contributories shall, in case of conflict, override any directions given by the committee of inspection.
- (2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and he shall summon meetings at such times as the creditors or contributories by resolution direct or whenever requested in writing to do so by not less than 10% in value of the creditors or contributories.
- (3) The liquidator may apply to the Court for directions in relation to any particular matter arising under the winding up.
- (4) Subject to this Part, the liquidator shall use his own discretion in the management of the affairs and property of the company and the distribution of its assets.

U.K.s.246.
Aust. s. 237.

Payment by liquidator into bank.

- 274.** —(1) Every liquidator shall, in the manner and at the times prescribed by the rules, pay the money received by him into such bank account as is prescribed by those rules or as is specified by the Court.
- (2) If any liquidator retains for more than 10 days a sum exceeding \$1,000, or such other amount as the Court in any particular case authorises him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount

so retained in excess, computed from the expiration of the abovementioned 10 days, until he has complied with subsection (1) at the rate of 20% per annum, and shall be liable —

- (a) to disallowance of all or such part of his remuneration as the Court thinks just;
- (b) to be removed from his office by the Court; and
- (c) to pay any expenses occasioned by reason of his default.

(3) Any liquidator who pays any sums received by him as liquidator into any bank or account other than the bank or account prescribed or specified under subsection (1) shall be guilty of an offence.

U.K.s.248.
Aust. s. 238.
13/87.

Release of liquidators and dissolution of company.

275. When the liquidator —

- (a) has realised all the property of the company or so much thereof as can in his opinion be realised, without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors and adjusted the rights of the contributories among themselves and made a final return, if any, to the contributories; or
- (b) has resigned or has been removed from his office, he may apply to the Court —
 - (i) for an order that he be released; or
 - (ii) for an order that he be released and that the company be dissolved.

U.K.ss.251,274.
Aust. s. 239.

As to orders for release or dissolution.

276. —(1) Where an order is made that the company be dissolved, the company shall from the date of the order be dissolved accordingly.

(2) The Court —

- (a) may cause a report on the accounts of a liquidator, not being the Official Receiver, to be prepared by the Official Receiver or by some approved company auditor appointed by the Court;
- (b) on the liquidator complying with all the requirements of the Court, shall take into consideration the report and any objection which is urged by the Official Receiver, auditor or any creditor or contributory or other person interested against the release of the liquidator; and
- (c) shall either grant or withhold the release accordingly.

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

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

(5) Where the liquidator has not previously resigned or been removed his release shall operate as a removal from office.

(6) Where the Court has made —

(a) an order that the liquidator be released; or
(b) an order that the liquidator be released and that the company be dissolved,
a copy of the order and an office copy of the order shall, within 14 days after the making thereof, be lodged by the liquidator with the Registrar and with the Official Receiver, respectively and a liquidator who makes default in complying with the requirements of this subsection shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty.

15/84.
Aust.s.240.

Subdivision (3) — Committees of inspection

Meetings to determine whether committee of inspection to be appointed.

277. —(1) The liquidator may, and shall, if requested by any creditor or contributory, summon separate meetings of the creditors and contributories for the purpose of determining whether or not the creditors or contributories require the appointment of a committee of inspection to act with the liquidator, and if so who are to be members of the committee.

(2) If there is a difference between the determinations of the meetings of the creditors and contributories the Court shall decide the difference and make such order as it thinks fit.

U.K.ss.252,254.
Aust. s. 241.

Constitution and proceedings of committee of inspection.

278. —(1) The committee of inspection shall consist of creditors and contributories of the company or persons holding —

(a) general powers of attorney from creditors or contributories; or

(b) special authorities from creditors or contributories authorising the persons named therein to act on such a committee,

appointed by the meetings of creditors and contributories in such proportions as are agreed or, in case of difference, as are determined by the Court.

(2) The committee shall meet at such times and places as it may from time to time appoint, and the liquidator or any member of the committee may also call a meeting of the committee as he thinks necessary.

(3) The committee may act by a majority of its members present at a meeting, but shall not act unless a majority of the committee is present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt or assigns his estate for the benefit of his creditors or makes an arrangement with his creditors pursuant to any written law relating to bankruptcy or is absent from 5 consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

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

(7) A vacancy in the committee may be filled by the appointment by the committee of the same or another creditor or contributory or person holding a general power of attorney or special authority as specified in subsection (1).

(8) The liquidator may at any time of his own motion and shall within 7 days after the request in writing of a creditor or contributory summon a meeting of creditors or of contributories, as the case requires, to consider any appointment made pursuant to subsection (7), and the meeting may confirm the appointment or revoke the appointment and appoint another creditor or contributory or person holding a general power of attorney or special authority as specified in subsection (1), as the case requires, in his stead.

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

U.K.s.253.
Aust. s. 242.

Subdivision (4) — General powers of Court

Power to stay winding up.

279. —(1) At any time after an order for winding up has been made, the Court may, on the application of the liquidator or of any creditor or contributory and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings either altogether or for a limited time on such terms and conditions as the Court thinks fit.

(2) On any such application the Court may, before making an order, require the liquidator to furnish a report with respect to any facts or matters which are in his opinion relevant.

(3) A copy of an order made under this section and an office copy of such an order shall be lodged by the company with the Registrar and the Official Receiver, respectively, within 14 days after the making of the order.

(4) Any person who fails to comply with subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

15/84.
U.K.s.256.
Aust. s. 243.

Settlement of list of contributories and application of assets.

280. —(1) As soon as possible after making a winding up order, the Court shall settle a list of contributories and may rectify the register of members in all cases where rectification is required in pursuance of this Part and shall cause the assets of the company to be collected and applied in discharge of its liabilities.

(2) Notwithstanding subsection (1), where it appears to the Court that it will not be necessary to make calls on or adjust the rights of contributories, the Court may dispense with the settlement of a list of contributories.

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

(4) The list of contributories, when settled, shall be prima facie evidence of the liabilities of the persons named therein as contributories.

U.K.s.257.
Aust. s. 244.

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

281. —(1) The Court may make an order directing any contributory for the time being on the list of contributories to pay to the company, in the manner directed by the order, any money due from him or from the estate of the person whom he represents, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act, and may —

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

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

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

U.K.s.259.
Aust. s. 245 (2).

Power of Court to make calls.

(2) The Court may either before or after it has ascertained the sufficiency of the assets of the company —

(a) make calls on all or any of the contributories for the time being on the list of contributories, to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company and the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves; and

(b) make an order for payment of any calls so made, and, in making a call, may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

Payment into bank of moneys due to company.

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

U.K.s.261.
Aust. s. 245 (4).

(4) All moneys and securities paid or delivered into any bank pursuant to this Division shall be subject in all respects to orders of the Court.

Order on contributory conclusive evidence.

(5) An order made by the Court under this section shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due, and all other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings.

U.K.s.262.

Aust. s. 245 (6).
U.K.s.260.
Aust. s. 245 (3).

Appointment of special manager.

282. —(1) The liquidator may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the Court which may appoint a special manager of the estate or business to act during such time as the Court directs with such powers, including any of the powers of a receiver or manager, as are entrusted to him by the Court.

(2) The special manager —

(a) shall give such security and account in such manner as the Court directs;

(b) shall receive such remuneration as is fixed by the Court; and

(c) may at any time resign after giving not less than one month's notice in writing to the liquidator of his intention to resign, or on cause shown be removed by the Court.

U.K.s.263.
Aust. s. 246.

Claims of creditors and distribution of assets.

283. —(1) The Court may fix a date on or before which creditors are to prove their debts or claims or after which they will be excluded from the benefit of any distribution made before those debts are proved.

(2) The Court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto.

(3) The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding up in such order of priority as the Court thinks fit.

U.K.ss.264,265,267.
Aust. s. 247.

Inspection of books by creditors and contributories.

284. The Court may make such order for inspection of the books and papers of the company by creditors and contributories as the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

U.K.s.266.
Aust. s. 248.

Power to summon persons connected with company.

285. —(1) The Court may summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the Court considers capable of giving information concerning the promotion, formation, trade dealings, affairs or property of the company.

(2) The Court may examine him on oath concerning the matters mentioned in subsection (1) either by word of mouth or on written interrogatories and may reduce his answers to writing and require him to sign them, and any writing so signed may be used in evidence in any legal proceedings against him.

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

(4) An examination under this section or section 286 may, if the Court so directs and subject to the Rules, be held before any District Judge named for the purpose by the Court, and the powers of the Court under this section and section 286 may be exercised by that Judge.

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

U.K.s.268.

Aust. s. 249.

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

286. —(1) Where the liquidator has made a report under this Part stating that, in his opinion, a fraud has been committed or that any material fact has been concealed by any person in the promotion or formation of the company or by any officer in relation to the company since its formation or that any officer of the company has failed to act honestly or diligently or has been guilty of any impropriety or recklessness in relation to the affairs of the company, the Court may, after consideration of the report, direct that the person or officer, or any other person who was previously an officer of the company, including any banker, solicitor or auditor, or who is known or suspected to have in his possession any property of the company or is supposed to be indebted to the company or any person whom the Court considers capable of giving information concerning the promotion, formation, trade dealings, affairs or property of the company, shall attend before the Court on a day appointed and be publicly examined as to the promotion or formation or the conduct of the business of the company, or in the case of an officer or former officer as to his conduct and dealings as an officer thereof.

(2) The liquidator and any creditor or contributory may take part in the examination either personally or by a solicitor.

(3) The Court may put or allow to be put such questions to the person examined as the Court thinks fit.

(4) The person examined shall be examined on oath and shall answer all such questions as the Court puts or allows to be put to him.

(5) A person ordered to be examined under this section shall before his examination be furnished with a copy of the liquidator's report.

(6) Where a person directed to attend before the Court under subsection (1) applies to the Court to be exculpated from any charges made or suggested against him, the liquidator shall appear on the hearing of the application and call the attention of the Court to any matters which appear to him to be relevant and if the Court, after hearing any evidence given or witnesses called by the liquidator, grants the application the Court may allow the applicant such costs as the Court in its discretion thinks fit.

(7) Notes of the examination —

(a) shall be reduced to writing;

(b) shall be read over to or by and signed by the person examined;

- (c) may thereafter be used in evidence in any legal proceedings against him; and
(d) 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.

U.K.s.270.
Aust. s. 250.

Power to arrest absconding contributory, director or former director.

287. The Court, at any time before or after making a winding up order, on proof of probable cause for believing that a contributory or a director or former director of the company is about to leave Singapore or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may cause the contributory, director or former director to be arrested and his books and papers and movable personal property to be seized and safely kept until such time as the Court orders.

U.K.s.271.
Aust. s. 251.

Delegation to liquidator of certain powers of Court.

288. Provision may be made by rules enabling or requiring all or any of the powers and duties conferred and imposed on the Court by this Part in respect of —
(a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;
(b) the settling of lists of contributories, the rectifying of the register of members where required, and the collecting and applying of the assets;
(c) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;
(d) the making of calls and the adjusting of the rights of contributories; and
(e) the fixing of a time within which debts and claims must be proved,
to be exercised or performed by the liquidator as an officer of the Court and subject to the control of the Court, but the liquidator shall not, without the special leave of the Court, rectify the register of members and shall not make any call without either the special leave of the Court or the sanction of the committee of inspection.

U.K.s.273.
Aust. s. 252.

Powers of Court cumulative.

289. —(1) Any powers by this Act conferred on the Court shall be in addition to, and not in derogation of, any existing powers of instituting proceedings against any contributory or debtor of the company or the estate of any contributory or debtor for the recovery of any call or other sums.

(2) Subject to the Rules, an appeal from any order or decision made or given in the winding up of a company shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the Court in cases within its ordinary jurisdiction.

U.K.ss.272,277.
Aust. s. 253.

Division 3 — Voluntary winding up

Subdivision (1) — Introductory

Circumstances in which company may be wound up voluntarily.

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

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

(b) if the company so resolves by special resolution.

(2) A company shall —

(a) within 7 days after the passing of a resolution for voluntary winding up, lodge a copy of the resolution with the Registrar; and

(b) within 10 days after the passing of the resolution, give notice of the resolution in one or more newspapers circulating in Singapore.

(3) If the company fails to comply with subsection (2), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

15/84.

U.K.ss.278,279.

Aust. s. 254.

Provisional liquidator.

291. —(1) Where the directors of a company have made a statutory declaration in the prescribed form which has been lodged with the Official Receiver and have lodged a declaration in the prescribed form with the Registrar —

(a) that the company cannot by reason of its liabilities continue its business; and

(b) that meetings of the company and of its creditors have been summoned for a date within one month of the date of the declaration,

the directors shall forthwith appoint an approved liquidator to be the provisional liquidator.

(2) A provisional liquidator shall have and may exercise all the functions and powers of a liquidator in a creditors' winding up subject to such limitations and restrictions as may be prescribed by the Rules.

(3) The appointment of a provisional liquidator under this section shall continue for one month from the date of his appointment or for such further period as the Official Receiver may allow in any particular case or until the appointment of a liquidator, whichever first occurs.

(4) Notice of the appointment of a provisional liquidator under this section together with a copy of the declaration lodged with the Official Receiver shall be advertised within 14 days of the appointment of the provisional liquidator in at least 4 local daily newspapers, one each published in the English, Malay, Chinese and Tamil languages.

(5) A provisional liquidator shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is prescribed.

Commencement of voluntary winding up.

(6) A voluntary winding up shall commence —

(a) where a provisional liquidator has been appointed before the resolution for voluntary winding up was passed, at the time when the declaration referred to in subsection (1) was lodged with the Registrar; and

(b) in any other case, at the time of the passing of the resolution for voluntary winding up.

Effect of voluntary winding up.

292. —(1) The company shall from the commencement of the winding up cease to carry on its business, except so far as is in the opinion of the liquidator required for the beneficial winding up thereof, but the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

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

U.K.ss.281,282.

Aust. s. 256.

Declaration of solvency.

293. —(1) Where it is proposed to wind up a company voluntarily, the directors of the company, or in the case of a company having more than two directors, the majority of the directors shall, in the case of a members' voluntary winding up before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out, make a declaration to the effect that they have made an inquiry into the affairs of the company, and that, at a meeting of directors, have formed the opinion that the company will be able to pay its debts in full within a period not exceeding 12 months after the commencement of the winding up.

(2) There shall be attached to the declaration a statement of affairs of the company showing, in the prescribed form —

(a) the assets of the company and the total amount expected to be realised therefrom;

(b) the liabilities of the company; and

(c) the estimated expenses of winding up,

made up to the latest practicable date before the making of the declaration.

(3) A declaration so made shall have no effect for the purposes of this Act unless it is —

(a) made at the meeting of directors referred to in subsection (1);

(b) made within 5 weeks immediately preceding the passing of the resolution for voluntary winding up; and

(c) lodged with the Registrar before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out.

(4) A director, who makes a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period stated in the declaration, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

15/84.

(5) If the company is wound up in pursuance of a resolution for voluntary winding up passed within a period of 5 weeks after the making of the declaration, but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion.

U.K.s.283.
Aust. s. 257.
13/87.

Subdivision (2) — Provisions applicable only to members' voluntary winding up

Liquidator.

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

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

(3) The company may in general meeting convened by any contributory by special resolution of which special notice has been given to the creditors and the liquidators remove any liquidator but no such resolution shall be effective to remove a liquidator if the Court, on the application of the liquidator or a creditor, has ordered that the liquidator be not removed.

(4) If a vacancy occurs by death, resignation, removal or otherwise in the office of a liquidator, the company in general meeting may fill the vacancy by the appointment of a liquidator and fix the remuneration to be paid to him, and for that purpose a general meeting may be convened by any contributory, or if there were more liquidators than one by the continuing liquidators.

(5) The meeting shall be held in the manner provided by this Act or by the articles or in such manner as is, on application by any contributory or by the continuing liquidators, determined by the Court.

U.K.ss.285,286.
Aust. s. 258.

Duty of liquidator to call creditors' meeting in case of insolvency.

295. —(1) If the liquidator is at any time of the opinion that the company will not be able to pay or provide for the payment of its debts in full within the period stated in the declaration made under section 293, he shall forthwith summon a meeting of the creditors and lay before the meeting a statement of the assets and liabilities of the company and the notice summoning the meeting shall draw the attention of the creditors to the right conferred upon them by subsection (2).

(2) The creditors may, at the meeting summoned under subsection (1), appoint some other person to be the liquidator for the purpose of winding up the affairs and distributing the assets of the company instead of the liquidator appointed by the company.

(3) If the creditors appoint some other person under subsection (2), the winding up shall thereafter proceed as if the winding up were a creditors' voluntary winding up.

(4) Within 7 days after a meeting has been held pursuant to subsection (1), the liquidator or if some other person has been appointed by the creditors to be the liquidator, the person so appointed shall lodge with the Registrar and with the Official Receiver a notice in the prescribed form and if default is made in complying with this subsection the liquidator or the person so appointed, as the case requires, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$800 and also to a default penalty.

15/84.
U.K.ss.288,291.
Aust. s. 259.

Alternative provisions as to annual meetings in case of insolvency.

5. Where the liquidator has convened a meeting under subsection (1) and the creditors do not appoint a liquidator instead of the liquidator appointed by the company, the winding up shall thereafter proceed as if the winding up were a creditors' voluntary winding up; but the liquidator shall not be required to summon an annual meeting of creditors at the end of the first year from the commencement of the winding up if the meeting held under subsection (1) was held less than 3 months before the end of that year.

Subdivision (3) — Provisions applicable only to creditors' voluntary winding up

Meeting of creditors.

296. —(1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.

(2) The company shall convene the meeting at a time and place convenient to the majority in value of the creditors and shall —

- (a) give to the creditors at least 7 clear days' notice by post of the meeting; and
- (b) send to each creditor with the notice, a statement showing the names of all creditors and the amounts of their claims.

(3) The company shall cause notice of the meeting of the creditors to be advertised at least 7 days before the date of the meeting in a newspaper circulating in Singapore.

(4) The directors of the company shall—

- (a) cause a full statement of the company's affairs showing in respect of assets the method and manner in which the valuation of the assets was arrived at, together with a list of the creditors and the estimated amount of their claims to be laid before the meeting of creditors; and
- (b) appoint one of their number to attend the meeting.

(5) The director so appointed and the secretary shall attend the meeting and disclose to the meeting the company's affairs and the circumstances leading up to the proposed winding up.

(6) The creditors may appoint one of their number or the director appointed under subsection (4) (b) to preside at the meeting.

(7) The chairman shall at the meeting determine whether the meeting has been held at a time and place convenient to the majority in value of the creditors and his decision shall be final.

(8) If the chairman decides that the meeting has not been held at a time and place convenient to that majority, the meeting shall lapse and a further meeting shall be summoned by the company as soon as is practicable.

(9) If the meeting of the company is adjourned and the resolution for winding up is passed at an adjourned meeting, any resolution passed at the meeting of the creditors shall have effect as if it had been passed immediately after the passing of the resolution for winding up.

(10) If default is made in complying with this section, the company and any officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000.

15/84.
U.K.s.293.
Aust. s. 260.

Liquidators.

297. —(1) The company shall, and the creditors may at their respective meetings, nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person nominated by the company shall be liquidator.

(2) Notwithstanding subsection (1), where different persons are nominated, any director, member or creditor may, within 7 days after the date on which the nomination was made by the creditors, apply to the Court for an order directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors.

(3) The committee of inspection or, if there is no such committee, the creditors may fix the remuneration to be paid to the liquidator.

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

(5) If a liquidator, other than a liquidator appointed by or by the direction of the Court, dies, resigns or otherwise vacates the office, the creditors may fill the vacancy and for the purpose of so doing a meeting of the creditors may be summoned by any two of their number.

U.K.ss.294,296,297.
Aust. s. 261.

Committee of inspection.

298. —(1) The creditors at the meeting summoned pursuant to section 295 or 296 or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than 5 persons, whether creditors or not and, if such a committee is appointed, the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint

such number of persons but not more than 5 as it thinks fit to act as members of the committee.

(2) Notwithstanding subsection (1), the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the Court otherwise directs, be qualified to act as members of the committee, and on any application to the Court under this subsection the Court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(3) Subject to this section and the rules made under this Act, the provisions of Subdivision (3) of Division 2 relating to the proceedings of and vacancies in committees of inspection shall apply with respect to a committee of inspection appointed under this section.

U.K.s.295.
Aust. s. 262.

Property and proceedings.

299. —(1) Any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of a creditors' voluntary winding up shall be void.

(2) After the commencement of the winding up no action or proceeding shall be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court imposes.

Aust.s.263.

Subdivision (4) — Provisions applicable to every voluntary winding up

Distribution of property of company.

300. Subject to the provisions of this Act as to preferential payments, the property of a company shall, on its winding up, be applied *pari passu* in satisfaction of its liabilities, and, subject to that application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

U.K.s.302.
Aust. s. 264.

Appointment of liquidator.

301. If from any cause there is no liquidator acting, the Court may appoint a liquidator.

U.K.s.304.
Aust. s. 265.

Removal of liquidator.

302. The Court may, on cause shown, remove a liquidator and appoint another liquidator.

Aust.s.266.

Review of liquidator's remuneration.

303. Any member or creditor or the liquidator may at any time before the dissolution of the company apply to the Court to review the amount of the remuneration of the liquidator, and the decision of the Court shall be final and conclusive.

Aust.s.267.

Act of liquidator valid, etc.

304. —(1) The acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

(2) Any conveyance, assignment, transfer, mortgage, charge or other disposition of a company's property made by a liquidator shall, notwithstanding any defect or irregularity affecting the validity of the winding up or the appointment of the liquidator be valid in favour of any person taking such property bona fide and for value and without notice of such defect or irregularity.

(3) Every person making or permitting any disposition of property to any liquidator shall be protected and indemnified in so doing notwithstanding any defect or irregularity affecting the validity of the winding up or the appointment of the liquidator not then known to that person.

(4) For the purposes of this section, a disposition of property shall be taken as including a payment of money.

Aust.s.268.

Powers and duties of liquidator.

305. —(1) The liquidator may —

(a) in the case of a members' voluntary winding up, with the approval of a special resolution of the company and, in the case of a creditors' voluntary winding up, with the approval of the Court or the committee of inspection, exercise any of the powers given by section 272 (1) (b), (c), (d) and (e) to a liquidator in a winding up by the Court;

(b) exercise any of the other powers by this Act given to the liquidator in a winding up by the Court;

(c) exercise the power of the Court under this Act of settling a list of contributories, and the list of contributories shall be prima facie evidence of the liability of the persons named therein to be contributories;

(d) exercise the power of the Court of making calls; or

(e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution in respect of any matter or for any other purpose he thinks fit.

(2) The liquidator shall pay the debts of the company and adjust the rights of the contributories among themselves.

(3) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as is determined at the time of their appointment, or in default of such determination by any number not less than two.

U.K.s.303.

Aust. s. 269.

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

306. —(1) Where it is proposed that the whole or part of the business or property of a company (referred to in this section as the company) be transferred or sold to another corporation (referred to in this section as the corporation), the liquidator of the company may, with the sanction of a special resolution of the company conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale shares, debentures, policies or other like interests in the corporation for distribution among the members of

the company, or may enter into any other arrangement whereby the members of the company may, in lieu of receiving cash, shares, debentures, policies or other like interests or in addition thereto, participate in the profits of or receive any other benefit from the corporation and any such transfer, sale or arrangement shall be binding on the members of the company.

(2) If any member of the company expresses his dissent therefrom in writing addressed to the liquidator and left at the registered office of the liquidator within 7 days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in the manner provided by this section.

(3) If the liquidator elects to purchase the member's interest, the purchase money shall be paid before the company is dissolved and be raised by the liquidator in such manner as is determined by special resolution.

(4) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but if an order for winding up the company by the Court is made within a year after the passing of the resolution the resolution shall not be valid unless sanctioned by the Court.

(5) For the purposes of an arbitration under this section, the Arbitration Act shall apply as if there were a submission for reference to two arbitrators, one to be appointed by each party; and the appointment of an arbitrator may be made under the hand of the liquidator, or if there is more than one liquidator then under the hands of any two or more of the liquidators; and the Court may give any directions necessary for the initiation and conduct of the arbitration and such direction shall be binding on the parties.

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(6) In the case of a creditors' voluntary winding up, the powers of the liquidator under this section shall not be exercised except with the approval of the Court or the committee of inspection.

U.K.ss.287,298.

Aust. s. 270.

Annual meeting of members and creditors.

307. —(1) If the winding up continues for more than one year, the liquidator shall summon a general meeting of the company in the case of a members' voluntary winding up, and of the company and the creditors in the case of a creditors' voluntary winding up, at the end of the first year from the commencement of the winding up and of each succeeding year or not more than 3 months thereafter, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) The liquidator shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.

(3) Every liquidator who fails to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty.

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U.K.ss.289,299.

Final meeting and dissolution.

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

(2) The meeting shall be called by advertisement published in at least 4 local daily newspapers, one each in the English, Malay, Chinese and Tamil languages which advertisement shall specify the time, place and object of the meeting and shall be published at least one month before the meeting, except that when a declaration is made by the liquidator and filed with the Official Receiver that neither at the date of commencement of the winding up nor since that date has the company had trade creditors, the advertisement referred to in this subsection need only be published in a newspaper circulating generally throughout Singapore.

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(3) The liquidator shall within 7 days after the meeting lodge with the Registrar and the Official Receiver a return of the holding of the meeting and of its date with a copy of the account attached to such return, and if the return or copy of the account is not so lodged the liquidator shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

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(4) The quorum at a meeting of the company shall be two and at a meeting of the company and the creditors shall be two members and two creditors and if a quorum is not present at the meeting, the liquidator shall in lieu of the return mentioned in subsection (3) lodge a return (with account attached) that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being lodged subsection (3) as to the lodging of the return shall be deemed to have been complied with.

(5) On the expiration of 3 months after the lodging of the return with the Registrar and with the Official Receiver, the company shall be dissolved.

(6) Notwithstanding subsection (5), the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(7) The person on whose application an order of the Court under this section is made shall, within 14 days after the making of the order, lodge with the Registrar and with the Official Receiver a copy of the order and an office copy of the order, respectively, and if he fails to do so he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

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(8) If the liquidator fails to call a meeting as required by this section, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty.

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U.K.ss.290,300.

Aust. s. 272.

Arrangement when binding on creditors.

309. —(1) Any arrangement entered into between a company about to be or in the course of being wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by a special resolution, and on the creditors if acceded to by 75% in value and 50% in number of the creditors, every creditor for under \$50 being reckoned in value only.

(2) A creditor shall be accounted a creditor for value for such sum as upon an account fairly stated, after allowing the value of security or liens held by him and the amount of any debt or set-off owing by him to the debtor, appears to be the balance due to him.

(3) Any dispute with regard to the value of any such security or lien or the amount of such debt or set-off may be settled by the Court on the application of the company, the liquidator or the creditor.

(4) Any creditor or contributory may within 3 weeks from the completion of the arrangement appeal to the Court against it, and the Court may thereupon, as it thinks just, amend, vary or confirm the arrangement.

U. K.s.306.

Aust. s. 273.

Application to Court to have questions determined or powers exercised.

310. —(1) The liquidator or any contributory or creditor may apply to the Court —

(a) to determine any question arising in the winding up of a company; or

(b) to exercise all or any of the powers which the Court might exercise if the company were being wound up by the Court.

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

U.K.s.307.

Aust. s. 274.

Costs.

311. All proper costs, charges and expenses of and incidental to the winding up including the remuneration of the liquidator shall be payable out of the assets of the company in priority to all other claims.

U.K.s.309.

Aust. s. 275.

Limitation on right to wind up voluntarily.

312. Where a petition has been presented to the Court to wind up a company on the ground that it is unable to pay its debts the company shall not, without the leave of the Court, resolve that it be wound up voluntarily.

Aust.s.276.

Division 4 — Provisions applicable to every mode of winding up

Subdivision (2) — General

Books to be kept by liquidator.

313. —(1) Every liquidator shall keep proper books in which he shall cause to be made entries or minutes of proceedings at meetings and of such other matters as are prescribed, and any creditor or contributory may, subject to the control of the Court, personally or by his agent inspect them.

Control of Court over liquidators.

(2) The Court shall take cognizance of the conduct of liquidators, and if a liquidator does not faithfully perform his duties and observe the prescribed requirements or the requirements of the Court or if any complaint is made to the Court by any creditor or contributory or by the Official Receiver in regard thereto, the Court shall inquire into the matter and take such action as it thinks fit.

U.K.s.250.

Aust. s. 278.

(3) The Registrar or the Official Receiver may report to the Court any matter which in his opinion is a misfeasance, neglect or omission on the part of the liquidator and the Court may order the liquidator to make good any loss which the estate of the company has sustained thereby and make such other order as it thinks fit.

(4) The Court may at any time require any liquidator to answer any inquiry in relation to the winding up and may examine him or any other person on oath concerning the winding up and may direct an investigation to be made of the books and vouchers of the liquidator.

Delivery of property to liquidator.

(5) The Court may require any contributory, trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer to the liquidator or provisional liquidator forthwith or within such time as the Court directs any money, property, books and papers in his hands to which the company is prima facie entitled.

U.K.s.258.

Aust. s. 245 (1).

U.K.s.247.

Aust. s. 277.

Powers of Official Receiver where no committee of inspection.

314. —(1) Where a person other than the Official Receiver is the liquidator and there is no committee of inspection, the Official Receiver may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Act authorised or required to be done or given by the committee.

(2) Where the Official Receiver is the liquidator and there is no committee of inspection, the Official Receiver may in his discretion do any act or thing which is by this Act required to be done by, or subject to any direction or permission given by, the committee.

Appeal against decision of liquidator.

315. Any person aggrieved by any act or decision of the liquidator may apply to the Court which may confirm, reverse or modify the act or decision complained of and make such order as it thinks just.

Aust.s.279.

Notice of appointment and address of liquidator.

316. —(1) A liquidator shall, within 14 days after his appointment, lodge with the Registrar and with the Official Receiver notice in the prescribed form of his appointment

and of the situation of his office and in the event of any change in the situation of his office shall within 14 days after the change lodge with the Registrar and with the Official Receiver notice in the prescribed form of the change.

(2) Service made by leaving any document at or sending it by post addressed to the address of the office of the liquidator given in any such notice lodged with the Registrar shall be deemed to be good service upon the liquidator and upon the company.

(3) A liquidator shall, within 14 days after his resignation or removal from office, lodge with the Registrar and with the Official Receiver notice thereof in the prescribed form.

(4) If a liquidator fails to comply with this section, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

15/84.

U.K.s.305.

Aust. s. 280.

Liquidator's accounts.

317. —(1) Every liquidator shall, within one month after the expiration of a period of 6 months from the date of his appointment and of every subsequent period of 6 months and in any case within one month after he ceases to act as liquidator and forthwith after obtaining an order of release, lodge with the Official Receiver in the prescribed form and verified by statutory declaration an account of his receipts and payments and a statement of the position in the winding up, and any liquidator who fails to do so shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

(1A) The liquidator referred to in subsection (1) shall also lodge with the Registrar a notice in the prescribed form of the matters referred to in that subsection and, if he fails to do so, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

(2) The Official Receiver may cause the account of any liquidation to be audited by an approved company auditor, and for the purpose of the audit the liquidator shall furnish the auditor with such vouchers and information as he requires, and the auditor may at any time require the production of and inspect any books or accounts kept by the liquidator.

(3) A copy of the account or, if audited, a copy of the audited account shall be kept by the liquidator and the copy shall be open to the inspection of any creditor or of any person interested at the office of the liquidator.

(4) The liquidator shall —

(a) give notice that the account has been made up to every creditor and contributory when next forwarding any report, notice of meeting, notice of call or dividend; and

(b) in such notice inform the creditors and contributories at what address and between what hours the account may be inspected.

(5) The costs of an audit under this section shall be fixed by the Official Receiver and shall be part of the expenses of winding up.

U.K.s.249.

Aust. s. 281.

15/84.

Liquidator to make good defaults.

318. —(1) If any liquidator who has made any default in lodging or making any application, return, account or other document, or in giving any notice which he is by law

required to lodge, make or give, fails to make good the default within 14 days after the service on him of a notice requiring him to do so, the Court may, on the application of any contributory or creditor of the company or the Official Receiver, make an order directing the liquidator to make good the default within such time as is specified in the order.

(2) Any order made under subsection (1) may provide that all costs of and incidental to the application shall be borne by the liquidator.

(3) Nothing in subsection (1) shall prejudice the operation of any written law imposing penalties on a liquidator in respect of any such default.

U.K.s.337.
Aust. s. 282.

Notification that a company is in liquidation.

319. —(1) Where a company is being wound up every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall have the words in liquidation added after the name of the company where it first appears therein.

(2) If default is made in complying with this section, the company, and every officer of the company or liquidator and every receiver or manager who knowingly and wilfully authorises or permits the default, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$400.

15/84.
U.K.s.338.
Aust. s. 283.

Books of company.

320. —(1) Where a company is being wound up, all books and papers of the company and of the liquidator that are relevant to the affairs of the company at or subsequent to the commencement of the winding up of the company shall, as between the contributories of the company, be prima facie evidence of the truth of all matters purporting to be therein recorded.

(2) When a company has been wound up the liquidator shall retain the books and papers referred to in subsection (1) for a period of 5 years from the date of dissolution of the company and at the expiration of that period may destroy them.

(3) Notwithstanding subsection (2), when a company has been wound up the books and papers referred to in subsection (1) may be destroyed within a period of 5 years after the dissolution of the company —

- (a) in the case of a winding up by the Court, in accordance with the directions of the Court;
- (b) in the case of a members' voluntary winding up, as the company by resolution directs; and
- (c) in the case of a creditors' voluntary winding up, as the committee of inspection, or, if there is no such committee, as the creditors of the company direct.

(4) No responsibility shall rest on the company or the liquidator by reason of any such book or paper not being forthcoming to any person claiming to be interested therein if such book or paper has been destroyed in accordance with this section.

(5) Any person who fails to comply with subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000.

15/84.
U.K.ss.340,341.
Aust. s. 284.

Investment of surplus funds on general account.

321. —(1) Whenever the cash balance standing to the credit of any company in liquidation is in excess of the amount which, in the opinion of the committee of inspection, or, if there is no committee of inspection, of the liquidator, is required for the time being to answer demands in respect of the estate of the company, the liquidator, if so directed in writing by the committee of inspection, or, if there is no committee of inspection, the liquidator himself, may, unless the Court on application by any creditor thinks fit to direct otherwise and so orders, invest the sum or any part thereof in securities issued by the Government of Singapore or of Malaysia or place it on deposit at interest with any bank, and any interest received in respect thereof shall form part of the assets of the company.

(2) Whenever any part of the money so invested is, in the opinion of the committee of inspection, or, if there is no committee of inspection, of the liquidator, required to answer any demands in respect of the company's estate, the committee of inspection may direct, or, if there is no committee of inspection, the liquidator may arrange for the sale or realisation of such part of those securities as is necessary.

U.K.s.361.
Aust. s. 285.

Unclaimed assets to be paid to Official Receiver.

322. —(1) Where a liquidator has in his hands or under his control —

- (a) any unclaimed dividend or other moneys which have remained unclaimed for more than 6 months from the date when the dividend or other moneys became payable; or
- (b) after making final distribution, any unclaimed or undistributed moneys arising from the property of the company,

he shall forthwith pay those moneys to the Official Receiver to be placed to the credit of the Companies Liquidation Account and shall be entitled to the prescribed certificate of receipt for the moneys so paid and that certificate shall be an effectual discharge to him in respect thereof.

(2) The Court may, at any time on the application of the Official Receiver, order any liquidator to submit to it an account of any unclaimed or undistributed funds, dividends or other moneys in his hands or under his control verified by affidavit and may direct an audit thereof and may direct him to pay those moneys to the Official Receiver to be placed to the credit of the Companies Liquidation Account.

(3) The interest arising from the investment of the moneys standing to the credit of the Companies Liquidation Account shall be paid into the Consolidated Fund.

(4) For the purposes of this section, the Court may exercise all the powers conferred by this Act with respect to the discovery and realisation of the property of the company and the provisions of this Act with respect thereto shall with such adaptations as are prescribed apply to proceedings under this section.

(5) This section shall not, except as expressly declared in this Act, deprive any person of any other right or remedy to which he is entitled against the liquidator or any other person.

(6) If any claimant makes any demand for any money placed to the credit of the Companies Liquidation Account, the Official Receiver upon being satisfied that the claimant is the owner of the money shall authorise payment thereof to be made to him out of that Account or, if it has been paid into the Consolidated Fund, may authorise payment of a like amount to be made to him out of moneys made available by Parliament for the purpose.

(7) Any person dissatisfied with the decision of the Official Receiver in respect of a claim made in pursuance of subsection (6) may appeal to the Court which may confirm, disallow or vary the decision.

(8) Where any unclaimed moneys paid to any claimant are afterwards claimed by any other person, that other person shall not be entitled to any payment out of the Companies Liquidation Account or out of the Consolidated Fund but such person may have recourse against the claimant to whom the unclaimed moneys have been paid.

(9) Any unclaimed moneys paid to the credit of the Companies Liquidation Account to the extent to which the unclaimed moneys have not been under this section paid out of that Account shall, on the lapse of 7 years from the date of the payment of the moneys to the credit of that Account, be paid into the Consolidated Fund.

U.K.s.343.

Aust. s. 286.

Outstanding assets of company wound up on grounds of national security or interest
322A. Notwithstanding any written law or rule of law to the contrary, upon a company being wound up under section 254 (1) (m) on the ground that it is being used for purposes against national security or interest, the Court may, on the application of the Minister, order that any assets of the company remaining after payment of its debts and liabilities and the costs, charges and expenses of the winding up shall be paid into the Consolidated Fund.

Expenses of winding up where assets insufficient.

323. —(1) Unless expressly directed to do so by the Official Receiver, a liquidator shall not be liable to incur any expense in relation to the winding up of a company unless there are sufficient available assets.

(2) The Official Receiver may, on the application of a creditor or a contributory, direct a liquidator to incur a particular expense on condition that the creditor or contributory indemnifies the liquidator in respect of the recovery of the amount expended and, if the Official Receiver so directs, gives such security to secure the amount of the indemnity as the Official Receiver thinks reasonable.

Aust.s.287.

Resolutions passed at adjourned meetings of creditors and contributories.

324. Subject to section 296 (9), where a resolution is passed at an adjourned meeting of any creditors or contributories of a company, the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed and not on any earlier date.

U.K.s.345.

Aust. s. 288.

Meetings to ascertain wishes of creditors or contributories.

325. —(1) The Court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence, and may if it thinks fit for the purpose of ascertaining those wishes direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the Court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or the articles.

U.K.s.346.

Aust. s. 289.

Special commission for receiving evidence.

326. —(1) District Judges shall be commissioners for the purpose of taking evidence under this Part, and the Court may refer the whole or any part of the examination of any witnesses under this Part to any person hereby appointed commissioner.

(2) Every commissioner shall, in addition to any powers which he might lawfully exercise as a District Judge, have in the matter so referred to him the same powers as the Court of summoning and examining witnesses of requiring the production or delivery of documents, of punishing defaults by witnesses and of allowing costs and expenses to witnesses.

(3) Unless otherwise ordered by the Court the taking of evidence by commissioners shall be in open court and shall be open to the public.

(4) The examination so taken shall be returned or reported to the Court in such manner as the Court directs.

U.K.s.348.

Aust. s. 290.

Subdivision (2) — Proof and ranking of claims

Proof of debts.

327. —(1) In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as are subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

(2) Subject to section 328, in the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and debts provable and the valuation of annuities and future and contingent liabilities as are in force for the time being under the law relating to bankruptcy in relation to the estates of bankrupt persons, and all persons, who in any such case would be entitled to prove for and receive dividends out of the assets of the company, may come in under the winding up and make such claims against the company as they respectively are entitled to by virtue of this section.

Priorities.

328.—(1) Subject to the provisions of this Act, in a winding up there shall be paid in priority to all other unsecured debts —

(a) firstly, the costs and expenses of the winding up including the taxed costs of a petitioner payable under section 256, the remuneration of the liquidator and the costs of any audit carried out pursuant to section 317;

(b) secondly, subject to subsection (2), all wages or salary (whether or not earned wholly or in part by way of commission) including any amount payable by way of allowance or reimbursement under any contract of employment or award or agreement regulating conditions of employment of any employee;

(c) thirdly, subject to subsection (2) all amounts due to an employee as a retrenchment benefit or ex gratia payment under any contract of employment or award or agreement that regulates conditions of employment whether such amount becomes payable before, on or after the commencement of the winding up;

(d) fourthly, all amounts due in respect of workmen's compensation under the Workmen's Compensation Act accrued before, on or after the commencement of the winding up;

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(e) fifthly, all amounts due in respect of contributions payable during the 12 months next before, on or after the commencement of the winding up by the company as the employer of any person under any written law relating to employees superannuation or provident funds or under any scheme of superannuation which is an approved scheme under the law relating to income tax;

(f) sixthly, all remuneration payable to any employee in respect of vacation leave, or in the case of his death to any other person in his right, accrued in respect of any period before, on or after the commencement of the winding up; and

(g) seventhly, the amount of all tax assessed and all goods and services tax due under any written law before the date of the commencement of the winding up or assessed at any time before the time fixed for the proving of debts has expired.

31/93.

(2) The amount payable under subsection (1) (b) and (c) shall not exceed an amount that is equivalent to 5 months' salary whether for time or piecework in respect of services rendered by him to the company or \$7,500, which ever is the lesser.

22/93.

(2A) The Minister may, by order published in the *Gazette*, amend subsection (2) by varying the amount specified in that subsection as the maximum amount payable under subsection (1) (b) (c).

22/93.

(2B)

(a) For the purposes of subsection (1) (b) and (c) —

"employee" means a person who has entered into or works under a contract of service with an employer and includes a subcontractor of labour;

"wages or salary" shall be deemed to include —

(i) all arrears of money due to a subcontractor of labour;

(ii) any amount payable to an employee on account of wages or salary during a period of notice of termination of employment or in lieu of notice of such termination, as the case may be, whether such amount becomes payable before, on or after the commencement of the winding up; and

(iii) any amount payable to an employee, on termination of his employment, as a gratuity under any contract of employment, or under any award or agreement that regulates conditions of employment whether such amount becomes payable before, on or after the commencement of the winding up.

22/93.

(b) For the purposes of subsection (1) (c) —

"ex gratia payment" means the amount payable to an employee on the winding up of a company or on the termination of his service by his employer on the ground of redundancy or by reason of any re-organisation of the employer, profession, business, trade or work, and the amount payable to an employee for these purposes means the amount stipulated in any contract of employment, award or agreement, as the case may be;

"retrenchment benefit" means the amount payable to an employee on the winding up of a company, on the termination of his service by his employer on the ground of redundancy or by reason of any re-organisation of the employer, profession, business, trade or work, the the amount payable to an employee for these purposes means the amount stipulated in any contract of employment, award or agreement, as the case may be, or if no amount is stipulated therein, such amount as is stipulated by the Commissioner for Labour.

(3) The debts in each class, specified in subsection (1), shall rank in the order therein specified but as between debts of the same class shall rank equally between themselves, and shall be paid in full, unless the property of the company is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(4) Where any payment has been made to any employee of the company on account of wages, salary or vacation leave out of money advanced by a person for that purpose, the person by whom the money was advanced shall, in a winding up, have a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the employee would have been entitled to priority in the winding up has been diminished by reason of the payment, and shall have the same right of priority in respect of that amount as the employee would have had if the payment had not been made.

(5) So far as the assets of the company available for payment of general creditors are insufficient to meet any preferential debts specified in subsection (1) (a), (b), (c), (e) and (f) and any amount payable in priority by virtue of subsection (4), those debts shall have priority over the claims of the holders of debentures under any floating charge created by the company (which charge, as created, was a floating charge), and shall be paid accordingly out of any property comprised in or subject to that charge.

22/93.

(6) Where the company is under a contract of insurance (entered into before the commencement of the winding up) insured against liability to third parties, then if any such liability is incurred by the company (either before or after the commencement of the winding up) and an amount in respect of that liability is or has been received by the company or the liquidator from the insurer the amount shall, after deducting any expenses

of or incidental to getting in such amount, be paid by the liquidator to the third party in respect of whom the liability was incurred to the extent necessary to discharge that liability or any part of that liability remaining undischarged in priority to all payments in respect of the debts referred to in subsection (1).

(7) If the liability of the insurer to the company is less than the liability of the company to the third party, nothing in subsection (6) shall limit the rights of the third party in respect of the balance.

(8) Subsections (6) and (7) shall have effect notwithstanding any agreement to the contrary entered into after 29th December 1967.

S 258/67.

(9) Notwithstanding anything in subsection (1) —

22/93.

(a) paragraph (d) of that subsection shall not apply in relation to the winding up of a company in any case where the company is being wound up voluntarily merely for the purpose of reconstruction or of amalgamation with another company and the right to the compensation has on the reconstruction or amalgamation been preserved to the person entitled thereto, or where the company has entered into a contract with an insurer in respect of any liability under any law relating to workmen's compensation; and

(b) where a company has given security for the payment or repayment of any amount to which paragraph (g) of that subsection relates, that paragraph shall apply only in relation to the balance of any such amount remaining due after deducting therefrom the net amount realised from such security.

22/93.

(10) Where in any winding up assets have been recovered under an indemnity for costs of litigation given by certain creditors, or have been protected or preserved by the payment of moneys or the giving of indemnity by creditors, or where expenses in relation to which a creditor has indemnified a liquidator have been recovered, the Court may make such order as it thinks just with respect to the distribution of those assets and the amount of those expenses so recovered with a view to giving those creditors an advantage over others in consideration of the risks run by them in so doing.

U.K.s.319.

Aust. s. 292.

15/84

13/87

22/93.

Subdivision (3) — Effect on other transactions

Undue preference.

329. —(1) Subject to this Act and such modifications as may be prescribed, any transfer, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company which, had it been made or done by or against an individual, would in his bankruptcy be void or voidable under section 98, 99 or 103 of the Bankruptcy Act 1995 (read with sections 100, 101 and 102 thereof) shall in the event of the company being wound up be void or voidable in like manner.

- (2) For the purposes of this section, the date which corresponds with the date of presentation of the bankruptcy petition in the case of an individual shall be —
- (a) in the case of a winding up by the Court —
 - (i) the date of the presentation of the petition; or
 - (ii) where before the presentation of the petition a resolution has been passed by the company for voluntary winding up, the date upon which the resolution to wind up the company voluntarily is passed, whichever is the earlier; and
 - (b) in the case of a voluntary winding up, the date upon which the winding up is deemed by this Act to have commenced.
- (3) Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

U.K.s.320.
Aust. s. 293.
15/95.

Effect of floating charge.

330. A floating charge on the undertaking or property of the company created within 6 months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid except to the amount of any cash paid to the company at the time of or subsequently to the creation of and in consideration for the charge together with interest on that amount at the rate of 5% per annum.

U.K.s.322.
Aust. s. 294.

Liquidator's right to recover in respect of certain sales to or by company.

331. —(1) Where any property, business or undertaking has been acquired by a company for a cash consideration within a period of two years before the commencement of the winding up of the company —

- (a) from a person who was at the time of the acquisition a director of the company; or
- (b) from a company of which, at the time of the acquisition, a person was a director who was also a director of the first-mentioned company,

the liquidator may recover from the person or company from which the property, business or undertaking was acquired any amount by which the cash consideration for the acquisition exceeded the value of the property, business or undertaking at the time of its acquisition.

(2) Where any property, business or undertaking has been sold by a company for a cash consideration within a period of two years before the commencement of the winding up of the company —

- (a) to a person who was at the time of the sale a director of the company; or
- (b) to a company of which at the time of the sale a person was a director who was also a director of the company first-mentioned in this subsection,

the liquidator may recover from the person or company to which the property, business or undertaking was sold any amount by which the value of the property, business or undertaking at the time of the sale exceeded the cash consideration.

(3) For the purposes of this section, the value of the property, business or undertaking includes the value of any goodwill or profits which might have been made from the business or undertaking or similar considerations.

(4) In this section “cash consideration”, in relation to an acquisition or sale by a company, means consideration for such acquisition or sale payable otherwise than by the issue of shares in the company.

Aust.s.295.

Disclaimer of onerous property.

332. —(1) Where any part of the property of a company consists of —

(a) any estate or interest in land which is burdened with onerous covenants;

(b) shares in corporations;

(c) unprofitable contracts; or

(d) any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money,

the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto, may, with the leave of the Court or the committee of inspection and, subject to this section, by writing signed by him, at any time within 12 months after the commencement of the winding up or such extended period as is allowed by the Court, disclaim the property; but where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power of disclaiming may be exercised at any time within 12 months after he has become aware thereof or such extended period as is allowed by the Court.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest and liabilities of the company and the property of the company in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The Court or the committee before or on granting leave to disclaim may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the Court or committee thinks just.

(4) The liquidator shall not be entitled to disclaim if an application in writing has been made to him by any person interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of 28 days after the receipt of the application or such further period as is allowed by the Court or the committee, given notice to the applicant that he intends to apply to the Court or the committee for leave to disclaim, and, in the case of a contract, if the liquidator after such an application in writing does not within that period or further period disclaim the contract the liquidator shall be deemed to have adopted it.

(5) The Court may, on the application of a person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court thinks just,

and any damages payable under the order to that person may be proved by him as a debt in the winding up.

(6) The Court may, on the application of a person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any person entitled thereto, or to whom it seems just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just, and on any such vesting order being made and a copy thereof and an office copy thereof being lodged with the Registrar and the Official Receiver, respectively, and if the order relates to land with the appropriate authority concerned with the recording or registration of dealings in that land, as the case requires, the property comprised therein shall vest accordingly in the person therein named in that behalf without any further conveyance, transfer or assignment.

(7) Notwithstanding anything in subsection (6), where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee, except upon the terms of making that person —

(a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or

(b) if the Court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date, and in either event, if the case so requires, as if the lease had comprised only the property comprised in the vesting order, and any under-lessee or mortgagee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the Court may vest the estate and interest of the company in the property in any person liable personally or in a representative character and either alone or jointly with the company to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company.

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

U.K.s.323.
Aust. s. 296.

Interpretation.

333. For the purposes of sections 334 and 335 —

"goods" includes all chattels personal;

"bailiff" includes any officer charged with the execution of a writ or other process.

Aust.s.297.

Restriction of rights of creditor as to execution or attachment.

334. —(1) Where a creditor has issued execution against the goods or land of a company or has attached any debt due to the company and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the

liquidator unless he has completed the execution or attachment before the date of the commencement of the winding up, but —

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

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

(c) the rights conferred by this subsection on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court thinks fit.

(2) For the purposes of this section —

(a) an execution against goods is completed by seizure and sale;

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

(c) an execution against land is completed by sale or, in the case of an equitable interest, by the appointment of a receiver.

U.K.s.325.

Aust. s. 298.

Duties of bailiff as to goods taken in execution.

335. —(1) Subject to subsection (3), where any goods of a company are taken in execution and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the bailiff that a provisional liquidator has been appointed or that a winding up order has been made or that a resolution for voluntary winding up has been passed, the bailiff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or moneys so delivered, and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.

(2) Subject to subsection (3), where under an execution in respect of a judgment for a sum exceeding \$100 the goods of a company are sold or money is paid in order to avoid sale, the bailiff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance of 14 days; and if within that time notice is served on him of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up and an order is made or a resolution is passed for the winding up, the bailiff shall pay the balance to the liquidator who shall be entitled to retain it as against the execution creditor.

(3) The rights conferred by this section on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court thinks fit.

U.K.s.326.

Aust. s. 299.

Subdivision (4) — Offences

Offences by officers of companies in liquidation.

336. —(1) Every person who, being a past or present officer or a contributory of a company which is being wound up —

- (a) does not to the best of his knowledge and belief fully and truly disclose to the liquidator all the property movable and immovable of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company;
- (b) does not deliver up to the liquidator, or as he directs —
 - (i) all the movable and immovable property of the company in his custody or under his control and which he is required by law to deliver up; or
 - (ii) all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up;
- (c) within 12 months next before the commencement of the winding up or at any time thereafter —
 - (i) has concealed any part of the property of the company to the value of \$200 or upwards, or has concealed any debt due to or from the company;
 - (ii) has fraudulently removed any part of the property of the company to the value of \$200 or upwards;
 - (iii) has concealed, destroyed, mutilated or falsified, or has been privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the company;
 - (iv) has made or has been privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company;
 - (v) has fraudulently parted with, altered or made any omission in, or has been privy to fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company;
 - (vi) by any false representation or other fraud, has obtained any property for or on behalf of the company on credit which the company has not subsequently paid for;
 - (vii) has obtained on credit, for or on behalf of the company, under the false pretence that the company is carrying on its business, any property which the company has not subsequently paid for; or
 - (viii) has pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing was in the ordinary way of the business of the company;
- (d) makes any material omission in any statement relating to the affairs of the company;
- (e) knowing or believing that a false debt has been proved by any person fails for a period of one month to inform the liquidator thereof;
- (f) prevents the production of any book or paper affecting or relating to the property or affairs of the company;
- (g) within 12 months next before the commencement of the winding up or at any time thereafter, has attempted to account for any part of the property of the company by fictitious losses or expenses; or
- (h) within 12 months next before the commencement of the winding up or at any time thereafter, has been guilty of any false representation or other fraud for the purpose of

obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years.

(2) It shall be a good defence to a charge under subsection (1) (a), (b), (d) or subsection (1) (c) (i), (vii) or (viii) if the accused proves that he had no intent to defraud, and to a charge under subsection (1) (f) or subsection (1) (c) (iii) or (iv) if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(3) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under subsection (1) (c) (viii), every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years.

15/84.

U.K.s.328.

Aust. s. 300.

13/87.

Inducement to be appointed liquidator.

337. Any person who gives or agrees or offers to give to any member or creditor of a company any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years.

U.K.s.336.

Aust. s. 301 (1).

15/84.

Penalty for falsification of books.

338. Every officer or contributory or any company being wound up who destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register or book of account or document belonging to the company with intent to defraud or deceive any person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years.

U.K.s.329.

Aust. s. 301(2).

15/84.

Liability where proper accounts not kept.

339. —(1) If, on an investigation under any other Part or where a company is wound up, it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the investigation or winding up or the period between the incorporation of the company and the commencement of the investigation or winding up (whichever is the lesser) every officer who is in default shall, unless he acted honestly and shows that, in the circumstances in which the business of the company was carried on, the default was excusable, be guilty of

an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year.

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

(3) If, in the course of the winding up of a company or in any proceedings against a company, it appears that an officer of the company who was knowingly a party to the contracting of a debt had, at the time the debt was contracted, no reasonable or probable ground of expectation, after taking into consideration the other liabilities, if any, of the company at the time of the company being able to pay the debt, the officer shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 3 months.

U.K.s.331.

Aust. s. 303.

15/84.

Responsibility for fraudulent trading.

340. —(1) If, in the course of the winding up of a company or in any proceedings against a company, it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the Court, on the application of the liquidator or any creditor or contributory of the company, may, if it thinks proper to do so, declare that any person who was knowingly a party to the carrying on of the business in that manner shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court directs.

(2) Where a person has been convicted of an offence under section 339 (3) in relation to the contracting of such a debt as is referred to in that subsection, the Court, on the application of the liquidator or any creditor or contributory of the company, may, if it thinks proper to do so, declare that the person shall be personally responsible without any limitation of liability for the payment of the whole or any part of that debt.

(3) Where the Court makes any declaration pursuant to subsection (1) or (2), it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the liability of any person under the declaration a charge on any debt or obligation due from the company to him, or on any charge or any interest in any charge on any assets of the company held by or vested in him or any corporation or person on his behalf, or any person claiming as assignee from or through the person liable or any corporation or person acting on his behalf, and may from time to time make such further order as is necessary for the purpose of enforcing any charge imposed under this subsection.

(4) For the purpose of subsection (3), assignee includes any person to whom or in whose favour by the directions of the person liable the debt, obligation or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(5) Where any business of a company is carried on with the intent or for the purpose mentioned in subsection (1), every person who was knowingly a party to the carrying on of the business with that intent or purpose shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 7 years or to both.

15/84.

(6) Subsection (5) shall apply to a company whether or not it has been, or is in the course of being, wound up.

15/84.

(7) This section shall have effect notwithstanding that the person concerned is criminally liable apart from this section in respect of the matters on the ground of which the declaration is made.

(8) On the hearing of an application under subsection (1) or (2), the liquidator may himself give evidence or call witnesses.

U.K.s.332.

Aust. s. 304.

Power of Court to assess damages against delinquent officers, etc.

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

(2) This section shall extend and apply to and in respect of the receipt of any money or property by any officer of the company during the two years preceding the commencement of the winding up whether by way of salary or otherwise appearing to the Court to be unfair or unjust to other members of the company.

(3) This section shall have effect notwithstanding that the offence is one for which the offender is criminally liable.

U.K.s.333.

Aust. s. 305.

Prosecution of delinquent officers and members of company.

342. —(1) If it appears to the Court, in the course of a winding up by the Court, that any past or present officer, or any member, of the company has been guilty of an offence in relation to the company for which he is criminally liable, the Court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator to prosecute the offender or to refer the matter to the Minister.

(2) If it appears to the liquidator, in the course of a voluntary winding up, that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the Minister and shall, in respect of information or documents in his possession or under his control which relate to the matter in question, furnish the Minister with such information and give to him such access to and facilities for inspecting and taking copies of any documents as he may require.

(3) If it appears to the liquidator, in the course of any winding up, that the company which is being wound up will be unable to pay its unsecured creditors more than 50 cents in the dollar, the liquidator shall forthwith report the matter in writing to the Official Receiver and shall furnish the Official Receiver with such information and give to him such access to and facilities for inspecting and taking copies of any document as the Official Receiver may require.

(4) Where any report is made under subsection (2) or (3), the Minister may, if he thinks fit, investigate the matter and for the purposes of such an investigation shall have all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the Court, but if it appears to him that the case is not one in which proceedings ought to be taken by him he shall inform the liquidator accordingly, and thereupon, subject to the previous approval of the Court the liquidator may himself take proceedings against the offender.

13/87.

(5) If it appears to the Court in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty as aforesaid and that no report with respect to the matter has been made by the liquidator to the Minister, the Court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly this section shall have effect as though the report has been made in pursuance of subsection (2).

(6) If, where any matter is reported or referred to the Minister or the Official Receiver under this section, he considers that the case is one in which a prosecution ought to be instituted, he may institute proceedings accordingly, and the liquidator and every officer and agent of the company past and present, other than the defendant in the proceedings, shall give the Minister or the Official Receiver all assistance in connection with the prosecution which he is reasonably able to give.

(7) For the purposes of subsection (6), agent, in relation to a company, includes any banker or solicitor of the company and any person employed by the company as auditor, whether or not an officer of the company.

(8) If any person fails or neglects to give assistance in the manner required by subsection (6), the Court may, on the application of the Minister or the Official Receiver, direct that person to comply with the requirements of that subsection, and where any application is made under this subsection with respect to a liquidator the Court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him to do so, direct that the costs of the application shall be borne by the liquidator personally.

(9) The Minister may direct that the whole or any part of any costs and expenses properly incurred by the liquidator in proceedings brought under this section shall be defrayed out of moneys provided by Parliament.

(10) Subject to any direction given under subsection (9) and to any charges on the assets of the company and any debts to which priority is given by this Act, all such costs and expenses shall be payable out of those assets as part of the costs of winding up.

U.K.s.334.

Aust. s. 306.

Subdivision (5) — Dissolution

Power of Court to declare dissolution of company void.

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

(2) The person on whose application the order was made shall, within 7 days after the making of the order or such further time as the Court allows, lodge with the Registrar and with the Official Receiver a copy of the order and an office copy of the order, respectively, and if he fails to do so shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000.

15/84.

U.K.s.352.

Aust. s. 307.

Power of Registrar to strike defunct company off register.

344. —(1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he may send to the company by post a letter to that effect and stating that if an answer showing cause to the contrary is not received within one month from the date thereof a notice will be published in the *Gazette* with a view to striking the name of the company off the register.

(2) Unless the Registrar receives an answer within one month from the date of the letter to the effect that the company is carrying on business or is in operation, he may publish in the *Gazette* and send to the company by registered post a notice that at the expiration of 3 months from the date of that notice the name of the company mentioned therein will unless cause is shown to the contrary be struck off the register and the company will be dissolved.

(3) If in any case where a company is being wound up the Registrar has reasonable cause to believe that —

(a) no liquidator is acting;

(b) the affairs of the company are fully wound up and for a period of 6 months the liquidator has been in default in lodging any return required to be made by him; or

(c) the affairs of the company have been fully wound up under Division 2 and there are no assets or the assets available are not sufficient to pay the costs of obtaining an order of the Court dissolving the company,

he may publish in the *Gazette* and send to the company or the liquidator, if any, a notice to the same effect as that referred to in subsection (2).

(4) At the expiration of the time mentioned in the notice, the Registrar may, unless cause to the contrary is previously shown, strike the name of the company off the register, and shall publish notice thereof in the *Gazette*, and on the publication in the *Gazette* of the notice the company shall be dissolved; but —

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

(b) nothing in this subsection shall affect the power of the Court to wind up a company the name of which has been struck off the register.

(5) If any person feels aggrieved by the name of the company having been struck off the register, the Court, on an application made by the person at any time within 15 years after the name of the company has been so struck off may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the name of the company be restored to the register, order the name of the company be restored to the register, and upon a copy of the order being lodged with the Registrar the company shall be deemed to have continued in existence as if its name had not been struck off, and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

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

U.K.s.353.

Aust. s. 308.

Official Receiver to act as representative of defunct company in certain events.

345. —(1) Where, after a company has been dissolved, it is proved to the satisfaction of the Official Receiver —

(a) that the company, if still existing, would be legally or equitably bound to carry out, complete or give effect to some dealing, transaction or matter; and

(b) that in order to carry out, complete or give effect thereto some purely administrative act, not discretionary, should have been done by or on behalf of the company, or should be done by or on behalf of the company, if still existing,

the Official Receiver may, as representing the company or its liquidator under this section, do or cause to be done any such act.

(2) The Official Receiver may execute or sign any relevant instrument or document adding a memorandum stating that he has done so in pursuance of this section, and such execution or signature shall have the same force, validity and effect as if the company if existing had duly executed such instrument or document.

Aust.s.309.

Outstanding assets of defunct company to vest in Official Receiver.

346. —(1) Where, after a company has been dissolved, there remains any outstanding

property, movable or immovable, including things in action and whether in or outside Singapore which was vested in the company or to which it was entitled, or over which it had a disposing power at the time it was so dissolved, but which was not got in, realised upon or otherwise disposed of or dealt with by the company or its liquidator, such property except called and uncalled capital, shall, for the purposes of the following sections of this Subdivision and notwithstanding any written law or rule of law to the contrary, by the operation of this section, be and become vested in the Official Receiver for all the estate and interest therein legal or equitable of the company or its liquidator at the date the company was dissolved, together with all claims, rights and remedies which the company or its liquidator then had in respect thereof.

(2) Where any claim, right or remedy of the liquidator may under this Act be made, exercised or availed of only with the approval or concurrence of the Court or some other person, the Official Receiver may for the purposes of this section make, exercise or avail himself of that claim, right or remedy without such approval or concurrence.

Aust.s.310.

Outstanding interests in property how disposed of.

347. —(1) Upon proof to the satisfaction of the Official Receiver that there is vested in him by operation of section 346 or by operation of any corresponding previous written law or of a law of a designated country corresponding with section 354 any estate or interest in property, whether solely or together with any other person, of a beneficial nature and not merely held in trust, the Official Receiver may sell or otherwise dispose of or deal with such estate or interest or any part thereof as he sees fit.

(2) The Official Receiver may sell or otherwise dispose of or deal with such property either solely or in concurrence with any other person in such manner for such consideration by public auction, public tender or private contract upon such terms and conditions as he thinks fit, with power to rescind any contract and resell or otherwise dispose of or deal with such property as he thinks expedient, and may make, execute, sign and give such contracts, instruments and documents as he thinks necessary.

(3) The Official Receiver shall be remunerated by such commission, whether by way of percentage or otherwise, as is prescribed in respect of the exercise of the powers conferred upon him by subsection (1).

(4) The moneys received by the Official Receiver in the exercise of any of the powers conferred on him by this Subdivision shall be applied in defraying all costs, expenses, commission and fees incidental thereto and thereafter to any payment authorised by this Subdivision and the surplus, if any, shall be dealt with as if they were unclaimed moneys paid to the Official Receiver in pursuance of section 322.

Aust.s.311.

Liability of Official Receiver and Government as to property vested in Official Receiver.

348. Property vested in the Official Receiver by operation of this Subdivision or by operation of any corresponding previous written law shall be liable and subject to all charges, claims and liabilities imposed thereon or affecting such property by reason of any statutory provision as to rates, taxes, charges or any other matter or thing to which such property would have been liable or subject had such property continued in the possession, ownership or occupation of the company; but there shall not be imposed on the Official Receiver or the Government any duty, obligation or liability whatsoever to do

or suffer any act or thing required by any such statutory provision to be done or suffered by the owner or occupier other than the satisfaction or payment of any such charges, claims or liabilities out of the assets of the company so far as they are in the opinion of the Official Receiver properly available for and applicable to such payment.

Aust.s.312.

Accounts and audit.

349. —(1) The Official Receiver shall —

- (a) record in a register a statement of any property coming to his hand or under his control or to his knowledge vested in him by operation of this Subdivision and of his dealings therewith;
 - (b) keep accounts of all moneys arising therefrom and of how they have been disposed of; and
 - (c) keep all accounts, vouchers, receipts and papers relating to such property and moneys.
- (2) The Auditor-General shall have all the powers in respect of such accounts as are conferred upon him by any Act relating to audit of public accounts.

Aust.s.313.

Division 5 — Winding up of unregistered companies

Definition of unregistered company.

350. —(1) For the purposes of this Division, unregistered company includes a foreign company and any partnership, association or company consisting of more than 5 members but does not include a company incorporated under this Act or under any corresponding previous written law.

Provisions of Division cumulative.

(2) This Division shall be in addition to, and not in derogation of, any provisions contained in this or any other written law with respect to the winding up of companies by the Court and the Court or the liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies.

U.K.ss.398,404.

Aust. s. 314.

Winding up of unregistered companies.

351. —(1) Subject to this Division, any unregistered company may be wound up under this Part, which Part shall apply to an unregistered company with the following adaptations:

- (a) the principal place of business of such company in Singapore shall for all the purposes of the winding up be the registered office of the company;
- (b) no such company shall be wound up voluntarily;
- (c) the circumstances in which the company may be wound up are —
 - (i) if the company is dissolved or has ceased to have a place of business in Singapore or has a place of business in Singapore only for the purpose of winding up its affairs or has ceased to carry on business in Singapore;
 - (ii) if the company is unable to pay its debts;
 - (iii) if the Court is of opinion that it is just and equitable that the company should be wound up.

- (2) An unregistered company shall be deemed to be unable to pay its debts if —
- (a) a creditor by assignment or otherwise to whom the company is indebted in a sum exceeding \$2,000 then due has served on the company, by leaving at its principal place of business in Singapore or by delivering to the secretary or a director, manager or principal officer of the company or by otherwise serving in such manner as the Court approves or directs, a demand under his hand requiring the company to pay the sum so due, and the company has for 3 weeks after the service of the demand neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor;
 - (b) any action or other proceeding has been instituted against any member for any debt or demand due or claimed to be due from the company or from him in his character of member, and, notice in writing of the institution of the action or proceeding having been served on the company by leaving it at its principal place of business in Singapore or by delivering it to the secretary or a director, manager or principal officer of the company or by otherwise serving it in such manner as the Court approves or directs, the company has not within 10 days after service of the notice paid, secured or compounded for the debt or demand or procured the action or proceeding to be stayed or indemnified the defendant to his reasonable satisfaction against the action or proceeding and against all costs, damages and expenses to be incurred by him by reason thereof;
 - (c) execution or other process issued on a judgment, decree or order obtained in any court in favour of a creditor against the company or any member thereof as such or any person authorised to be sued as nominal defendant on behalf of the company is returned unsatisfied; or
 - (d) it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

(3) A company incorporated outside Singapore may be wound up as an unregistered company under this Division notwithstanding that it is being wound up or has been dissolved or has otherwise ceased to exist as a company under the laws of the place under which it was incorporated.

(4) In this section, “to carry on business” has the same meaning as in section 366.

U.K.ss.399,400.

Aust. s. 315.

13/87.

Contributories in winding up of unregistered company.

352. —(1) On an unregistered company being wound up every person shall be a contributory —

- (a) who is liable to pay or contribute to the payment of —
 - (i) any debt or liability of the company;
 - (ii) any sum for the adjustment of the rights of the members among themselves; or
 - (iii) the costs and expenses of winding up; or
 - (b) where the company has been dissolved in the place in which it is formed or incorporated, who immediately before the dissolution was so liable,
- and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability.

(2) On the death or bankruptcy of any contributory, the provisions of this Act with respect to the personal representatives of deceased contributories and the assignees and trustees of bankrupt contributories respectively shall apply.

U.K.s.401.
Aust. s. 316.

Power of Court to stay or restrain proceedings.

353. —(1) The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order shall, in the case of an unregistered company where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

(2) Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company except by leave of the Court and subject to such terms as the Court imposes.

U.K.ss.402,403.
Aust. s. 317.

Outstanding assets of defunct unregistered company.

354. —(1) Where an unregistered company the place of incorporation or origin of which is in a designated country has been dissolved and there remains in Singapore any outstanding property, movable or immovable, including things in action which was vested in the company or to which it was entitled or over which it had a disposing power at the time it was dissolved, but which was not got in, realised upon or otherwise disposed of or dealt with by the company or its liquidator before the dissolution, the property, except called and uncalled capital, shall, by the operation of this section, be and become vested, for all the estate and interest therein legal or equitable of the company or its liquidator at the date the company was dissolved, in such person as is entitled thereto according to the law of the place of incorporation or origin of the company.

(2) Where the place of origin of an unregistered company is Singapore sections 345 to 349 (both inclusive) shall with such adaptations as may be necessary apply in respect of that company.

(3) Where it appears to the Minister that any law in force in any other country contains provisions similar to this section, he may, by notification in the *Gazette*, declare that other country to be a designated country for the purposes of this section.

Aust.s.318.