

Companies Act

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

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:

[20th May , 1982]

Short title and the date of operation. **1.**

- (1) This Act may be cited as the Companies Act, No. 17 of 1982.
- (2)

(a) The provisions of this Act other than Part V shall come into operation on such date (hereinafter referred to as the " appointed date ") as the Minister may, by Order published in the Gazette, appoint.

(b) The provisions of Part V of this Act shall come into operation on such date as the Minister may, by Order published in the Gazette, specify.

PART I

INCORPORATION OF COMPANIES AND MATTERS INCIDENTAL THERETO MEMORANDUM OF ASSOCIATION

MEMORANDUM OF ASSOCIATION

Mode of forming incorporated company. **2.**

- (1) Any seven or more persons, or where the company to be formed is to be a private company, any two or more persons, or where the company to be formed is a people's company, any fifty or more persons, associated for any lawful purpose may, by subscribing their names to a memorandum of association (which shall be printed) and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability.
- (2) Such a company may be either

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

(b) a people's company as defined in Part VII of this Act; or

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

(d) a company not having any limit on the liability of its members (in this Act referred to as " an unlimited company ").

Requirement with respect to memorandum. **3.**

- (1) The memorandum of every company shall state

(a) the name of the company, with " Limited " as the last word of the name in the case of a public limited company, and with " (Private) Limited" as the last words of the name in the case of a

private limited company, where such companies are limited by shares, and with " (Guarantee) Limited " as the last words of the name in the case of a company limited by guarantee, and with " (People's) Limited " as the last words of the name in the case of a people's company ;

(b) the district in which the registered office of the company is to be situate ;

(c) the objects of the company

(2) The memorandum of a company limited by shares or by guarantee shall also state that the liability of its members is limited.

(3) The memorandum of a company limited by guarantee shall also state that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(4) In the case of a company having a share capital

(a) the memorandum shall, unless the company is an unlimited company, state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;

(b) no subscriber of the memorandum shall take less than one share;

(c) each subscriber shall write opposite to his name the number of shares he takes.

Further requirements with respect to memorandum. **4.**

(1) The memorandum of every company shall, in stating the objects of the company, set out specifically, the primary objects of the company, that is to say, the objects which the subscribers or promoters intend that the company should carry out during the period of five years from the date of the commencement of business by the company.

(2) The memorandum of every company shall state the ancillary powers proposed to be exercised or which may need to be exercised by the company for the purposes of carrying out its primary objects.

(3) Nothing in the provisions of subsection (1) or subsection (2) shall be deemed or construed to preclude the memorandum from containing a separate statement of objects, not being primary objects, or of powers (whether general or special), in addition to those specifically set out under the provisions of subsections (1) and (2) :

Provided, however, that no such object or power may be carried out or exercised by the company except with the prior sanction of a special resolution of the company.

(4) The preceding provisions of this section shall apply in the case of companies formed on or after the appointed date.

Stamp and signature of memorandum.

5. The memorandum shall bear a stamp of the prescribed value and shall be signed by each subscriber in the presence of a notary public who shall witness the signature of each signatory and affix his seal.

Restriction on alteration of memorandum.

6. A company shall not alter the conditions contained in its memorandum except in the cases, in the mode and to the extent for which express provision is made in this Act:

Provided that, in the case of a company registered prior to the appointed date, the Registrar may alter the name of the company in accordance with the provisions of paragraph (a) of subsection (1) of section 3.

Mode in which and extend to which objects of

7.

company may be altered.

(1) A company may, by special resolution, alter the provisions of its memorandum with respect to the objects extent of the company, so far as may be required to enable it

- (a) to carry on its business more economically or more efficiently; or
- (b) to attain its primary objects by new or improved means; or
- (c) to enlarge or change the local area of its operations; or
- (d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or
- (e) to restrict or abandon any of the primary objects specified in the memorandum ; or
- (f) to sell or dispose of the whole or any part of the undertaking of the company ; or
- (g) to amalgamate with any other company or body of persons:

Provided that, where an application is made to the court in accordance with the provisions of this section for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.

(2) An application under the provisions of subsection (1) may be made

- (a) by the holders of not less in the aggregate than fifteen per centum in nominal value of the company's issued share capital or any class thereof, or if the company is not limited by shares, not less than fifteen per centum of the company's members ; or
- (b) by the holders of not less than fifteen per centum of the company's debentures entitling the holders to object to alterations of its objects:

Provided that such an application shall not be made by any person who has consented to or voted in favour of the alteration.

(3) An application under the provisions of subsection (1) shall be made within twenty-one days from the date on which the resolution altering the company's objects was passed, and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(4) On an application under the provisions of subsection (1) the court may make an order confirming the alteration of the objects of the company either wholly or in part and on such terms and conditions as it thinks fit, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members, and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement:

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

(5) The debentures entitling the holders to object to alterations of a company's objects shall be any debentures secured by a floating charge, which were issued or first issued before the appointed date, or form part of the same series as any debentures so issued, and a special resolution altering a company's objects shall require the same notice to the holders of any such debentures as to members of the company.

In default of any provisions regulating the giving of notice to any such debenture holders, the provisions of the company's articles regulating the giving of notice to members shall apply.

(6) In the case of a company which is by virtue of a licence from the Registrar exempt from the obligation to use the word " Limited " as part of its name, a resolution altering the company's objects shall also require the same notice to the Registrar as to members of the company.

(7) Where a company passes a special resolution altering its objects

- (a) if no application is made under the provisions of subsection (1) in respect of the alteration, it shall, within fifteen days from the end

of the period of making such an application, deliver to the Registrar a printed copy of its memorandum as altered ; and
(b) if such an application is made it shall

- (i) forthwith give notice of that fact to the Registrar; and
- (ii) within fifteen days from the date of any order cancelling or confirming the alteration, deliver to the Registrar a certified copy of the order and, in the case of an order confirming the alteration, a printed copy of the memorandum as altered.

The court may by order at any time extend the time for the delivery of the documents to the Registrar under the provisions of paragraph (b) of this subsection for such period as the court may think proper.

(8) Where a company makes default in giving notice or delivering any document to the Registrar as required under the provisions of subsection (7), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine of three hundred and fifty rupees.

(9) The validity of an alteration of the provisions of a company's memorandum with respect to the objects of the company shall not be questioned in any court or tribunal on the ground that it was not authorized by the provisions of subsection (1), except in proceedings taken for the purpose (whether under this section or otherwise) before the expiration of twenty-one days from the date of the resolution in that behalf; and where any such proceedings are taken otherwise than under this section, the provisions of subsections (7) and (8) shall apply in relation thereto as if they had been taken under this section, an order declaring the alteration invalid were an order cancelling it, and an order dismissing the proceedings were an order confirming the alteration.

ARTICLES OF ASSOCIATION

Articles
prescribing rules
for companies.

8. There shall in the case of every company be registered with the memorandum, articles of association signed by the subscribers to the memorandum and setting out rules for the management of the company unless such articles have adopted the rules set out in Table A of the First Schedule hereto.

Regulations
required in case of
unlimited
company of
company limited
by guarantee.

9.

(1) In the case of an unlimited company, the articles shall state the number of members with which the company proposes to be registered and, if the company has a share capital, shall state the amounts of share capital with which the company proposes to be registered.

(2) In the case of a company limited by guarantee, the articles shall state the number of members with which the company proposes to be registered.

(3) Where an unlimited company or a company limited by guarantee has increased the number of its members beyond the registered number, it shall, within fifteen days from the date the increase was resolved on or took place, give to the Registrar in writing the notice of the increase, and the Registrar shall record the increase.

Where default is made in complying with the provisions of this subsection the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine of three hundred and fifty rupees.

Adoption and
application of
rules set out in
Table A of First
Schedule.

10. The articles of association of a company limited by shares may adopt all or any of the rules set out in Table A of the First Schedule hereto

Printing stamp,
and signature of
articles.

11. Articles shall

- (a) be printed ;
- (b) be divided into paragraphs numbered consecutively ;

- (c) bear a stamp of the prescribed value;
- (d) be signed by each subscriber of the memorandum of association in the presence of a notary public who shall witness the signature of each signatory and affix his seal.

Alteration of articles by special resolution. **12.**

- (1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles.
- (2) Any alteration or addition made to the articles shall, subject to the provisions of this Act, be as valid as if originally contained therein, and be subject in like manner to alteration by special resolution.

FORM OF MEMORANDUM AND ARTICLES

Statutory forms of memorandum and articles. **13.** The form of

- (a) the memorandum of association of a company limited by shares,
- (b) the memorandum and articles of association of a company limited by guarantee and not having a share capital,
- (c) the memorandum and articles of association of a company limited by guarantee and having a share capital,
- (d) the memorandum and articles of association of an unlimited company having a share capital,

shall be respectively in accordance with the forms set out in Tables B, C, D and E of the First Schedule hereto, or as near thereto as circumstances permit.

REGISTRATION

Registration memorandum and articles. **14.** Subject to the provisions of section 175, the memorandum and the articles, if any, shall be delivered to the Registrar who shall retain and register them.

Effect of Registration. **15.**

- (1) On the registration of the memorandum of the company the Registrar shall issue to such company a certificate authenticated by the seal prepared under the provisions of section 390 that the company is incorporated and, in the case of a limited company, the company is limited.
- (2) From the date of incorporation specified in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is referred to in this Act.

Power of company to hold lands. **16.**

- (1) A company formed for the purpose of promoting art, science, religion, charity or any other like objects not involving the acquisition of gain by the company or by its individual members, shall not without a licence issued by the Registrar, hold more than two acres of land, and the Registrar may, by licence, empower any such company to hold lands in such quantity, and subject to such conditions as he thinks fit.
- (2) A licence issued by the Registrar under the provisions of subsection (1) shall be in the prescribed form.

Conclusiveness of certificate of incorporation. **17.**

- (1) A certificate of incorporation issued by the Registrar in respect of any

association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorized to be registered and duly registered under this Act.

(2) A statutory declaration by an attorney-at-law engaged. In the formation of the company, or by a person named in the articles as a director or secretary of the company, of compliance with all or any of the said requirements, shall be produced to the Registrar, and the Registrar may accept such a declaration as sufficient evidence of compliance.

Registration of unlimited company as limited. **18.**

(1) A company registered as an unlimited company may register under this Act as a limited company, or a company already registered as a limited company may re-register under this Act, but the registration of an unlimited company as a limited company shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into by, to, with, or on behalf of the company before the registration, and those rights or liabilities may be enforced in the manner provided by this Act.

(2) On registration of a company under the provisions of subsection (1), the Registrar shall close the former registration of the company, and may dispense with the delivery to him of copies of any documents, with copies of which he was furnished on the occasion of the original registration of the company, but, save as aforesaid, the registration shall take place in the same manner and shall have effect as if it were the first registration of the company under this Act.

PROVISIONS WITH RESPECT TO NAMES OF COMPANIES

Restriction of registration of companies by certain names. **19.**

(1) No company shall be registered by a name which

(a) is identical with that by which a company in existence is already registered, or so nearly resembles that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the Registrar requires ; or

(b) contains the words "Chamber of Commerce", unless the company is a company which is to be registered under a licence granted under section 21 without the addition of the word "Limited" to its name.

(2) Except with the consent of the Minister, given having regard to the national interest, no company shall be registered by a name which contains the words

(a) "President", "Presidential" or in the opinion of the Registrar suggests, or is calculated to suggest, the patronage of the President or connection with the Government or any department thereof; or

(b) "Municipal" or "incorporated", or in the opinion of the Registrar suggests, or is calculated to suggest, connection with any Municipality or other local authority or with any society or body incorporated by Act of Parliament; or

(c) "Co-operative" or "Society"; or

(d) "National", "State" or "Sri Lanka" or in the opinion of the Registrar suggests, or is calculated to suggest, any connection with the Government or any department thereof.

Change of name. **20.**

(1) A company may, by special resolution and with the prior approval in writing

Power to
despense with
"limited" in name
of charitable and
other companies.

21.

of the Registrar, change its name.

(2) Where through inadvertence or otherwise, a company on its first registration or on its registration by a new name is registered by a name which, in the opinion of the Registrar, is too like the name by which a company in existence is previously registered, the first-mentioned company may change its name with the prior sanction of the Registrar and, if the Registrar so directs within six months from the date of its being registered by that name, shall change it within a period of six weeks from the date of the direction or such longer period as the Registrar may in his discretion allow.

Where a company makes default in complying with a direction made under the provisions of this subsection, it shall be guilty of an offence and shall be liable to a fine not exceeding two hundred and fifty rupees for every day during which the default continues.

(3) Where a company changes its name, the Registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to indicate such change.

(4) The change of name shall not affect any rights or obligations of the company, or render ineffective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced against it by the former name may be continued or commenced against it by its new name.

(1) Where it is proved to the satisfaction of the Registrar that an association whether of recent origin or otherwise about to be formed as a limited company is to be formed for promoting commerce, art, science, religion, charity, sport, or any other useful object, and intends to apply its profits, if any, or other income in promoting its objects and to prohibit the payment of any dividend to its members, the Registrar may by licence direct that the association may be registered as a company, with limited liability, without the addition of the word "Limited" to its name, and the association may be registered accordingly and shall on registration enjoy all the privileges and (subject to the other provisions of this section) be subject to all the obligations of a limited company.

(2) Where it is proved to the satisfaction of the Registrar

(a) that the objects of a company registered under this Act as a limited company are restricted to those specified in subsection (1) and to objects incidental or conducive thereto ; and

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

the Registrar may by licence authorize the company to make by special resolution a change in its name including or consisting of the omission of the word " Limited " and subsections (3) and (4) of section 20 shall apply to a change of name under this subsection as they apply to a change of name under that section.

(3) A licence granted under the provisions of this section may be subject to such terms and conditions as the Registrar thinks fit, for the association to conform to the requirements of subsection (1), and such terms and conditions shall be binding on the association to which such licence granted, and (where the grant is under the provisions of subsection (1)) shall, if the Registrar so directs, be inserted in the memorandum and articles, or in one of those documents. Any alterations made in the memorandum and articles shall be so made with prior written approval of the Registrar.

(4) An association to which a licence is granted under the provision of this section shall be exempt from the provisions of this Act relating to the use of the word "Limited" as any part of its name, and the sending of lists of members to the Registrar.

(5) A licence granted under the provisions of this section may at any time be revoked by the Registrar where the association to which such licence is granted fails to comply with the requirements of subsection, (1) or subsection

(3), and upon revocation the Registrar shall enter the word " Limited " at the end of the name upon the register of the association to which it was granted and the association shall cease to enjoy the exemptions and privileges granted by the provisions of this section:

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

(6) Where an association in respect of which a licence under this section is in force alters the provisions of its memorandum with respect to its objects the Registrar may, unless he sees fit to revoke the licence vary, add to or alter the terms and conditions subject to which such licence was granted.

(7) Where a licence granted under the provisions of this section to an association the name of which contains the words " Chamber of Commerce " or any other name signifying an association of business interests is revoked, the association shall, within a period of six weeks from the date of revocation or such longer period as the Registrar may in his discretion allow, change its name to a name which does not contain such words or such name, and

(a) the notice to be given under the provisions of the proviso to subsection (5) to that association shall include a statement in accordance with the preceding provisions of this subsection; and

(b) the provisions of subsections (3) and (4) of section 20 shall apply to a change of name under this subsection as they apply to a change of name under that section.

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

GENERAL PROVISIONS WITH RESPECT TO MEMORANDUM AND ARTICLES

Effect of memorandum and articles. **22.**

(1) Subject to the provisions of this Act the memorandum and articles shall, when registered, bind the company and the members thereof to the extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member to observe all the provisions of the memorandum and of the articles.

(2) All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

provisions as to memorandum and articles of companies limited by guarantee. **23.**

(1) In the case of a company limited by guarantee and not having a share capital, and registered on or after the appointed date, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void,

(2) For the purposes of the provisions of this Act relating to the memorandum of a company limited by guarantee, and this section, every provision in the memorandum or articles, or in any resolution, of a company limited by guarantee and registered on or after the appointed date, purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests may not be specified thereby.

Alterations in memorandum or articles Increasing liability contribute to share capital **24.**

Notwithstanding anything in the memorandum or articles of a company, no member of the company shall be bound by an alteration made in the memorandum or articles after the date on which he became a member, if and in so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of,

not to bind existing members without consent.

or otherwise to pay money to, the company:

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

Power to alter conditions in memorandum which could have been contain in articles.

25.

(1) Subject to the provisions of section 24 and section 217, any condition contained in a company's memorandum which could lawfully have been contained in its articles may, subject to the provisions of this section, be altered by the company by special resolution:

Provided that where an application has been made to court for the alteration to be cancelled the alteration shall not have effect except in so far as it is confirmed by the court.

(2) The provisions of subsection (1) shall not apply where the memorandum itself prohibits, or provides for, the alteration of all or any of the said conditions and shall not authorize the variation or abrogation of the special rights of any class of members.

(3) The provisions of subsections (2), (3), (4), (7) and (8) of section 7 (except paragraph (b) of subsection (2)) shall apply in relation to any alteration and to any application made under this section as they apply in relation to an alteration and application made under that section.

(4) The provisions of this section shall apply to a company's memorandum whether registered before or after the appointed date.

Copies of memorandum articles and agreement to be given to members.

26.

(1) A company shall, on a written request made by any member, send such member within seven days of the date of receipt of such request and subject to the payment of a fee of twenty-five rupees or such less sum as the company may specify, a copy of

(a) the memorandum;

(b) the articles, if any ; and

(c) the agreement, if any, entered into or proposed to be entered into by the company with any person appointed or to be appointed as its agent, secretary or manager.

(2) Where a company makes default in complying with any request made under the provisions of subsection (1), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding two hundred and fifty rupees.

Issued copies of memorandum to embody alterations

27.

(1) Where an alteration is made in the memorandum of a company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration.

(2) Where after the date of any such alteration, the company issues any copy of the memorandum which is not in accordance with the alteration, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding two hundred and fifty rupees for each copy so issued, and every officer of the company who is in default shall be guilty of an offence and shall be liable to a like penalty.

Definition of members.

28.

MEMBERSHIP OF COMPANY

(1) The subscribers' to the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall

be entered as members in its register of members.

(2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.

Membership of holding company. **29.**

(1) Except in the cases hereafter in this section set out, a body corporate cannot be a member of a company which is its holding company, and any allotment or transfer of shares in a company to its subsidiary shall be void.

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

(3) The provisions of this section shall not prevent a subsidiary which is, on the appointed date, a member of its holding company, from continuing to be such member but, subject to the provisions of subsection (2), the subsidiary shall have no right to vote at meetings of the holding company or any class of members thereof.

(4) Subject to the provisions of subsection (2), the provisions of subsections (1) and (3) shall apply in relation to a nominee for a body corporate which is a subsidiary as if any reference in subsections (1) and (3) to a body corporate included a reference to a nominee for a body corporate.

(5) Any reference in this section to shares, in relation to a company limited by guarantee or unlimited which is a holding company whether or not it has a share capital, shall be construed as including a reference to the interest of its members as such, whatever the form of the interest.

Meaning of "private company". **30.**

(1) For the purposes of this act the expression private company means a company which by its articles-

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

(b) limits the number of its members to fifty, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company, were whilst in that employment, and have continued after the determination of that employment to be, members of that company ; and

(c) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

(2) Where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this section be treated as a single member.

Consequences of default in complying with conditions constituting a company a private company. **31.**

Where the articles of a company include the provisions set out in section 30 in order to constitute it a private company but default is made in complying with any of those provisions, the company shall cease to be entitled to privileges and exemptions conferred on private companies under the provisions contained in section 33, paragraph (d) of section 255 and sub-paragraph (i) of paragraph (a) of the proviso to subsection (1) of section 257 and thereupon the provisions contained in section 33, paragraph (d); of section 255 and sub-paragraph (i) of paragraph (a) of the proviso to subsection (1) of section 257 shall apply to the company as if it were not a private company:

Provided that the court, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any other person interested and on such conditions as seem to the court just and expedient, order that the company be relieved from such consequences as aforesaid.

Statement in lieu of prospectus to be delivered to Registrar by company on ceasing to be private company. **32.**

(1) Where a company, being a private company, alters its articles in such manner that they no longer include the provisions which, under the provisions of section 30, are required to be included in the articles of a company in order to constitute it a private company, the company shall, as on the date of the alteration, cease to be a private company and shall within a period of fourteen days from such date; deliver to the Registrar for registration, a statement in lieu of prospectus in the form and containing the particulars set out in Part I of the Second Schedule hereto, and in the instances specified in Part II of that Schedule, setting out the reports specified therein. The provisions contained in Parts I and II, shall have effect subject to the provisions contained in Part III, of that Schedule:

Provided that a statement in lieu of prospectus need not be delivered under the provisions of this subsection if within the said period of fourteen days a prospectus relating to the company which complies with the provisions contained in the Third Schedule hereto is issued and is delivered to the Registrar as required by the provisions of section 43.

(2) Every statement in lieu of prospectus delivered under the provisions of subsection (1) shall, where the persons making any such reports as aforesaid have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 5 of the Second Schedule hereto, have endorsed thereon or attached thereto a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(3) Where default is made in complying with the provisions of subsection (1) or subsection (2), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine of five hundred rupees.

(4) Where a statement in lieu of prospectus delivered to the Registrar under the provisions of subsection (1) includes any untrue statement, any person who authorised the delivery of the statement in lieu of prospectus for registration shall be guilty of an offence and shall be liable to a fine not exceeding five thousand rupees or to imprisonment of either description for a term not exceeding two years or to both such fine and imprisonment, unless he proves either that the untrue statement was immaterial or that he had reasonable ground to believe and did up to the time of the delivery for registration of the statement in lieu of prospectus: believe that the untrue statement was true.

(5) For the purposes of this section

(a) a statement included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included ; and

(b) a statement shall be deemed to be included in a statement in lieu of prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein.

DEDUCTION OF NUMBER OF MEMBERS BELOW LEGAL MINIMUM

Prohibition of carrying on business with fewer than seven or, in the case of a people's company fifty, members.

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

CONTRACTS, & c .

Form of contracts. **34.**

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

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

(2) A contract made in accordance with the provisions of this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto.

(3) A contract made in accordance with the provisions of this section may be varied or discharged in the same manner in which it is authorized by this section to be made.

Bills of exchange and promissory note.

35. A bill of exchange or promissory note shall be deemed to have been made, accepted, or endorsed on behalf of a company, if made, accepted, or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its written authority.

Execution of deeds abroad.

36.

(1) A company may, by writing under its common seal, empower any person, whether generally or in respect of any specified matters, to act as its attorney to execute deeds on its behalf in any place outside Sri Lanka.

(2) A deed signed by such an attorney on behalf of the company and under his seal shall bind the company and have the same effect as if it were under its common seal.

Power for company to have official seal for use abroad.

37.

(1) A company whose objects require or comprise the transaction of business in foreign countries may, if authorized by its articles, have for use in any territory, district, or place outside Sri Lanka, an official seal which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every such territory, district, or place, as the case may be, in which it is to be used.

(2) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

(3) A company having an official seal for use in any such territory, district or place may, by writing under its common seal, authorize any person appointed for the purpose in that territory, district or place, to affix the official seal to any deed or other document to which the company is party in that territory, district or place,

(4) The authority of, any such agent shall, as between the company and any person dealing with the agent, continue during the period, if any, specified in the instrument conferring such authority, or if no period is so specified, until notice of the revocation or determination of the agent's authority has been given to the person dealing with such agent.

(5) The person affixing any such official seal shall, by writing under his hand, certify on the deed or other instrument to which the seal is affixed, the date on which and the place at which it is affixed.

Authentication of Documents and Translation. **38.**

(1) A document or record of proceedings requiring authentication by a company shall be signed by a director, secretary, or other authorized officer of the company, and may not be under its common Seal

(2) Where any document required by this Part to be delivered to the Registrar is in a language other than 'the official language, the Registrar may, in any instance he considers necessary, request in writing, the delivery of a printed translation thereof in such language as may be decided by the Registrar, certified in the prescribed manner to be a correct translation ;
Provided that, where such a request has not been complied with, the Registrar shall take no further action on such document.

PART II

SHARE CAPITAL AND DEBENTURES

PROSPECTUS

Dating of prospectus.

39. A prospectus issued by or on behalf of a company relation to a company intended to be formed shall bear a date, and such date shall, unless the contrary is proved, be taken as the date of publication of such prospectus.

Specific requirements as to particulars in prospectus.

40.

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

(2) A condition requiring or binding an applicant for shares in, or debentures of, a company, to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(3) It shall not be lawful to issue any form of application for shares in, or debentures of, a company, unless the form is issued with a prospectus which complies with the requirements of this section :

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

(a) in connection with a bonafide invitation to a person to enter into an under-writing agreement with respect to the shares or debentures ; or

(b) in relation to shares or debentures which were not offered to the public.

Any person acting in contravention of the provisions of this subsection, shall be guilty of an offence and shall be liable to a fine not exceeding five thousand rupees.

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

(a) as regards any matter not disclosed, he proves that he was not cognizant thereof; or

(b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or

(c) the non-compliance or contravention was in respect of matters which in the opinion* of the court dealing with the case were

immaterial or was otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 17 of the Third Schedule hereto, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(5) The provisions of this section shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures shall or shall not have the right to renounce in favour of other persons, but save as aforesaid, the provisions of this section shall apply to a prospectus or a form of application whether issued on or with reference to the formation of a company or subsequently.

(6) Nothing in this section shall limit or diminish any liability which any person may incur under any written or other law or this Act other than this section.

(7) In any case where a prospectus has been sent for registration in accordance with the provisions of section 43 and has been registered by the Registrar, nothing in the preceding provisions of this section shall be deemed or construed to prohibit the issue or publication of any notice, circular or advertisement stating that the prospectus has been registered and issued and that copies thereof are available on application, if such notice, circular or advertisement does not contain any invitation to the public to subscribe for or purchase any shares in or debentures of a company.

Experts consents to issue of prospectus containing statements by him. **41.**

(1) A prospectus inviting persons to subscribe for shares in, or debentures of, a company and including statement purporting to be made by an expert shall not be issued unless

(a) such expert has given and has not, before delivery of a copy of the prospectus for registration, withdrawn his written consent to the issue thereof with the statement included in the form and context in which it is included ; and

(b) a statement that such expert has given and has not withdrawn his consent as referred to in paragraph (a), appears in the prospectus.

(2) Where any prospectus is issued in contravention of the provisions of this section, the company and every person who is knowingly a party to the issue thereof shall be guilty of an offence and shall be liable to a fine not exceeding five thousand rupees.

(3) In this section, the expression "expert" includes an engineer, a valuer, auditor, an accountant and any other person whose profession gives authority to a statement made by him.

Consent of bank or attorney-at-law or auditor necessary for inclusion of name in prospectus. **42.**

(1) No bank shall be named as a company's bankers in any prospectus inviting persons to subscribe for shares in, or debentures of, the company unless that bank has given and has not, before delivery of a copy of the prospectus for registration, withdrawn its written consent to the inclusion in such prospectus of its names as such bankers :

Provided that a bank shall not be deemed for the purposes of this Act to have authorized the issue of a prospectus by reason only of its having given the consent required by the preceding provisions of this subsection to the inclusion in such prospectus of its name as the company's bankers.

(2) No attorney at law shall be named as a company's lawyer in a prospectus inviting persons to subscribe for shares in, or debentures of, the company unless that attorney-at-law has given and has not, before delivery of a copy of the prospectus for registration, withdrawn his written consent to the inclusion in such prospectus of his name as such lawyer:

Provided that an attorney-at-law shall not be deemed for the purposes of this Act to have authorized the issue of a prospectus by reason only of his having given the consent required by the preceding provision of this subsection to the inclusion in such prospectus of his name as the company's lawyer.

(3) No auditor shall be named as a company's auditor in a prospectus, inviting persons to subscribe for shares in, or debentures of, the company unless that auditor has given and has not, before delivery of a copy of the prospectus for registration, withdrawn his written consent to the inclusion therein of his name as such auditor:

Provided that an auditor shall not be deemed for the purposes of this Act to have authorized the issue of a prospectus by reason only of his having given the consent required by the preceding provisions of this; subsection to the inclusion in such prospectus of his name as the company's auditor.

(4) Where the name of any bank, attorney-at-law or auditor is included in any prospectus of a company in contravention of the provisions of this section, the company and every person who is knowingly a party to the issue thereof shall be guilty of an offence and shall be liable to a fine not exceeding five thousand rupees.

(1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company on or before the date of its publication, there has been delivered to the Registrar for registration a copy of such prospectus signed by every person who is named in prospectus as a director or proposed director of company, or by his agent authorized in writing, and is endorsed thereon or attached thereto

(a) any consent to the issue of the prospectus required by section 41 from any person as an expert;

(b) a declaration made and subscribed by every person who is named in such prospectus as a director or a proposed director of the company to the effect that he has read the provisions of this Act relating to the issue of a prospectus and that those provisions have been complied with; and

(c) in the case of a prospectus issued generally where the persons making any report required by Part II of the Third Schedule hereto have made, or have, without giving the reasons, indicated in such prospectus any such adjustments as are mentioned in paragraph 30 of such Schedule, a written statement signed by such persons setting out the adjustments and giving the reasons therefor.

(2) Every prospectus shall, on the face of it

(a) state that a copy has been delivered for registration as required by this section; and

(b) set out, or refer to, statements included in the prospectus which, specify any documents required by this section to be endorsed on or attached* to the copy so delivered.

(3) The Registrar shall not register a prospectus

(a) unless the copy thereof is signed in the manner required by this section; and

(b) unless it has endorsed thereon or attached thereto the documents (if any) specified as aforesaid; and

(c) unless it bears the date of the delivery of the copy thereof to the Registrar under this section or it bears a future date to be inserted in such prospectus under the provisions of section 39; and

(d) where it bears a future date as hereinbefore provided, unless that date has been confirmed or altered by notice served on the

Registrar.

(4) Where a prospectus is issued without a copy thereof being delivered under this section to the Registrar, or without the copy so delivered having endorsed thereon or attached thereto the required documents referred to in subsection (1), the company and every person who is knowingly a party to the issue of the prospectus, shall be guilty of an offence and shall be liable to a fine not exceeding two hundred and fifty rupees for every day from the issue of the prospectus until a copy thereof is so delivered with the required documents endorsed thereon or attached thereto.

Restrictions on alteration on term mentioned in prospectus or statement in lieu of prospectus. **44.**

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

(2) The provisions of this section shall not apply to a private company.

Civil liability for mis-statement in prospectus. **45.**

(1) Subject to the provisions of this section, where a prospectus invites persons to subscribe for shares in or debenture of a company, the following persons shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement included in such prospectus, that is to say

(a) every person who is a director of the company at the time of the issue of the prospectus ;

(b) every person who has authorized himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time ;

(c) every person being a promoter of the company; and

(d) every person who has authorized the issue of the prospectus :

Provided that, where under the provisions of section 41, the consent of any person is required to the issue of a prospectus and such person has given such consent, such person shall not by reason of his having given such consent be liable under the provisions of this subsection as a person who has authorized the issue of the prospectus except in respect of an untrue statement purporting to be made by him as an expert.

(2) No person shall be liable under the provisions of subsection (1) if he proves

(a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent: or

(b) that the prospectus was issued without his knowledge or consent and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or

(c) that, after the issue of the prospectus and before* allotment thereunder, he, on becoming aware of any untrue statement in such prospectus, withdrew his; consent thereto and gave reasonable public notice-of the withdrawal and of the reasons therefor ; or

(d) that

(i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the

allotment of the shares or debentures, as the case may be, believe, that the statement was true ; and
(ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, as the case may be, and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe that the person making the statement was competent to make it and that person had given the consent required by the provisions of section 41 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or to the defendant's knowledge, before allotment thereunder ; and
(iii) as regards every untrue statement purporting to be a statement made by a person in his official capacity or contained in what purports to be a copy of or extract from a public document issued officially, it was a correct and fair representation of the statement or copy or extract from the document:

Provided that the provisions of this subsection shall 1 apply in the case of a person liable, by reason of his having given the consent required by the provisions of subsection as a person who has authorized the issue of the prospectus. in respect of an untrue statement purporting to be 1 by him as an expert.

(3) A person who, apart from the provisions of this s section, would under the provisions of subsection liable, by reason of his having given the consent required by the provisions of section 41 as a person who authorized the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert, not be so liable if he proves

- (a) that, having given his consent under the provision of section 41 to the issue of the prospectus, withdrew it in writing before delivery of a copy c the prospectus for registration; or
- (b) that, after delivery of a copy of the prospectus registration and before allotment thereunder, on becoming aware of the untrue statement, drew his consent in writing and gave seasonal public notice of the withdrawal, and of the reason therefor ; or
- (c) that he was competent to make the statement ; that he had reasonable ground to believe and different up to the time of the allotment of the shares debentures, as the case may be, believe that statement was true.

(4) Where

- (a) the prospectus contains the name of a person director of the company, or as having agreed to become a director of such company, and he has no consented to become a director or has withdraw his consent before the issue of the prospectus, and has not authorized or consented to the issue such prospectus ; or
- (b) the consent of a person is required under the provisions of section 41 to the issue of the prospectus a he either has not given that consent or has with drawn it before the issue of the prospectus,

the directors of the company, except any director whose knowledge or consent the prospectus was issued, a any other person who authorized the issue of such prospectus , shall be liable to indemnify the person named under paragraph (a), or whose consent was required under paragraph (b), as the case may be, against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or

of the inclusion therein of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any action or legal proceeding brought against him in respect thereof:

Provided that a person shall not be deemed for the purposes of this subsection to have authorized the issue of a prospectus by reason only of his having given the consent required by the provisions of section 41 to the inclusion in such prospectus of a statement purporting to be made by him as an expert

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

(6) For the purposes of this section

(a) the expression "pro motor" means a pro motor who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company ; and

(b) the expression "expert" has the same meaning as in section 41.

Criminal liability **46.**
for mis-statements
in prospectus.

(1) Where a prospectus issued on or after the appointed date includes any untrue statement, any person who authorized the issue of the prospectus shall be guilty of an offence and shall be liable to a fine not exceeding five thousand rupees or to imprisonment of either description for a term not exceeding two years or to both such fine and imprisonment unless he proves either that the statement was immaterial or that he had reasonable ground to believe and did, up to the time of the issue of the prospectus, believe that the statement was true.

(2) A person shall not be deemed for the purposes of this section to have authorized the issue of a prospectus by reason only of his having given the consent required by the provisions of section 41 to the inclusion in such prospectus of a statement purporting to be made by him as an expert.

(3) No prosecution shall be instituted in respect of any offence, under the provisions of subsection (1) except with the sanction of the Attorney-General.

Document **47.**
containing offer of
shares or
debentures for
sale to deemed
prospectus.

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

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

(a) that an offer of the shares or debentures or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or

(b) that at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(3) The provisions of section 43 as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as directors of a company, and the provisions of section 40 as applied by this section shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus

(a) the net amount of the consideration received by the company in respect of the shares or debentures to which, the offer relates ; and

(b) the place and time at which the contract under which the said shares or debentures have been or are to be allotted may be inspected.

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

Interpretation of provisions relating to prospectuses.

48. For the purposes of the preceding provisions of this Part-

(a) a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included ; and

(b) a statement shall be deemed to be included in a prospectus if it is contained in, or in any report or memorandum appearing on the face of, or by reference incorporated in, or issued with, such prospectus.

ALLOTMENT

Prohibition of allotment unless minimum subscription received.

49.

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

For the purposes of this subsection, a sum shall be deemed to have been paid to and received by the company if a cheque for that sum has been received in good faith by the company and the directors of the company have no reason for suspecting that the cheque may not be paid.

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

(3) The amount payable on application on each share shall not be less than five per centum of the nominal amount of the share.

(4) Where the conditions set out in the preceding sub sections have not been complied with, within the expiration of sixty days from the date of closing of the subscription lists, any money received from applicants for shares shall be forthwith repaid to them without interest, and if such money is not so repaid within seventy-five days from the date of closing of the subscription lists, the directors of the company shall be jointly and severally liable to repay that money with interest at the legal rate, from the expiration of the seventy-fifth day :

Provided that a director shall not be liable if he proves that the default in the

repayment of the money was not due to any misconduct or negligence on his part.

(5) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(6) The provisions of this section other than the provisions of subsection' (3) shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to Registrar. **50.**

(1) A company having a share capital which does not issue a prospectus on or with reference to its formation or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless at least three days before the first allotment of either shares or debentures there has been delivered to the Registrar for registration a statement in lieu of prospectus, signed by every person who is named in such prospectus as a director or a proposed director of the company or by his agent authorized in writing, in the form and containing the particulars set out in Part I of the Fourth Schedule hereto, setting out the reports specified in such Schedule. The provisions contained in Parts I and II, shall have effect subject to the provisions contained in Part III, of that Schedule.

(2) Every statement in lieu of prospectus delivered under the provisions of subsection (1) shall, where the persons making any such report under that subsection have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in para graph 5 of the Fourth Schedule hereto, have endorsed there on or attached thereto a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(3) The provisions of this section shall not apply to a private company.

(4) "Where a company acts in contravention of the provision of subsection (1) or subsection (2) the company and every director of the company who knowingly and wilfully authorizes or permits the contravention shall be guilty of an offence and shall be liable to a fine not exceeding one thousand rupees.

(5) Where a statement in lieu of prospectus delivered to the Registrar under the provisions of subsection (1) includes any untrue statement, any person who authorized the delivery of the statement in lieu of prospectus for registration shall be guilty of an offence and shall be liable to a fine not exceeding five thousand rupees, or to imprisonment of either description for a term not exceeding two years or to both such fine and imprisonment, unless he proves either that the untrue statement was immaterial or that he had reasonable ground to believe and did up to the time of the delivery for registration of the statement in lieu of prospectus believe that the untrue statement was true.

(6) For the purposes of this section

(a) a statement included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included ; and

(b) a statement shall be deemed to be included in a statement in lieu of prospectus if it is contained in such prospectus in any report or memorandum appearing on the face of, or by reference incorporated in, such prospectus.

Effect of irregular allotment. **51.**

(1) An allotment made by a company to an applicant in contravention of the provisions of section 49 or section 50 shall be voidable at the instance of the applicant within one month from the date of the holding of the statutory meeting of the company, or, in any case where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting, within one month from the date of the allotment, and

shall be so voidable notwithstanding that the company is in the course of being wound up.

(2) Where any director of a company knowingly contravenes or permits or authorizes the contravention of any of the provisions of section 49 or section 50, he shall be liable to compensate the company and the allottee respectively for any loss, damages, or costs which the company or the allottee may have sustained or incurred thereby:

Provided that no proceedings to recover any such loss, damages, or costs shall be commenced after the expiration of two years from the date of the allotment.

Applications for,
and allotment of,
shares and
debentures. **52.**

(1) No allotment shall be made of any shares in, or debentures of, a company in pursuance of a prospectus issued generally and no proceedings shall be taken on applications made in pursuance of a prospectus so issued, until commencement of the third day after that on which the prospectus is first so issued or such later time (if any) as may be specified in the prospectus. The commencement of such third day or such later time as aforesaid is hereafter in this Act referred to as "the time of the opening of the subscription lists".

(2) The reference in subsection (1) to the day on which the prospectus is first issued generally shall be construed as referring to the day on which it is first so issued as a newspaper advertisement:

Provided that, if it is not so issued as a newspaper advertisement before the third day after that on which it is first so issued in any other manner, the said reference shall be construed as referring to the day on which it is first so issued in such manner.

(3) The validity of an allotment shall not be affected by any contravention of the preceding provisions of this section but, in the event of any such contravention, the company, and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding five thousand rupees.

(4) In the application of this section to a prospectus offering shares or debentures for sale, the preceding subsections shall have effect with the substitution for a reference to allotment, of a reference to sale, and for the reference to the company and every officer of the company who is in default, of a reference to any person by or through whom the offer is made and who knowingly and wilfully authorizes or permits the contravention.

(5) An application for shares in or debentures of a company which is made in pursuance of a prospectus issued generally shall not be revocable until after the expiration of the third day from the date of the opening of the subscription lists, or the giving before the expiration of the said third day, by some person responsible under the provisions of section 45 for the prospectus, of a public notice having the effect under that section of excluding or limiting the responsibility of the person giving it.

(6) In reckoning for the purposes of this section the third day after any day, any intervening day which is a bank holiday or public holiday in Sri Lanka shall be disregarded, and if the third day (as so reckoned) is itself such a bank or public holiday there shall for the said purposes be substituted the first day thereafter which is none of them.

Return as to
allotment. **53.**

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

(a) a return of the allotments stating

(i) the number and nominal amount of the shares

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

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

(2) Where a contract referred to in subsection (1) is not reduced to writing, the company shall, within one month from the date of allotment, deliver to the Registrar for registration the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and such particulars shall be deemed to be an instrument within the meaning of the Stamp Ordinance and the Registrar may, as a condition of filing the particulars, require that the duty payable thereon be determined in accordance with the provisions of Chapter III of that Ordinance.

(3) Where default is made in complying with the provisions of this section, every officer of the company who is in default, shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues :

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

COMMISSIONS AND DISCOUNTS

Power to pay
commissions and
of payment of all
other commission
discounts ,&c. **54.**

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

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

- (i) in the case of shares offered to the public for subscription, disclosed in the prospectus ; or
- (ii) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of

prospectus and delivered before the payment of the commission to the Registrar for registration, and, where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice; and

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

(2) Save as provided in subsection (1), no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount, or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or that money be paid out of the nominal purchase money or contract price, or otherwise.

(3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay.

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

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

Prohibition of provisions of financial assistance by company for purchase of or subscription for its own or its holding company's shares.

55.

(1) Subject as provided in this section, it shall not be lawful for a company to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of, or for any shares in, the company, or, where the company is a subsidiary company, in its holding company :
Provided that nothing in this section shall be taken to prohibit

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

(b) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of: or subscription for. fully-paid shares in the company or its holding company, as the case may be, being a purchase or subscription by trustees of or for shares to be held by, or for the benefit of, employees of the company, including any director holding a salaried employment or office in the company ;

(c) the making by a company of loans to persons, other than directors, bona fide in the employment of the company with a view to enabling those persons to purchase or subscribe for fully-paid shares in the company or its holding company, as the case may be, to be held by themselves by way of beneficial ownership.

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

Construction of reference to offering shares or

56.

debentures to the public.

(1) Any reference in this Act to offering of any shares or debentures to the public shall, subject to any provision to the contrary contained therein, be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner, and references in this Act or in a company's articles to invitations to the public to subscribe for shares or debentures shall, subject to the preceding provisions, be similarly construed.

(2) The provisions of subsection (1) shall not be taken as requiring any offer or invitation to be treated as made to the public if it can properly be regarded, in all the circumstances as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or otherwise as being a domestic concern of the persons making and receiving it, and in particular :

(a) a provision in a company's articles prohibiting invitations to the public to subscribe for shares or debentures shall not be taken as prohibiting the making to members or debenture holders of an invitation which can properly be regarded as aforesaid ; and

(b) the provisions of this Act relating to private companies shall be construed accordingly.

ISSUE OF REDEEMABLE PREFERENCE SHARES AND SHARES AT A PREMIUM AND DISCOUNT

Power to issues redeemable preference shares. **57.**

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

Provided that

(a) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of fresh issue of shares made for the purposes of the redemption;

(b) no such shares shall be redeemed unless they are fully paid;

(c) the premium, if any, payable on redemption, must have been provided for out of the profits of the company or out of the company's share premium account before the shares are redeemed; and

(d) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall out of profits which would otherwise have been available for dividend be transferred to a reserve fund to be called the " Capital Redemption Reserve Fund " a sum equal to the nominal amount of the shares redeemed and the provisions of this Act, relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the Capital Redemption Reserve Fund were paid-up share capital of the company.

(2) The redemption of preference shares under the provisions of this section may be effected subject to such terms and in such manner as may be provided by the articles of the company.

(3) The redemption of preference shares under the provisions of this section by a company shall not be taken as reducing the amount of the company's authorized share capital

(4) Where in pursuance of the provisions of this section a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed, as the case may be, as if those shares had never been issued, and accordingly the share capital of the company shall not for the purposes of any

enactments relating to stamp duty be deemed to be increased by the issue of shares in pursuance of the provisions of this subsection:

Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as they relate to stamp duty, be deemed to have been issued in pursuance of the provisions of this subsection unless shares are redeemed within one month after the issue of the new shares.

(5) The Capital Redemption Reserve Fund may, notwithstanding anything in this section, be applied by the company in paying up un issued shares of the company to be issued to members of the company as fully-paid bonus shares.

Application on
premiums
received on issue
of shares. **58.**

(1) Where a company issues shares at a premium, whether for cash, or otherwise, a sum equal to the aggregate or value of the premium on those shares shall be transferred to an account, to be called the " Share Premium Account", and the provisions of this Act relating to the reduction of the share capital of a company shall, except in this section, apply as if the share premium account were paid-up share capital of the company.

(2) The Share Premium Account may, notwithstanding anything in subsection (1), be applied by the company in paying up un issued shares, of the company to be issued to members of the company as fully-paid bonus shares, in writing of

(a) the preliminary expenses of the company; or

(b) the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company,

or in providing for the premium payable on redemption of any redeemable preference shares or of any debentures of the company.

(3) Where a company has before the appointed date issued any shares at a premium, the provisions of this section shall apply as if the shares had been issued on or after that date:

Provided that any part of the premium which has been so applied that it does not on the appointed date form an identifiable part of the company's reserves within the meaning of the Fifth Schedule hereto shall be disregarded in determining the sum to be included in the share premium account.

Power to issue
shares at
discount. **59.**

(1) It shall be lawful for the company to issue at a discount shares in the company of a class of shares already issued:

Provided that

(a) such issue is authorized by a resolution passed at a general meeting of the company and is sanctioned by the court;

(b) the resolution shall specify the maximum rate of such discount;

(c) not less than one year has, at the date of such issue, elapsed since the date on which the company was entitled to commence business and

(d) such issue is made within one month from the date on which the issue is sanctioned by the court or within such extended time as the court may allow.

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

(3) Every prospectus relating to the issue of the shares under the provisions of subsection (1) shall contain particulars of the discount allowed or of so much of that discount as has not been written off at the date of the issue of the prospectus.

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

MISCELLANEOUS PROVISIONS AS TO SHARE CAPITAL

Power of company to arrange for different amounts being paid on shares. **60.** A company may, if so authorized by its articles, do one or more of the following:

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

Reserve liability of limited company. **61.** A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in such event and for such purposes.

Power of company limited by shares to alter its share capital. **62.**

(1) A company limited by shares or a company limited by guarantee and having a share capital, if so authorized by its articles, may alter the conditions of its memorandum as follows, that is to say, it may -

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

(2) The powers conferred by the provisions of this section shall be exercised by the company at a general meeting.

(3) A cancellation of shares in pursuance of the provisions of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

Notice to Registrar of consolidation of share capital, conversion of shares into stock &c. **63.**

(1) Where company having a share capital has

- (a) consolidated and divided its share capital into shares of larger amount than its existing shares ; or
- (b) converted any shares into stock; or
- (c) reconverted stock into shares,; or
- (d) subdivided its shares or any of them; or
- (e) redeemed any redeemable preference shares; or
- (f) cancelled any shares otherwise than in connection with a

reduction of share capital under the provisions of section 67, it shall, within one month from the date of so doing, give notice thereof to the Registrar specifying, as the case may be, the shares consolidated, divided, converted, subdivided, redeemed or cancelled, or the stock reconverted.

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

Notice of increase of share capital. **64.**

(1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, it shall with fifteen days from the date of passing of the resolution authorizing the increase, give to the Registrar notice thereof and the Registrar shall record such increase.

(2) The notice to be given under the provisions of sub section (1) shall include such particulars as may be prescribed with respect to the classes of shares affected and the conditions subject to which the new shares have been or are to be issued, and the company shall forward to the Registrar together with such notice a copy of the resolution authorizing such increase.

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

Power of unlimited company to provide for reserve share capital on registration. **65.**

An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of the provisions of this Act, do either or both of the following namely :

(a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital shall be capable of being called up;

(b) notify that a specified portion of its uncalled share capital shall not be capable of being called up,

except in the event and for the purposes of the company being wound up.

Power of company to pay-interest out of capital in certain cases. **66.**

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

Provided that

(a) no such sum shall be paid unless it is authorized by the articles or by special resolution ;

(b) no such sum, whether authorized by the articles or by special resolution, shall be paid without the sanction of the court;

(c) before sanctioning the payment of any such sum, the court may at the expense of the company, appoint a person to inquire and report to the court as to the circumstances of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry;

(d) the payment shall be made only for such period as may be determined by the court, and that period shall in no case extend beyond the close of the half-year next after the half-year during which the works or buildings have been actually completed or the plant provided, as the case may be ;

(e) the rate of interest shall in no case exceed such rate as may for the time being be prescribed by regulation ;

(f) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid.

REDUCTION OF SHARE CAPITAL

Special resolution **67.**
for reduction of
share capital.

(1) Subject to confirmation by the court, a company limited by shares or a company limited by guarantee and having a share capital may, if so authorized by its articles, by special resolution reduce its share capital and also may

(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up ; or

(b) either with or without extinguishing or reducing liability on any of its shares cancel any paid-up share capital which is, lost or unrepresented by available assets; or

(c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants; of the company,

and may, so far as it is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) A special resolution made under the provisions of subsection (1) is in this Act referred to as "a resolution for reducing share capital".

Application to **68.**
court for
confirming order,
objections by
creditors and
settlement of list
of objecting
creditors.

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

(2) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any share holder of any paid-up share capital, and in any other case if the court so directs, the following provisions shall, subject to the provisions of subsection (3), apply:

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

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

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

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

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

(3) Where a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any

Order confirming
reduction and
powers of court on
making such
order. **69.**

shareholder of any paid-up share capital, the court may, if having regard to any special circumstances of the case it thinks proper so to do, direct that the provisions of subsection (2) shall not apply as regards any class or any classes, of creditors.

(1) The court, if satisfied, with respect to every creditor of the company who under the provisions of section 68 is entitled to object to the reduction, that either his consent to the reduction has been obtained or his, debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks, fit.

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

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

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

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

Registration of
order and minute
of reduction. **70.**

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

(2) On the registration of the order and minute under the provisions of subsection (1), the resolution for reducing share capital as confirmed by the order so registered shall take effect.

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

(4) The Registrar shall issue a certificate, authenticated by the seal prepared under the provisions of section 390, of the registration of the order and minute, and such certificate shall be conclusive evidence that all requirements of this Act, with respect to reduction of share capital have been complied with and that the share capital of the company is such as stated in the minute.

(5) The minute referred to hi subsection (1) when registered shall be deemed to be substituted for the corresponding part of the memorandum, and shall be as valid and effectual as if it had been originally contained therein.

(6) The substitution of any such minute as referred to in subsection (1) for part of the memorandum of the company shall be deemed to be an alteration of the memorandum within the meaning of section 27.

Liability of
members in
respect of reduced
shares. **71.**

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

Provided that if any creditor, entitled in respect of any debt or claim to object to

the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of the nature and effect of such proceedings with respect to his claim, not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of this Act, with respect to winding up by the court, to pay the amount of his debt or claim, then

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

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

(2) Nothing in this section shall affect- the right of the contributories among themselves.

Penalty of concealment of name of creditor.

72. Where any officer of the company-

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

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

(c) aids, abets or is privy to any such concealment or misrepresentation as referred to in paragraph (b),

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

VARIATION OF SHAREHOLDERS' RIGHTS

Rights of holders of special classes of shares. **73.**

(1) Where in the case of a company, the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorizing the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than fifteen per centum of the issued shares of that class, being persons who did not consent to, or vote in favour of the resolution for the variation, may make an application to the court to have the variation cancelled, and, any such application is made, the variation shall not have effect unless and until it is confirmed by the court.

(2) An application under the provisions of subsection (1) shall be made within twenty-one days from the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the share holders entitled to make the application by such, one or more of their number as they may appoint in writing for the purpose.

(3) On any application made under the provisions! of subsection (1), the court, after hearing the applicant and any other persons who make an application to the court to be heard and appear to the court to be interested in the application may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the

variation.

(4) The decision of the court on any application made under the provisions of subsection (1) shall be final.

(5) The company shall, within fifteen days from the date of an order by the court on any application made under the provisions of subsection (1), forward a copy of such order to the Registrar and, where default is made in complying with the provisions of this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine.

(6) In this section the expression "variation" includes abrogation and the expression "varied" shall be construed accordingly.

TRANSFER OF SHARES AND DEBENTURES, EVIDENCE OF TITLE, & c.

Nature of shares. **74.**

(1) The shares or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles of the company, and shall not be of the nature of immovable property.

(2) Each share in a company having a share capital shall be distinguished by its appropriate number.

Transfer not to be registered except on production of instrument of transfer.

75. Notwithstanding anything in the articles of a company, it shall not be lawful for the company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company :

Provided that nothing in this section shall prejudice any power of the company to register as shareholder or debenture holder, any person to whom the right of any shares in or debentures of the company has been transmitted by operation of law.

Transfer by legal representative.

76. A transfer of the shares or other interests of a deceased member of a company made by his legal representative shall, although the legal representative is not himself a member of the company, be as valid as if he had been such a member at the time of the execution of the instrument of transfer.

Registration of transfer at request of transferor.

77. On the application of the transferor of any share or other interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

Notice of refusal to register transfer.

78.

(1) Where a company refuses to register a transfer of any shares or debentures, the company shall, within two months from the date on which the transfer was lodged with the company, send to the transferee notice of the refusal.

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

Certification of transferor. **79.**

(1) The certification by a company of any instrument, of transfer of shares in or debentures of the company shall be taken as representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show a prima facie title to the shares or debentures in the transferor named in the instrument of transfer, but not as representation that the transferor has any title to the shares or debentures.

(2) Where any person acts on the faith of a false certification by a company made negligently, the company shall be under the same liability to him as if the certification had been made fraudulently.

(3) For the purposes of this section

(a) an instrument of transfer shall be deemed to be certified if it bears the words " certificate lodged " or words to the like effect;
(b) the certification of an instrument of transfer shall be deemed to be made by a company if

(i) the person issuing the instrument is a person authorized to issue certificated instruments of transfer on the company's behalf; and

(ii) the certification is signed by a person authorized to certificate transfers on the company's behalf or by any officer or servant either of the company or of a body corporate so authorized ;

(c) a certification shall be deemed to be signed by any person if

(i) it purports to be authenticated by the signature or initials whether handwritten or not; and

(ii) it is not shown that the signature or initials was or were placed there neither by himself nor by any person authorized to use the signature or initials for the purpose of certifying transfers on the company's behalf.

Duties of company **80**.
with respect to
issue of certificate.

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

For the purposes of this subsection the expression " transfer " means a transfer duly stamped and otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.

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

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

Certificate to be
evidence of title.

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

Evidence of grant
of probate &c.

82. The production to a company of any document which by law is sufficient evidence of probate of the will, or letters of administration of the estate, or confirmation as executor, of a deceased person having been granted to some person shall be accepted by the company, notwithstanding anything in its articles, as sufficient evidence of the grant.

Issue and effect of
share or warrants
to bearer. **83**.

(1) A company limited by shares, if so authorized by its articles, may, with

Offences in connection with share warrants.

84.

respect to any fully paid-up shares issue under its common seal a warrant stating that the bearer of such warrant is entitled to the shares therein specified, and may provide, by coupons or otherwise, for the payment of the future, dividends on the shares included in the warrant.

(2) Such a warrant as is referred to in subsection (1) is in this Act referred to as a "share warrant".

(3) A share warrant shall entitle the bearer thereof to the shares specified in such share warrant, and the shares may be transferred by delivery of the warrant.

(1) Where any person

(a) with intent to defraud forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any share warrant or coupon, or any document purporting to be a share warrant or coupon, issued in pursuance of this Act; or

(b) by means of any such forged or altered share warrant, coupon, or document, purporting as aforesaid, demands or endeavours to obtain or receive any share or interest in any company under this Act, or to receive any dividend or money payable in respect thereof, knowing the warrant, coupon or document to be forged or altered; or

(c) falsely and deceitfully personates any owner of any share or interest in any company, or of any share warrant or coupon, issued in pursuance of this Act, and thereby obtains or endeavours to obtain any such share or interest or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if the offender were the true and lawful owner,

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

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

(a) engraves or makes on any plate, wood, stone, or other material any share warrant or coupon purporting to be-

(i) a share warrant or coupon issued or made by any particular company in pursuance of this Act; or

(ii) a blank share warrant or coupon so issued or made; or

(iii) a part of such share warrant or coupon; or

(b) uses any such plate, wood, stone or other material for the making or printing of any such share warrant or coupon, or of any such blank share warrant or coupon, or any part thereof respectively; or

(c) knowingly has in his custody or possession any such plate, wood, stone, or other material,

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

SPECIAL PROVISIONS AS TO DEBENTURES

Right of debenture holders and share holders to inspect register of

85.

(1) Every company which has issued debentures shall maintain a register of

debenture holders and to have copies of trust deed,

holders of debentures of the company, The register shall, except when duly closed (but subject to such reasonable restrictions as the company may in general meeting impose so that not less than two hours in each day shall be allowed for inspection), be open to the inspection of the registered holder of any such debentures or any holder of shares in the company without fee, and of any other person on payment of a fee of ten rupees or such less sum as may be specified by the company.

(2) For the purposes of subsection (1), a register shall be deemed to be duly closed if closed in accordance with the provisions contained in the articles or in the debentures, or in the case of debenture stock, in the stock certificates, or in the trust deed or other document securing the debentures or debenture stock, during such period or periods, not exceeding in the whole thirty days in any year, as may be therein specified.

(3) Any such registered holder of the debentures or holder of shares as aforesaid or any other person may require a copy of the register of the holders of debentures of the company or any part thereof to be furnished on payment of a sum not exceeding one rupee for every hundred words required to be copied.

(4) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed of the sum of ten rupees or such less sum as may be specified by the company, or, where the trust deed has not been printed, on payment of a sum not exceeding one rupee for every hundred words required to be copied.

(5) Where inspection of the register is refused or a copy as aforesaid is refused or not forwarded, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding two hundred and fifty rupees and further shall be liable to a fine of twenty rupees for every day the default continues.

(6) Where a company is in default as referred to in sub section (5) the court may by order compel an immediate inspection of the register or direct that any copy required as aforesaid shall be sent to the person requiring them.

Directors prohibited from acting as trustees.

86. A director of a company shall not be capable of being appointed as a trustee for the holders of debentures of the company:

Provided that the provisions of this section shall not apply to any director of a company who holds office as a trustee for the holders of debentures of the company by virtue of an appointment made before the appointed date, and accordingly any such director may continue in office as such trustee until the termination of that appointment.

Perpetual debentures.

87. A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the appointed date, shall not be invalid by reason only that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of the period, however long.

Power to reissue redeemed debentures in certain cases.

88.

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

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

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

the company shall have, and shall be deemed always to have had, power to reissue the debentures, either by reissuing the same debentures or by issuing other debentures in their place.

(2) On a reissue of redeemed debentures the person entitled to the debentures shall have, and shall be deemed always to have had, the same

priorities as if the debentures had never been redeemed.

(3) Where a company has either before or after the appointed date deposited any of its debentures to secure advances from time to time on current account or other wise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(4) The reissue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the reissue or issue was made before or after the appointed date, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued:

Provided that any person lending money on the security of a debenture reissued under the provisions of this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing, his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty.

(5) The reissue after the appointed date of debentures redeemed before that date shall not prejudice any right or priority which any person would have had under or by virtue of any mortgage or charge created before that date.

Specific performance of Contracts to subscribe debentures. Payment of certain debts out of assets subject to floating charge in priority to claims under the charge.

89. A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

90.

(1) Where either a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding up are under the provisions of Part IX relating to preferential payments to be paid in priority to all other debts, shall be paid out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(2) In the application of the provisions of Part IX, the provisions of section 347 shall be construed as if the provision for payment of accrued holiday remuneration becoming payable on the termination of employment before or by the effect of the winding-up order or resolution were a provision for payment of such remuneration becoming payable on the termination of employment before or by effect of the appointment of receiver or possession being taken as referred to in subsection (1).

(3) The periods of time specified in the said provisions of Part IX shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.

(4) Where the date referred to in subsection (3) occurred before the appointed date, the provisions of subsections (1) and (3) shall have effect with the substitution for references to the said provisions of Part IX, of references to the provisions which, by virtue of subsection (9) of section 347 are deemed to remain in force in the case therein mentioned, and the provisions of subsection (2) of this section shall not apply.

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

PART III

REGISTRATION OF CHARGES

Registration of charges created by companies registered in Sri Lanka.

91.

REGISTRATION OF CHARGES WITH REGISTRAR

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

(2) The provisions of this section shall apply to the following charges:

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

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

(4) Where a charge is created in Sri Lanka, but comprises property outside Sri Lanka, the instrument creating or purporting to create the charge may be sent for registration under the provisions of this section notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situate.

(5) Where a charge comprises property situate outside Sri Lanka and registration in the country where the property is, situate is necessary to make the charge valid or effectual according to the law of that country, the delivery to and the receipt by the Registrar of a copy, verified in the prescribed manner, of the instrument by which the charge is created or evidenced, together with a certificate in the prescribed form stating that the charge was presented for registration in the country where the property is situate on the date on which it was so presented shall, for the purposes of this section, have the same effect as the delivery and receipt of the instrument itself.

(6) Where a negotiable instrument has been given to secure the payment of any book debts of a company the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a charge on those book debts.

(7) The holding of debentures entitling the holder to a charge on land shall not

for the purposes of this section be deemed to be an interest in land.

(8) Where a series of debentures, containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company it shall for the purposes of this section be sufficient if they are delivered to or received by the Registrar within twenty-one days from the date of execution of the deed containing the charge or, if there is no such deed, from the date of execution of any debentures of the series, the following particulars :

- (a) the total amount secured by the whole series ; and
- (b) the dates of the resolutions authorizing the issue of the series and the date of the covering deed, if any, by which the security is created or defined ; and
- (c) a general description of the property charged ; and
- (d) the names of the trustees, if any, for debenture holders

together with the deed containing the charge or a copy thereof verified in the prescribed manner, or if there is no such deed, one of the debentures of the series :

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the Registrar for entry in the register, particulars of the date and amount of each issue. Any omission to send such particulars shall not affect the validity of the debentures issued.

(9) Where any commission, allowance or discount has been paid or made either directly or indirectly by a company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be sent for registration under the provisions of this section shall include particulars as to the amount or rate per centum of the commission, discount or allowance so paid or made. Any omission to send such particulars shall not affect the validity of the debentures issued;

Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this subsection be treated as the issue of the debentures at a discount.

(10) Nothing in section 63 of the Mortgage Act shall apply to or in relation to any floating charge on the under taking or property of a company.

(11) The provisions of this section shall be in addition to and not in substitution of any other written law relating to the registration of any document of instrument creating or purporting to create a charge on any property whether movable or immovable.

(12) In this Part, the expression "charge" includes mortgage.

Duty of company **92.**
to register charges
created by
company.

(1) It shall be the duty of a company to send in the prescribed form to the Registrar for registration the particulars of every charge created by the company and of the issue of debentures of a series requiring registration under the provisions of section 91. Registration of any such charge may be effected on the application of any person interested therein.

(2) Where registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the Registrar.

(3) Where any company makes default in sending to the Registrar for registration the particulars of any charge created by the company, or of the issues of debentures of a series, requiring registration as aforesaid, then, unless the registration has been effected on the application of some other person, the company and every officer of the company who is in default shall be liable to a fine of five hundred rupees.

Duty of company **93.**
register to charges
existing on
property acquired.

(1) Where after the appointed date a company registered in Sri Lanka acquires

Register of charges to be kept by Registrar. **94.**

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

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

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

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

- (a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are specified in subsection (8) of section 91 ;
- (b) in the case of any other charge

- (i) if the charge is a charge created by the company, the date of its creation, and if the charge was a charge existing on property acquired by the company, the date of the acquisition of the property ; and
- (ii) the amount secured by the charge ; and
- (iii) short particulars of the property charged ; and
- (iv) the persons entitled to the charge:

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

(2) The Registrar shall issue a certificate authenticated by the seal prepared under the provisions of section 390 of the registration of any charge registered in pursuance of this Part, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this Part, as to registration have been complied with.

(3) The register kept in pursuance of the provisions of this payment of the prescribed fee.

Endorsement of certificate of registration on debentures. **95.**

(1) The company shall cause a copy of every certificate of registration given under the provisions of section 94 to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the charge so registered:

Provided that nothing in the provisions of this subsection shall be construed as requiring a company to cause a certificate of registration of any charge so given to be endorsed on any debenture or certificate of debenture stock issued by the company before the charge was created.

(2) Where any person knowingly and wilfully authorizes or permits the delivery of any debenture or certificate of debenture stock which under the provisions

of this section is required to have endorsed on it a copy of a certificate of registration without the copy being so endorsed upon it, he shall, without prejudice to any other liability, be guilty of an offence and be liable to a fine not exceeding one thousand rupees.

Duty of company to inform Registrar of release of property from charge and of Registrar to enter memorandum of satisfaction. **96.**

(1) Where

(a) the debt for which any registered charge was given has been paid or satisfied in whole or in part; or

(b) any part of the property or undertaking charged has been released from the charge or has ceased to form part of a company's property or undertaking,

it shall be the duty of the company to send to the Registrar a statement to that effect in the prescribed form.

(2) Upon the receipt of a statement sent by a company under the provisions of subsection (1) the Registrar may, on his being satisfied as to the correctness of such statement, enter on the register a memorandum of satisfaction in whole or in part, or of the fact that part of the property or under taking has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be.

(3) Where any company makes default in complying with the provisions of subsection (1), every officer of the company who is in default shall be guilty of an offence and shall be liable to fine not exceeding five hundred rupees for every day during which the default continues.

Rectification register of charges.

97. The court, on being satisfied that the omission to register a charge within the time required by this Act, or that the omission or mis-statement of any particular with respect to any such charge or in a memorandum of static faction, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that, on other grounds, it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the court just and expedient, order that the time for registration shall be extended, or that the omission or mis-statement shall be rectified, as the case may be.

Registration of enforcement of security.

98.

(1) Where any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall, within seven days from the date of the order or of the appointment under the said powers, give notice of the fact to the Registrar who shall, on payment of the prescribed fee, enter the fact in the register of charges.

(2) Where any person appointed receiver or manager of the property of a company under the power contained In any instrument ceases to act as such receiver or manager, he shall, on so ceasing, give the Registrar notice to that effect, and the Registrar shall enter the notice in the register of charges.

(3) Where any person makes default in complying with the requirements of this section he shall be guilty of an offence and shall be liable to a fine not exceeding two hundred and fifty rupees for every day during which the default continues.

PROVISIONS AS TO COMPANY'S REGISTER OF CHARGES AND AS TO COPIES OF INSTRUMENTS CREATING CHARGES

Copies of instrument creating charges to be kept by company.

99. Every company shall cause a copy of every instrument creating any charge requiring registration under this Part to be kept at the registered office of the company:

Provided that, in the case of a series of uniform debentures, a copy of one debenture of the

series shall be sufficient.

Company register of charges. **100.**

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

Right to inspect copies of instruments creating mortgages and charges and company's register of charges. **101.**

- (1) The copies of instruments creating any charge requiring registration under this Part with the Registrar, and the register of charges kept under the provisions of section 100, shall be open during business hours (but subject to such reasonable restrictions as the company at a general meeting may impose, so that not less than two hours in each day shall be allowed for inspection) to the inspection of any creditor or member of the company without fee, and the register of charges shall also be open to the inspection of any other person on payment of such fee as the company may specify.
- (2) Where inspection of the said copies or register is refused any officer of the company refusing inspection, and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding two hundred and fifty rupees and a further fine not exceeding twenty rupees for every day during which the refusal continues.
- (3) Where any such refusal occurs in relation to a company registered in Sri Lanka, the court may by order compel an immediate inspection of the copies or register referred to in subsection (1).

APPLICATION OF PART III TO COMPANIES INCORPORATED OUTSIDE SRI LANKA

Application of Part III to charges property subject to charge acquired by company incorporated outside Sri Lanka. **102.** The provisions of this Part shall extend to charges on property in Sri Lanka which are created, and to charges on property in Sri Lanka which is acquired, after the appointed date by a company (whether a company within the meaning of this Act or not) incorporated outside Sri Lanka which has an established place of business in Sri Lanka.

PART IV MANAGEMENT AND ADMINISTRATION

REGISTERED OFFICE AND NAME

Registered office of company. **103.**

- (1) A company shall, as from the day on which it begins to carry on business or as from the fourteenth day after the date of its incorporation, whichever is the earlier, have a registered office to which all communications and notices may be addressed.
- (2) Notice of the situation of the registered office, and of any change therein, shall be given within fourteen days from the date of the incorporation of the company or of the change, as the case may be, to the Registrar who shall record the same.
- The inclusion in the annual return of a company or a statement as to the situation of its registered office shall not be taken to satisfy the obligation

Publication of
name by
company.

104.

imposed by the provisions of this subsection.

(3) Where notice of the registered office has not been given under the provisions of subsection (2) within fourteen days from the date of incorporation of a company then the intended situation of such company's registered office on incorporation, specified in the statement delivered prior to the incorporation, shall be deemed to be the registered office of the company.

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

(1) Every company

(a) shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible ;

(b) shall have its name engraven in legible characters on its seal;

(c) shall have its name specified in legible characters in all business letters of the company and in all notices, and other official publications of the company and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts and letters of credit of the company.

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

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

(4) Where an officer of a company, or any person on its behalf

(a) uses or authorizes the use of any seal purporting to be a seal of the company whereon its name is not so engraven as referred to in subsection (1) ; or

(b) issues or authorizes the issue of business letters of the company or any notice, or other official publication of the company, or signs or authorizes to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque, or order for money or goods, wherein its name is not specified in the manner referred to in subsection (1) ; or

(c) issues or authorizes the issue of any bill of parcels, invoice, receipt, or letter of credit of the company, wherein its name is not specified in the manner referred to in subsection (1),

he shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees, and shall also be liable to the holder of the bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless it is duly paid by the company.

Statutory books & **105.**
c., to be kept at
registered office.

(1) Every register, book or other document declared by this Act to be open to inspection by members of a company shall be kept at the registered office of the company.

(2) Where default is made in complying with the provisions of this section, the company and every officer of the company who is in default shall be guilty of

Form of registers, **106.**
& c.

an offence and shall be liable to a default fine.

(1) Any register, index or book of account required Form of by this Act to be kept by a company may be kept either by registers, amp;c making entries in bound books, or by recording the matter in question in any other manner.

(2) Regulations may be made in respect of the application of the provisions of subsection (1) to any minute book required by this Act to be kept by a company. In the absence of any such regulations, such minute book shall be kept by making entries in a bound book, and where- it is not so kept, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees and also to a default fine.

(3) Where any such register, index or other book to which the provisions of subsection (1) apply is not kept by making entries in a bound book, but by some other means, adequate precautions shall be taken for guarding against falsification and facilitating its discovery, and where default is made in complying with the provisions of this subsection, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees and also to a default fine.

Restrictions on **107.**
commencement of
business.

RESTRICTIONS ON COMMENCEMENT OF BUSINESS

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

(a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription ; and

(b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription ; and

(c) there has been delivered to the Registrar for registration a statutory declaration by the secretary or one of the directors, in the prescribed form, that the provisions of paragraphs (a) and (b) have been complied with.

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

(a) there has been delivered to the Registrar for registration a statement in lieu of prospectus;

(b) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash ; and

(c) there has been delivered to the Registrar for registration a statutory declaration by the secretary or one of the directors in the prescribed form that the provisions of paragraph (b) have been complied with.

(3) The Registrar shall, on the delivery to him of the statutory declaration under the provisions of paragraph (c) of subsection (2), and, in the case of a company which is required by this section to deliver a statement in lieu of prospectus, of such a statement, certify that the company is entitled to

commence business, and that certificate shall be conclusive evidence that the company is so entitled.

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

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

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

(7) Nothing in this section shall apply to

(a) a private company ; or

(b) a company registered before April 1. 1939.

REGISTER OF MEMBERS

Register of members.

108.

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

(a) the names and addresses, nationalities and the principal occupations, if any, of the members, and in the case of a company having a share capital a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member ;

(b) the date on which each person was entered in the register as a member;

(c) the date on which any person ceased to be a member :

Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the register shall show the amount or stock held by each member instead of the amount of shares and the particulars relating to shares specified in paragraph (a).

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

Index of members of company .

109.

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

(2) The index shall in respect of each member contain a sufficient indication enabling the account of that member in the register to be readily found.

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

Provision as to entries in register in relation to share warrants.

110.

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

enter in the register the following particulars, namely:

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

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

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

(4) Until the warrant is surrendered, the particulars specified in subsection (1) shall be deemed to be the particulars required by this Act to be entered in the registers of members, and on the surrender, the date of the surrender shall be entered.

(5) Subject to the provisions of this Act, the bearer of a share warrant may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Act, either to the full extent of, or for any purposes, defined in, the articles.

Inspection of register and index. **111.**

(1) The register of members, commencing from the date of the registration" of the company and the index of the names of members shall, except when duly closed (but subject to such reasonable restrictions as the company may in general meeting impose, so that not less than two hours in each day shall be allowed for inspection), be open to the inspection of any member without charge and of any other persons on payment of one rupee or such less sum as the company may specify for each inspection.

(2) Any member or other person may require a copy of the register, or of any part thereof, on payment of such sum not exceeding one rupee as the company may specify, for every hundred words or fractional part thereof required to be copied.

The company shall cause any copy so required by any person to be sent to that person within a period of ten days commencing on the day next after the day on which the requirement is received by the company.

(3) Where any inspection required under the provisions of this section is refused or if any copy required under the provisions of this section is not sent within the proper period, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable in respect of each offence to a fine not exceeding one thousand rupees and further to a default fine of two hundred and fifty rupees for every day during which the default continues.

(4) In the case of any such refusal or default, the court may by order compel an immediate inspection of the register and index or direct that the copies required shall be sent to the persons requiring them.

Power to close register.

112. A company may, after notice published in the Gazette and in any newspaper circulating in the district in which the registered office of the company is situate, close the register of members for any time of times not exceeding in the whole thirty days in each year.

Power of court rectify register.

113.

(1) Where

- (a) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company ; or
- (b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,

the person aggrieved, or any member of the company, or the company, may make an application to court for rectification of the register.

(2) Where an application is made under the provisions of this section, the court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party agreed.

(3) On an application made under the provisions of this section, the court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members, or alleged members, or between members or alleged members on the one hand and the company on the other hand, and generally may decide any question necessary or expedient to be decided for rectification of the register.

(4) In the case of a company required by this Act to send a list of its members to the Registrar, the court, when making an order for rectification of the register under the provisions of subsection (2) shall by its order direct notice of the rectification to be given to the Registrar.

Trusts not to be entered on register.

114. Subject to the provisions of paragraph (b) of the proviso to section 55(1), no notice of any trust, expressed implied, or constructive, shall be entered on the register or be receivable by the Registrar, in the case of companies registered in Sri Lanka.

Register to be evidence.

115. The register of members shall be prima facie evidence of any matters by this Act directed or authorized to be inserted therein.

BRANCH REGISTER

Power of company to keep branch register.

116.

(1) A company having a share capital may, if so authorised by its articles, cause to be kept in any country other than Sri Lanka a branch register of members resident in that country (in this Act called "branch register").

(2) The company shall give to the Registrar notice of the situation of the office where any branch register is kept and of any change in its situation, and if it is discontinued, notice of its discontinuance, and any such notice shall be given within one month from the date of opening of the office or of change or discontinuance, as the case may be.

(3) Where default is made in complying with the provisions of subsection (2), the company and every officer of the company who is in default shall be liable to a default fine.

Regulations as to branch register.

117.

(1) A branch register shall be deemed to be part of the company's register of members (in this section called "the principal register").

(2) It shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before closing the register shall be inserted in any newspaper circulating in the district where the branch register is kept.

(3) The company shall transmit to its registered office in Sri Lanka a copy of every entry in its branch register as soon as may be after the entry is made, and shall cause to be kept at its registered office, duly brought up to date from time to time, a duplicate of its branch register.

Every such duplicate shall, for all the purposes of this Act, be deemed to be part of the principal register,

(4) Subject to the provisions of this section with respect to the duplicate register, the shares registered in a branch register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a branch register shall, during the continuance of that registration, be registered in any other register.

(5) A company may discontinue to keep a branch register, and thereupon all entries in that register shall be transferred to the principal register.

(6) Subject to the provisions of this Act, any company may, by its articles,

make such provisions as it may think fit respecting the keeping of branch registers.

(7) Where default is made in complying with the provisions of subsection (3), the company and every officer of the company who is in default shall be liable to a default fine.

Stamp duties in case of shares registered in branch register. Provisions as to branch registers kept in any other country.

118. An instrument of transfer of a share registered in a branch register, shall be deemed to be a transfer of property situate out of Sri Lanka, and, unless executed in Sri Lanka, shall be exempt from stamp duty chargeable in Sri Lanka.

119. Where by virtue of the law in force in any other country, companies incorporated under that law have power to keep in Sri Lanka branch registers of their members resident in Sri Lanka, the Minister may by Order published in the gazette direct that sections 111 and 113 of this Act, shall, subject to any modifications and adaptations specified in the Order, apply to and in relation to any such branch registers kept in Sri Lanka as they apply to and in relation to the registers of companies within the meaning of this Act.

ANNUAL RETURN

Annual return to be made by company having a share capital.

120.

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

Provided that the preceding provisions of this section shall not apply to a company either in the year of its incorporation or, if it is not required under the provisions of section 127 to hold an annual general meeting during the following year, in that year.

(2) The list referred to in subsection (1) shall state the names, addresses, nationalities and principal occupations of all the past and present members therein mentioned, and the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return or, in the case of the first return, of the incorporation of the company by persons who are still members and have ceased to be members respectively and the dates of registration of the transfers, and, if the names contained in such list are not arranged in alphabetical order, shall have annexed to it an index sufficient to enable the name of any person in such list to be readily found :

Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the list shall state the amount of stock held by each of the existing members instead of the amount of shares and the particulars relating to shares referred to in the preceding provisions of this section.

(3) The return made under the provisions of subsection (1) shall also state the date of incorporation, and change of name (if any), of the company and the address of the registered office of the company and shall contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars:

- (a) the amount of the share capital of the company, and the number of the shares into which it is divided ;
- (b) the number of shares taken from the date of - cement of business of the company up to the date of the return ;
- (c) the amount called up on each share ;
- (d) the total amount of calls received ;
- (e) the total amount of calls unpaid ;
- (f) the total amount of the sums, if any, paid by way of commission in respect of any shares or debentures ;
- (g) particulars of the discount allowed on the issue of any shares

issued at a discount, or of so much of that discount as has not been written off at the date on which the return is made ;
 (h) the total amount of the sums, if any, allowed by way of discount in respect of any debentures, since the date of the last return ;
 (i) the total number of shares forfeited ;
 (j) the total amount of shares for which share warrants are outstanding at the date of the return ;
 (k) the total amount of share warrants issued and surrendered respectively since the date of the last return ;
 (l) the number of shares comprised in each share warrant ;
 (m) all such particulars with respect to the persons who at the date of the return are the directors of the company as are by this Act required to be contained with respect 'to directors in the register of the directors of a company ;
 (n) the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Registrar under this Act ;
 (o) the name and address of the auditor, or the names and addresses of the auditors, of the company at the date of the return.

(4) The return made under the provisions of subsection (1) shall be in accordance with the form set out in the Sixth Schedule hereto or as near thereto as circumstances permit.

(5) Where a company fails to comply with the provisions of this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine.

(6) For the purposes of this section and of the Sixth Schedule hereto, the expressions " director " and " officer " shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

Annual return to be made by company not having share capital. **121.**

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

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

Provided that the preceding provisions of this section shall not apply to a company either in the year of its incorporation or, if it is not required under the provisions of section 127 to hold an annual general meeting during the following year, in that year.

(2) There shall be annexed to any return made under the provisions of subsection (1), a statement containing particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Registrar under this Act.

(3) Where a company fails to comply with the provisions of this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine.

(4) For the purposes of this section, the expressions " officer" and " director" shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

Declaration to sent by private company with annual return.

122.A private company shall send with its annual return, a declaration signed by the directors of the company to the effect that to the best of their knowledge and belief they have done all things .required to be done by them by or under this Act.

time for completion of annual return.

123.

(1) The annual return shall be completed within Time for forty-two days from the date of the annual general annual meeting for the year, whether or not that meeting is the first or only ordinary general meeting, or the first or only general meeting, of the company in the year, and the company shall forthwith forward to the Registrar a copy of such return signed both by a director and by the secretary of the company.

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

For the purposes of this subsection, the expression "officer" shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

Documents to be annexed to annual return.

124.

(1) Subject to the provisions of this Act, there shall be annexed to the annual return

(a) a written copy, certified both by a director and by the secretary of the company to be a true copy of every balance sheet which was, or should have been, in accordance with the provisions of section 144: laid before the company at the general meeting subsequent to which the annual return is required by the provisions of subsection (1) of section 123 to be made (including every document required by law to be annexed to the balance sheet) ; and

(b) a copy, certified as aforesaid, of the report of the auditors, on, and of the report of the directors accompanying, each such balance sheet,

and where any such balance sheet or document required by law to be annexed thereto is in a language other than the official language or English, there shall be annexed to that balance sheet a translation of the balance sheet or document in such language as may be required by the Registrar and certified in the prescribed manner to be a correct translation.

(2) Where any balance sheet or document required by law to be annexed to such balance sheet does not comply with the requirements of the law as in force at the date of the audit with respect to form, there shall be made such additions to and corrections in the copy referred to in paragraph (a) of subsection (1) as would have been required to be made in the balance sheet or document in order to make it comply with the said requirements and the fact that the copy has been so amended shall be stated thereon.

(3) Where a company fails to comply with the provisions of this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine.

For the purposes of this subsection, the expression " officer " shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

Certificate to be send by private company with annual return.

125.

A private company shall send to the Registrar together with the annual return required to be sent under the provisions of section 120, a certificate signed by a director and by the secretary of the company that the company has not, since the date of the last return, or, in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company, and, where the annual return discloses the fact that the number of members of the company exceeds fifty, also a certificate so signed that the excess consists wholly of persons who, under the provisions of paragraph (b) of subsection (1) of section 30 are not to be included in reckoning the number of fifty.

(1) Every company limited by shares and every company limited by guarantee and having a share capital shall, within a period of not less than one month and not report more than three months from the date on which the company is entitled to commence business, hold a general meeting of the members of the company, in this Act referred as the " statutory meeting " .

(2) The directors shall, at least fourteen days before the day on which the statutory meeting is held, forward a report, in this Act referred to as the " statutory report", to every member of the company :

Provided that, if the statutory report is forwarded later than is required by the provisions of this subsection, it shall, notwithstanding that fact, be deemed to have been duly forwarded if it is so agreed by all the members entitled to attend and vote at the meeting.

(3) The statutory report shall be certified by not less than two directors of the company, or, where there are less than two directors, by the sole director and secretary and shall state

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

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

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

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

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

(4) The statutory report shall, so far as it relates to the shares allotted by the company, to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors, if any, of the company.

(5) The directors shall cause a copy of the statutory report, certified as set out in the provisions of subsection (4) to be delivered to the Registrar for registration forthwith after the sending thereof to the members of the company.

(6) The directors shall cause a list showing the names, descriptions and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

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

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

(9) In the event of any default in complying with the provisions of this section, every director of the company who is knowingly and wilfully guilty of the default

Annual general meeting. **127.**

or, in the case of default by the company, every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees.

(10) The provisions of this section shall not apply to a private company.

(1) Every company shall in each year hold a general meeting called its annual general meeting in addition to any other meetings in that year and shall specify the meeting as such in the notice calling it ; and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

Provided that, so long as a company holds its first annual general meeting within eighteen months of its incorporation it need not hold it in the year of its incorporation or in the following year.

(2) Where default is made in holding a meeting of the company in accordance with the provisions of subsection (1) the Registrar may, on the application of any member of the company call, or direct the calling of, a general meeting of the company and give such ancillary or consequential directions as the Registrar thinks expedient, including any direction modifying or supplementing, in relation to the calling, holding and conducting of the meeting, the operation of the company's articles, and a direction to the effect that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(3) A general meeting held in pursuance of the provisions of subsection (2) shall, subject to any directions of the Registrar, be deemed to be an annual general meeting of the company ; but, where a meeting so held is not held in the year in which the default in holding the company's annual general meeting occurred, the meeting so held shall not be treated as the annual general meeting for the year in which it is held unless at that meeting the company resolves that it shall be so treated.

(4) Where a company resolves that a meeting shall be so treated, a copy of the resolution shall, within fifteen days from the date of passing thereof, be forwarded to the Registrar and recorded by him.

(5) Where default is made in holding a meeting of the company in accordance with the provisions of subsection (1), or in complying with any directions of the Registrar under the provisions of subsection*(2), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees, and where default is made in complying with the provisions of subsection (4), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine of two hundred and fifty rupees.

Convening of extra-ordinary general meeting of requisition. **128.**

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

(2) The requisition shall state the objects of the meeting, and shall be signed by the requisitionists and deposited a' the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.

(3) Where the directors do not within twenty-one days from the date of the deposit of the requisition duly proceed to convene a meeting, the requisitionists, or any of them representing more than one-half of the total voting rights of all of them may themselves convene a meeting, but any

meeting so convened shall not be held after the expiration of three months from the said date.

(4) A meeting convened under the provisions of this section by the requisitionists shall be convened in the same manner as nearly as possible, as that in which meetings are to be convened by the directors.

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

(6) For the purposes of this section, the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required by the provisions of section 137.

Length of notice
for calling
meetings. **129.**

(1) Any provision of a company's articles shall be void in so far as it provides for the calling of a meeting of the company (other than an adjourned meeting) by a shorter notice than

(a) in the case of the annual general meeting, twenty-one days notice in writing in the case of a company other than a private company, and fourteen days' notice in writing in the case of a private company and

(b) in the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution, fourteen days' notice in writing in the case of a company other than a private or an unlimited company and ten days' notice in writing in the case of a private or an unlimited company.

(2) Subject to the provisions of subsection (1), save in so far as the articles of a company make other provisions in that behalf, a meeting of the company (other than an adjourned meeting) may be called

(a) in the case of the annual general meeting by twenty' one days notice in writing in the case of a company other than a private company, and by fourteen days notice in writing in the case of a private company; and

(b) in the case of a meeting, other than an annual general meeting or an meeting for the passing of a special resolution, by fourteen days' notice in writing in the case of a company other than a private or an unlimited company and by ten days' notice in writing in the case of a private or an unlimited company.

(3) A meeting of the company shall, notwithstanding that it is called by shorter notice than that specified in the last foregoing subsection or in the company's articles, as the case may be, be deemed to have been duly called if it is so agreed-

(a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote at such meeting ; and

(b) in the case of any other meeting, by the members having a right to attend and vote at the meeting, being members together holding not less than ninety-five per centum in nominal value of the shares giving a right to attend and vote at the meeting, or, in the case of a company not having a share capital, together representing not less than ninety-five per centum of the total voting rights at that meeting of all the members.

Provisions as to
meetings and **130.** The following provisions shall have effect in so far as the articles of the company do

votes.

not make other provision in that behalf

(a) notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served under the provisions of by Table A of the First Schedule hereto and for the purpose of this paragraph, the expression " Table A " means that Table as is for the time being in force ;

(b) two or more members holding not less than one- tenth of the issued share capital or, if the company has not a share capital, not less than five per centum in number of the members of the company may call a meeting ;

(c) in the case of a private company two members, and in the case of any other company three members, present in person or by an authorized representative under the provisions of paragraph (a) of subsection (1) of section 132 shall be a quorum ;

(d) any member elected by the members present at a meeting may be chairman thereof ;

(e) no member shall be entitled to vote at any general meeting unless, all calls or other sums then payable by him in respect of shares in the company have been paid ;

(f) in the case of a company having a share capital where voting is by show of hands, each member shall have one vote and on a poll every member shall have one vote in respect of each share or each one hundred rupees of stock, as the case may be, held by him and in any other case every member shall have one vote.

Power of court to order meeting. **131.**

(1) Where for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in the manner specified by the articles or this Act, the court may either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the court thinks fit, and where any such order is made, may give such ancillary or consequential direction as it thinks expedient, and any meeting called, held and conducted in accordance with any such order shall for all purposes, be deemed to be a meeting of the company duly called, held and conducted and any such direction may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) A copy of every notice calling a meeting under the provisions of this section shall be sent to the Registrar at the same time as such notice is required to be sent to the members.

(3) Where default is made in complying with the provisions of subsection (2) the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding two hundred and fifty rupees.

Representation of companies at meetings of other companies and of creditors **132.**

(1) A corporation, whether a company within the meaning of this Act or not, may

(a) where it is a member of another corporation being company within the meaning of this Act, by resolution of its directors or other governing body authorize such person as; it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company ;

(b) where it is a creditor (including a holder of debentures) of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body

authorize such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person authorized as aforesaid shall be entitled to exercise the same power on behalf of the corporation which he represents as, that corporation could exercise if it were an individual shareholder, creditor or holder of debentures, of that other company.

Proxies.

133.

(1) Any member of a company entitled to attend and vote at a "meeting of the company shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of him, but a proxy so appointed shall not have the same right as, the member to speak at the meeting unless expressly authorized in that behalf by the instrument appointing him as proxy ; Provided that, unless the article otherwise provide,

(a) the provisions of this subsection shall not apply in the case of a company not having a share capital; and

(b) a member shall not be entitled to appoint more than one proxy to attend on the same occasion ; and

(c) a proxy shall not be entitled to vote except on a poll.

(2) In every notice calling a meeting of a company having a share capital there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy to attend and vote instead of him, and that a proxy need not also be a member ; and where default is made in complying with the provisions of this, subsection as respects any meeting every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupee.

(3) Any provision contained in a company's articles shall be void in so far as it would have the effect of requiring the instrument appointing a proxy, or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy, to be received by the company or any other person more than forty-eight hours and not less than twenty-four hours before a meeting or adjourned meeting in order that the appointment may be effective thereat.

(4) Where for the purpose of any meeting of a company invitations to appoint as proxy a person "or one of a number of persons specified in the invitations are issued at the company's expense to some only of the members entitled to be sent a notice of the meeting and to vote thereat by proxy, every officer of the company who knowingly and wilfully authorizes or permits their issue as aforesaid shall be guilty of an offence and shall be liable to a fine not exceeding one thousand rupees:

Provided that an officer shall not be liable under the provisions of this subsection by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy or of a list of persons willing to act as proxy if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(5) The provisions of this section shall apply to meetings of any class of members of a company as it applies to general meetings of the company.

(6) Every member of the company or a proxy holder shall be entitled to inspect the proxies received under the provisions of this section at least three hours before the commencement of the meeting or adjourned meeting at which the proxy is to be used.

Right to demand a poll. **134.**

(1) Any provision contained in a company's articles shall be void in so far as it

would have the effect either

- (a) of excluding the right to demand a poll at a general meeting on any question other than the election of the chairman of the meeting or the adjournment of the meeting; or
- (b) of making ineffective a demand for a poll on any such question which is made either

- (i) by not less than five members, having the right to vote at the meeting; or

- (ii) by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting ; or

- (iii) by a member or members holding shares in the company conferring a right to vote at the meeting, being share on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

(2) The instrument appointing a proxy to vote at a meeting of a company shall be deemed also to confer authority to demand or join in demanding a poll, and for the purpose of the provisions of subsection (1) a demand by a person as proxy for a member shall be the same as a demand by the member.

Voting on a poll.

135. On a poll taken at a meeting of a company or a meeting of any class of members of a company, a member entitled to more than one vote need not, if he votes, use or cast all his votes in the same way.

Circulation of member resolutions on requisition.

136.

(1) It shall be the duty of a company, on the requisition in writing of such number of members as is hereinafter specified and (unless the company otherwise resolves) at the expense of the requisitionists

- (a) to give to members of the company entitled to receive notice of the next annual general meeting notice of any resolution which may properly be moved and is intended to be moved at that meeting;

- (b) to circulate to members entitled to have notice of any general meeting sent to them any statement with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

(2) The number of members necessary for a requisition under the provisions of subsection (1) shall be

- (a) any number of members representing not less than one-twentieth of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or

- (b) not less than fifty members holding shares in the company on which there has been paid up an average sum, per member, of not less than one thousand rupees.

(3) Notice of any such resolution shall be given, and any such statement shall be circulated, to members of the company entitled to have notice of the meeting sent to them by serving a copy of the resolution or statement on each such member in any manner permitted for service of notice of the meeting, and notice of any such resolution shall be given to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving him notice of meetings of the company :

Provided that the copy shall be served, or notice of the effect of the resolution shall be given, as, the case may be, in the same manner and as far as practicable at the same time as notice of the meeting and, where it is not

practicable for it to be served or given at that time, it shall be served or given as soon as practicable thereafter.

(4) A company shall not be bound under the provisions of this section to give notice of any resolution or to circulate any statement unless

(a) a copy of the requisition signed by the requisitionists (or two or more copies which between them contain the signatures of all the requisitionists) is deposited at the registered office of the company

(i) in the case of a requisition requiring notice of a resolution, not less, than six weeks before the date of the meeting ; and

(ii) in the case of any other requisition, not less than one week before the meeting; and

(b) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect thereto :

Provided that where, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date six weeks or less from the date on which the copy has been deposited, the copy though not deposited within the time required by this, subsection shall be deemed to have been properly deposited for the purposes thereof.

(5) The company shall not be bound under the provisions of this section to circulate any statement, if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by the provisions of this section are being abused to secure unnecessary publicity for defamatory matter ; and the court may order the company's costs on an application made under the provisions of this section to be paid in whole or in part by the requisitionists, notwithstanding that they are not parties to the application.

(6) Notwithstanding anything in the company's articles, the business which may be dealt with at an annual general meeting shall include any resolution of which notice is given in accordance with the provisions of this section, and for the purposes of this subsection notice shall be deemed to have been so given notwithstanding the accidental omission, of giving such notice to one or more members.

(7) Where any default is made in complying with the provisions of this section, every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding five thousand rupees.

Provisions as to **137.**
extra-ordinary and
special resolution.

(1) A resolution shall be an extraordinary resolution when it has been passed by not less than three-fourths of such members as, being entitled so to do, vote in person or where proxies are allowed, by proxy, or by an authorized representative under the provisions of paragraph (a) of subsection (1) of section 132, at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

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

Provided that, where it is so agreed by the members having the right to attend and vote at any such meeting, being members together holding not less than ninety-five per centum in nominal value of the shares giving that right, or, in the case of a company not having a share capital, together representing not less than ninety-five per centum of the total voting rights at that meeting of all the members, a resolution may be proposed and passed as a special

resolution at a meeting of which less than twenty-one days' notice or fourteen days' notice, as the case may be, has been given.

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

(4) In computing the majority on a poll demanded on the question that an extraordinary resolution or a special resolution be passed, reference shall be had to the number of votes cast for and against the resolution.

(5) For the purposes of this section, notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by the articles, or by this Act.

Resolutions
requiring special
notice.

138. Where by any provision, hereafter contained in this Act, special notice is required of a resolution, the resolution shall not be effective unless notice of the intention to move it has been given to the company not less than twenty-eight days before the date of the meeting at which it is moved, and the company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice thereof, either by advertisement in a newspaper having an appropriate circulation or in any other manner allowed by the articles, not less than twenty-one days before the date of the meeting :

Provided that where, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date twenty-eight days or less from the date of the notice, the notice though not given within the time required by this section shall be deemed to have been properly given for the purposes thereof.

Registration of
certain resolutions
and agreements.

139.

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

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

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

(4) The provisions of this section shall apply to

(a) a special resolution ;

(b) an extraordinary resolution ;

(c) a resolution which has been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for its purpose unless, as the case may be, it has been passed as a special resolution or as an extraordinary resolution;

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

(e) a resolution requiring a company to be wound up voluntarily, passed under the provisions of paragraph (a) of subsection (1) of section 308.

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

(6) Where a company fails to comply with the provisions of subsection (2) or subsection (3), the company and every officer of the company who is in default

shall be guilty of an offence and shall be liable to a fine not exceeding two hundred and fifty rupees for each copy in respect of which default is made.
(7) For the purposes of subsections (5) and (6), a liquidator of the company appointed under this Act shall be deemed to be an officer of the company.

Resolution passed at an adjourned meetings. **140.** Where after the appointed date a resolution is passed at an adjourned meeting of-

- (a) a company;
- (b) the holders of any class of shares in a company ;
- (c) the directors of a company,

the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

Minutes of proceeding of meetings and directors.

141.

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

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

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

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

Inspection of minute books.

142.

(1) The books containing the minutes of proceedings of any general meeting of a company held after the appointed date shall, during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) be open to inspection by any member without charge.

(2) Any member shall be entitled to be furnished, with in seven days from the date on which he has made a request in that behalf to the company, with a copy of any such minutes referred to in subsection (1), at a charge not exceeding one rupee for every hundred words.

(3) Where any inspection required under the provisions of this section is refused or if any copy required under the provisions of this section is not sent within the specified period, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable in respect of each offence to a fine not exceeding two hundred and fifty rupees and further to a fine of two hundred and fifty rupees.

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

ACCOUNTS AND AUDIT

Keeping of books of accounts. **143.**

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

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

(2) For the purposes of the provisions of subsection (1), proper books of accounts shall not be deemed to be kept with respect to the matters set out in subsection (1) if there are not kept such books as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.

(3) The books of account shall be kept at the registered office of the company or at such other place as the directors think fit and shall at all times be open to inspection by the directors, the Registrar or other officer duly authorized in writing by the Registrar or by the auditors of the company or any person duly authorized by the auditors in writing :

Provided that, where books of account are kept at a place outside Sri Lanka, there shall be sent to and kept at a place in Sri Lanka and be at all times open to inspection by the directors, such accounts and returns with respect to the business dealt with in the books of account so kept as will disclose with reasonable accuracy the financial position of that business at intervals not exceeding six months and will enable to be prepared in accordance with this Act the company's balance sheet, its profit and loss account or income and expenditure account, and any document annexed to any of those documents giving information which is required and permitted to be so given by this Act.

(4) Where any person being a director of a company fails to take all reasonable steps to ensure compliance by the company with the requirements of this section, or has by his own wilful act been the cause of any default by the company thereunder, he shall be guilty of an offence and shall, in respect of each such offence, be liable to a fine not exceeding two thousand rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment:

Provided that

(a) in any proceedings against a person in respect of the offence of contravention of the provisions of this section by a failure to take reasonable steps to secure compliance by the company with the requirements of this section, it shall be a defence to prove that such person had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that those requirements were complied with and was in a position to discharge that duty ; and

(b) a person shall not be sentenced to imprisonment for such an offence unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

Profit and loss
account and
balance sheet.

144.

(1) The directors of every company shall at a date not later than eighteen months from the date of incorporation of the company and subsequently once at least in every calendar year lay before the company at a general meeting, a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the period, in the case of the first account, since the incorporation of the company, and, in any other case, since the preceding account, made up to a date not earlier than the date of the meeting by more than nine months, or, in the case of a company carrying on business or having interests outside Sri Lanka, by more than twelve months :

Provided that the Registrar may, for sufficient cause being shown by the defaulting company, extend the periods of eighteen, nine or twelve months, as the case may be, aforesaid.

(2) The directors shall cause to be made out in every calendar year, and to be laid before the company in general meeting, a balance sheet as at the date to which the profit and loss account or the income and expenditure account, as

General provisions as to contents and form of accounts.

145.

the case may be, is made up.

(3) Where any person being a director of a company fails to take all reasonable steps to comply with the provisions of this section, he shall be guilty of an offence, and shall, in respect of each offence, be liable to a fine not exceeding two thousand rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment: Provided that

(a) in any proceedings against a person in respect of an offence under this section it shall be a defence to prove that such person had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the provisions of this section were complied with and was in a position to discharge that duty; and

(b) a person shall not be sentenced to imprisonment for such an offence unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

(1) Every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of its financial year, and every profit and loss account of a company shall give a true and fair view of the profit or loss of the company for the financial year.

(2) A company's balance sheet and profit and loss account shall comply with the requirements of the Fifth Schedule hereto, so far as applicable thereto.

(3) Save as expressly provided in the following provisions of this section or in Part III of the Fifth Schedule hereto, the requirements of subsection (2) and such Schedule shall be without prejudice either to the general requirements of subsection (1) or to any other requirements of this Act.

(4) Notwithstanding the fact that any company has failed to comply with any of the requirements of this Act as to the matters to be stated in the company's balance sheet or profit and loss account (except the requirements of subsection (1)), the Registrar may, having regard to the paid-up capital and turnover of the company, accept such balance sheet or profit and loss account delivered to him by such company, and accordingly such company shall, for the purposes of this section, be deemed to have complied with all such requirements.

(5) The provisions of subsections (1) and (2) shall not apply to a company's profit and loss account where

(a) the company has subsidiaries ; and

(b) the profit and loss account is framed as a consolidated profit and loss account dealing with all or any of the company's subsidiaries as well as the company itself and

(i) complies with the requirements of this Act relating to consolidated profit and loss accounts; and

(ii) shows how much of the consolidated profit or loss for the financial year is dealt with in the accounts of the company.

(6) Where any balance sheet or profit and loss account of a company, of which a copy is laid before the company in general meeting or is delivered to the Registrar, does not comply with the requirements of this section and with the other requirements of this Act as to the matters to be stated in the accounts, every person who, at the time when the copy is so laid or delivered, is a director of the company, shall be guilty of an offence and, in respect of each offence, shall be liable to a fine not exceeding two thousand rupees :

Provided that, in proceedings against a person for the offence of contravention of the provisions of this section, it shall be a defence for such person to prove that he took all reasonable steps for securing compliance with such provisions.

(7) For the purposes of this section and the following provisions of this Act, except where the context otherwise requires

(a) any reference to a balance sheet or profit and loss account shall include any notes thereon or document annexed thereto, giving information which is required and permitted to be so given, by this Act; and

(b) any reference to a profit and loss account shall be taken, in the case of a company not trading for profit, as referring to its income and expenditure account, and any reference to profit or to loss and, where the company has subsidiaries, any reference to a consolidated profit and loss account shall be construed accordingly.

Obligation to lay
group accounts
before holding
company. **146.**

(1) At the end of the financial year of a company having subsidiaries, accounts and statements (in this Act group referred to as " group accounts") dealing as hereinafter set out with the state of affairs and profit or loss of the company and the subsidiaries, shall, subject to the provisions of subsection (2), be laid before the company at a general meeting when the own balance sheet and profit and loss account of the company are so laid:

Provided that such group accounts may not deal with any subsidiary of the company with respect to which the directors of the company are of any of the opinions referred to in sub-paragraphs (i), (ii) and (iii) of paragraph (b) of subsection (2).

(2) Notwithstanding the provisions of subsection (1), group accounts shall not be required

(a) where the company is, at the end of its financial year, the wholly-owned subsidiary of another body corporate incorporated in Sri Lanka; and

(b) where the company's directors are of opinion with respect to each of the company's subsidiaries that-

(i) it is impracticable, or would be of no real value to members of the company, in view of the insignificant amounts involved, or would involve expense or delay out of proportion to the value to members of the company; or

(ii) the result would be misleading, or harmful to the business of the company or any of its subsidiaries ; or

(iii) the business of the holding company and that of the subsidiary are so different that they cannot reasonably be treated as a single undertaking:

Provided that no company shall refrain from dealing group accounts with a subsidiary on the ground that the result would be harmful or on the ground of the difference between the business of the holding company and that of the subsidiary, without the prior approval in writing of the Registrar.

(3) Where any person being a director of a company fails to take all reasonable steps to secure compliance with the provisions of this section as respects the company, he shall be guilty of an offence and shall, in respect of each offence, be liable to a fine not exceeding two thousand rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment:

Provided that-

(a) in any proceedings against a person in respect of an offence under the provisions of this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of

seeing that the requirements of this section were complied with and was in a position to discharge that duty; and

(b) a person shall not be sentenced to imprisonment for an offence under the provisions of this section unless, in the opinion of the court, the offence was committed wilfully.

(4) For the purposes of this section, a body corporate shall be deemed to be the wholly-owned subsidiary of another if it has no members except that other and that other's wholly-owned subsidiaries and its or their nominees.

Form of group accounts. **147.**

(1) Subject to the provisions of subsection (2), the group accounts laid before a holding company shall be consolidated accounts comprising-

(a) a consolidated balance sheet dealing with the state of affairs of the company and all the subsidiaries to be dealt with in group accounts ; and

(b) a consolidated profit and loss account dealing with the profit or loss of the company and such subsidiaries.

(2) Where the company's directors are of opinion that it is better for the purpose-

(a) of presenting the same or equivalent information about the state of affairs and profit or loss of the company and its subsidiaries ; and

(b) of so presenting it that it may be readily appreciated by the company's members,

the group accounts may be prepared in a form other than that required by the provisions of subsection (1), and in particular, may consist of more than one set of consolidated accounts dealing respectively with the company and one group of subsidiaries and with other groups of subsidiaries or of separate accounts dealing with each of the subsidiaries, or of statements expending the information about the subsidiaries in the company's own accounts, or any combination of these forms.

(3) The group accounts may be wholly or partly incorporated in the company's own balance sheet and profit and loss account.

Contents of group accounts. **148.**

(1) The group accounts laid before a company shall give a true and fair view of the state of affairs and profit or loss of the company and the subsidiaries dealt with thereby as a whole, so far as concerns members of the company.

(2) Where the financial year of a subsidiary does not coincide with that of the holding company, the group accounts shall, unless the Registrar on the application, or with the consent, of the directors of the holding company otherwise directs, deal with the subsidiary's state of affairs as at the end of its financial year ending with, or last before, the financial year of the holding company, and with the subsidiary's profit or loss for that financial year.

(3) Without prejudice to the provisions of subsection (1) the group accounts, if prepared as consolidated accounts, shall comply with the requirements of the Fifth Schedule hereto, so far as applicable to consolidated accounts and if not so prepared shall give the same or equivalent information:

Provided that the registrar may, on the application, or with the consent, of the directors of a company, modify the said requirements in relation to that company for the purpose of adopting them to the circumstances of the company.

Financial year of holding company and subsidiary. **149.**

(1) The directors of a holding company shall determine that except where in their opinion there are good reasons against it, the financial year of each of its subsidiaries shall coincide with the company's own financial year.

(2) Where it appears to the Registrar desirable for a holding company or a

Meaning of
"holding company"
and "subsidiary". **150.**

holding company's subsidiary to extend its financial year so that the subsidiary's financial year may end with the financial year of the holding company, and for that purpose to postpone the submission of the relevant accounts to a general meeting from one calendar year to the next, the Registrar may, on the application, or with the consent, of the directors of the company whose financial year is to be extended direct that, in the case of that company, the submission of accounts to a general meeting, the holding of an annual general meeting or the making of an annual return shall not be required in the earlier of the said calendar years.

(1) For the purposes of this Act, a company shall, subject to the provisions of subsection (3), be deemed to be a subsidiary of another if, and only if -

(a) that other company either

(i) is a member of it and controls the composition of its board of directors; or

(ii) holds more than half in nominal value of its equity share capital; or

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

(2) For the purposes of subsection (1), the composition of a company's board of directors shall be deemed to be controlled by another company if, and only if, that other company by the exercise of any power exercisable by it without the consent or concurrence of any other person can appoint or remove the holders of all or a majority of the directorships ; but for the purposes of these provisions that other company shall be deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied, that is to say-

(a) that a person cannot be appointed to a directorship without the exercise in his favour by that other company of a power to so appoint; or

(b) that a person's appointment to a directorship follows necessarily from his appointment as director of that other company ; or

(c) that the directorship is held by that other company itself or by a subsidiary of it.

(3) In determining whether one company is a subsidiary of another-

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

(b) subject to the provisions of paragraphs (c) and (d), any shares held or power exercisable

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

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

shall be treated as held or exercisable by that other ;

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

(d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary (not being held or exercisable as

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

(4) For the purposes of this Act, a company shall be deemed to be another's holding company if, and only if, that other is its subsidiary.

(5) In this section, the expression " company" includes any body corporate, and the expression " equity share capital " in relation to a company means its issued share capital excluding any part thereof which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution .

Accounts and
auditors report to
be annexed to
balance sheet. **151.**

(1) The profit and loss account and, so far as not incorporated in the balance sheet or profit and loss accounts, any group accounts laid before the company at a general meeting, shall be annexed to the balance sheet, and the auditors' report shall be attached thereto.

(2) Any accounts so annexed shall be approved by the board of directors before the balance sheet is signed on their behalf.

(3) If any copy of a balance sheet is issued, circulated or published without having annexed thereto a copy of the profit and loss account or any group accounts required by this section to be so annexed, or without having attached thereto a copy of the auditors' report, the company and every officer of the company who is in default shall be liable to a fine not exceeding five hundred rupees.

Directors' report to
be attached to
balance sheet. **152.**

(1) There shall be attached to every balance sheet laid before a company in general meeting a report by the directors with respect to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend, and the amount if any, which they propose to carry to reserves within the meaning of the Fifth Schedule hereto. The report shall state whether any director is, directly or indirectly, interested in any contract or proposed contract with the company, and if so, shall state the nature of such interest and whether it was declared by him at a meeting of the directors as required under the provisions of section 203.

(2) The report referred to in subsection (1) shall deal, so far as is material for the appreciation of the state of the company's affairs by its members and may not in the opinion of the directors be harmful to the business of the company or of any of its subsidiaries, with any change during the financial year in the nature of the company's business, or in the company's subsidiaries, or in the classes of business in which the company has an interest, whether as member of another company or otherwise.

(3) Where any person being a director of a company fails to take all reasonable steps to comply with the requirements of subsection (1), he shall be guilty of an offence and shall, in respect of each offence, be liable to a fine not exceeding two thousand rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment:

Provided that-

(a) in any proceedings against a person in respect of the offence of the contravention of the provisions of subsection (1), it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the provisions of that subsection were complied with and was in a position to discharge that duty ; and

(b) a person shall not be liable to be sentenced to imprisonment for such an offence unless, in the opinion of the court, the offence

Signing of balance sheet. **153.**

was committed wilfully.

(1) Every balance sheet of a company shall be signed on behalf of the board by two of the directors of the company, or, if there is only one director, by that director.

(2) In the case of a banking company, the balance sheet shall be signed by the secretary or manager, if any, and where there are more than three directors of the company, by at least three of those directors, and where there are not more than three directors by all the directors.

(3) Where any copy of a balance sheet which has not been signed as required by the provisions of this section is issued, circulated or published, the company which is in default shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees.

Right to receive copies of balance sheets and auditors report. **154.**

(1) A copy of every balance sheet, including every document required by any written law to be annexed thereto, which is to be laid before a company at a general meeting together with a copy of the auditors' report, shall not less than twenty-one days before the date of the meeting, in the case of a company other than a private company, and fourteen days before the date of the meeting, in the case of a private company, be sent to every member of the company (whether he is or is not entitled to receive notices of general meetings of the company), every holder of debentures of the company (whether he is or is not so entitled), and all persons other than members or holders of debentures of the company, being persons so entitled :

Provided that -

(a) in the case of a company not having a share capital the provisions of this subsection shall not require the sending of a copy of the documents aforesaid to a member of the company who is not entitled to receive notice of general meetings of the company or to a holder of debentures of the company who is not so entitled;

(b) the provisions of this subsection shall not require a copy of the documents aforesaid to be sent -

(i) to a member of the company or a holder of debentures of the company, being in either case a person who is not entitled to receive notices of general meetings of the company and of whose address the company is unaware ;

(ii) to more than one of the joint holders of any shares or debentures none of whom are entitled to receive such notices, to those who are not entitled ; and

(iii) in the case of joint holders of any shares or debentures some of whom are and some of whom are not entitled to receive such notices, to those who are not entitled, and

(c) where the copies of the documents aforesaid are sent less than twenty-one days before the date of the meeting in the case of a company other than a private company, or less than fourteen days before the date of the meeting in the case of a private company, such copies shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by all the members entitled to attend and vote at the meeting.

(2) Any member of a company, whether he is or is not entitled to have sent to him copies of the balance sheets of the company and any holder of debentures of the company, whether he is or not so entitled, shall be entitled

to be furnished on demand, without charge, with a copy of the last balance sheet of the company including every document required by any written law to be annexed thereto, together with a copy of the auditors' report on the balance sheet.

(3) Where default is made in complying with the provisions of subsection (1), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding two hundred and fifty rupees, and if when any person makes a demand for any document with which he is by virtue of the provisions of subsection (2) entitled to be furnished, default is made in complying with such demand within seven days from the date of making thereof, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine unless it is proved that that person has already made a demand for, and been furnished with, a copy of the document.

(4) The provisions of subsection (1) shall not have effect in relation to a balance sheet of a private company laid before it before the appointed date, and accordingly the right of any person to be furnished with a copy of any such balance sheet and the liability of the company in respect of a failure to satisfy that right shall be the same as they would have been if this Act had not been brought into operation.

Banking and
certain other
companies to
publish periodical
statement.

155.

(1) Every company, being a limited banking company or an insurance company or a deposit, provident, or benefit society, shall, before it commences business, and also on the thirty-first day of March and thirtieth day of September in every year during which it carries on business, make a statement in the prescribed form or as near thereto as circumstances permit.

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

(3) Every member and every creditor of the company shall be entitled to a copy of the statement, on payment of such sum of money not exceeding ten rupees, as may be prescribed.

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

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

(6) The provisions of this section shall not apply to any insurance company to which the provisions of any written law for the time being in force as to the accounts and balance sheet to be prepared annually and delivered by such a company apply, where the company complies with those provisions.

Appointment and
remuneration of
auditors.

156.

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

(2) At any annual general meeting a retiring auditor, however appointed, shall be re-appointed without any resolution to that effect being passed unless-

(a) he is not qualified for reappointment; or

(b) a resolution has been passed at that meeting appointing somebody instead of him or providing expressly that he shall not be reappointed; or

(c) he has given the company notice in writing of his unwillingness to be reappointed :

Provided that where notice is given of an intended resolution to appoint any person or persons in place of a retiring auditor, and by reason of the death, incapacity or disqualification of that person or of all those persons, as the case

may be, the resolution cannot be proceeded with, the retiring auditor shall be automatically reappointed by virtue of the provisions of this subsection.

(3) Where at an annual general meeting no auditors are appointed or reappointed, the Registrar may appoint a person to fill the vacancy.

(4) The company shall, within one week from the date on which the power of the Registrar under the provisions of subsection (3) becomes exercisable, give the Registrar notice of that fact, and, where a company fails to give notice as required by the provisions of this subsection, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine.

(5)

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

Provided that-

(i) the company may at a general meeting remove any such auditors and appoint in their place any other persons who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than fourteen days before the date of the meeting, in the case of a company other than a private company, or not less than seven days before that date in the case of a private company ; and

(ii) where the directors fail to exercise their powers under the provisions of this subsection, the company at a general meeting may appoint the first auditors and thereupon such powers of the directors shall cease.

(b) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues, the surviving or continuing auditor or auditors, if any, may act.

(6) The remuneration of the auditors of a company-

(a) in the case of an auditor appointed by the directors or by the Registrar, may be fixed by the directors or by the Registrar, as the case may be;

(b) subject to the provisions of paragraph (a), shall be fixed by the company at a general meeting or in such manner as the company at a general meeting may determine.

For the purposes of this subsection, the expression " remuneration" shall include any sums paid by the company in respect of the auditors' expenses.

(7)

(a) No person other than a registered auditor shall be eligible for appointment as an auditor under the provisions of this section.

(b) Regulations shall be made providing for-

(i) the qualifications necessary in order to secure such registration; and

(ii) the procedure for the registration of auditors ;

(iii) the fees payable for such registration.

(8) Where persons practising in partnership as auditors are appointed in the firm name, each of the partners of the firm at the time of the appointment, shall be deemed to be appointed as auditors and such appointment shall continue notwithstanding any subsequent change in the constitution of the partnership, provided at least one of the original partners so appointed, remains in the firm.

(9) Any person who acts as an auditor of a company without being registered

Provisions as to resolutions relating to appointment and removal of auditors.

157.

as an auditor under the provisions of subsection (7) shall be guilty of an offence and shall be liable to a fine not exceeding rupees five hundred or to imprisonment of either description for a term not exceeding one year or to both such fine and imprisonment.

(1) Special notice shall be required for a resolution at a company's annual general meeting appointing as auditor a person other than a retiring auditor or providing expressly that a retiring auditor shall not be reappointed

(2) On receipt of notice of a resolution referred to in subsection (1), the company shall forthwith send a copy thereof to the retiring auditor, if any.

(3) Where notice is given of a resolution referred to in subsection (1) and the retiring auditor makes, with respect to such resolution, representations to the company in writing (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it within a period of fourteen days from the date of the notice, send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company), and where a copy of the representations is not sent because of the company's default, or because such representations were received after the expiry of such period, the auditor may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting:

Provided that no copies of the representations may be sent and the representations may not be read out at the meeting where, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by the provisions of this section are being abused to secure unnecessary publicity for defamatory matter; and the court may order the company's costs on such an application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

(4) The provisions of subsection (3) shall apply to a resolution to remove the first auditors by virtue of the provisions of subsection (5) of section 156 as it applies in relation to a resolution that a retiring auditor shall not be reappointed.

Disqualifications for application as auditors.

158.

(1) No person who is-

(a) an officer or servant of the company;

(b) a partner of or in the employment of an officer or servant of the company ;

(c) a body corporate,

shall be qualified for appointment as an auditor of that company.

Any reference in this subsection to an officer or servant shall be construed as not including any reference to an auditor.

(2) No person shall be eligible for appointment as an auditor of a company unless he (a) is a member of the Institute of Chartered Accountants of Sri Lanka ; or (b) has the necessary qualifications referred to in subsection (7) of section 156.

(3) Any person who acts as an auditor of a company in contravention of the provisions of subsection (1) shall be guilty of an offence and shall be liable to a fine not exceeding one thousand rupees.

Auditors report and right of access to books and to attend and be bound at general meetings.

159.

(1) The auditors shall make a report to the members on the accounts examined by them, and on every balance sheet, every profit and loss account and all group accounts laid before the company at a general meeting during their tenure of office, and the report shall contain statements as to the matters

specified in the Seventh Schedule hereto.

(2) The auditors' report shall be read before the company at a general meeting and shall be open to inspection by any member, provided that where an auditor qualifies a statement with reference to a particular report, that report shall form part of the audit report.

(3) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers and all documents and records, belonging to the company, which they consider necessary for the performance of their duties, and shall be entitled to require from the officers of the company such information and explanation as he thinks necessary for the performance of the duties, of the auditor.

(4) The auditors of a company shall be entitled to attend any general meeting of the company and to receive all notices and other communications relating to any general meeting which any member of the company is entitled to receive, and to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors.

Construction of references to documents annexed to accounts.

160. References in this Act to a document annexed or required to be annexed to a company's accounts or any of them shall not include the directors' report or the auditors' report:

Provided that any information which is required by this Act to be given in the accounts, and is thereby allowed to be given in a statement annexed, may be given in the directors' report instead of in the accounts and where any such information is so given, the report shall be annexed to the accounts and the provisions of this Act shall apply in relation thereto accordingly, except that the auditors shall report thereon only so far as it gives the said information.

INSPECTION

Investigation of company affairs on application of members.

161.

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

(a) in the case of a company having a share capital, on the application either of not less than fifty members or of members holding not less than one-fifth of the shares issued;

(b) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members.

(2) The application shall be supported by such evidence as the Registrar may require for the purpose of showing that any person making an application under the provisions of subsection (1) has good reason for requiring the investigation, and the Registrar may, before appointing an inspector, require such person to give security, to an amount not exceeding two thousand five hundred rupees for payment of the costs of the investigations.

(3) The Registrar may from time to time as and when he deems necessary, require any person making an application under the provisions of subsection (1) to make additional payments as security for, and for further conduct of, the investigation and on failure of such person to furnish any such amount as and when required so to do, the Registrar may in his absolute discretion direct that the security paid by virtue of the provisions of subsection (2) be forfeited and terminate the investigation.

(4) The Registrar may as and when he deems necessary call upon an inspector to furnish him with an interim report on any investigation being conducted by such inspector.

Investigation of company's affairs other cases

162. Without prejudice to the provisions of section 161, the Registrar-

(a) shall appoint one or more competent inspectors, to investigate the affairs of a company and to report thereon in such manner as the Registrar directs, where-

- (i) the company by special resolution; or
- (ii) the court by order,

declares that its affairs ought to be investigated by an inspector appointed by the Registrar;

(b) may appoint one or more competent inspectors to investigate the affairs of a company and to report thereon to the Registrar that there are circumstances suggesting that-

- (i) its business is being conducted with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose or in a manner oppressive of any part of its members or that it was formed for any fraudulent or unlawful purpose; or
- (ii) persons concerned with its formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members ; or
- (iii) its members have not been given all the information with respect to its; affairs which they might reasonably expect.

Power of inspectors to carry out investigation into affairs of related companies.

163. Where an inspector appointed under the provisions of section 161 or section 162 to investigate the affairs of a company thinks it necessary for the purposes of his investigation to investigate also the affairs of any other body corporate which is or has at any relevant time been the company's subsidiary or holding company or a subsidiary of its holding company or a holding company of its subsidiary, he shall, with the prior written approval of the Registrar, have power so to do, and shall report on the affairs of the other body corporate so far as he thinks the results of his investigation thereof are relevant to the investigation of the affairs of the first-mentioned company.

Production of documents and evidence on investigation.

164.

(1) It shall be the duty of all directors, officers and agents of the company and of all directors, officers and agents of any other body corporate whose affairs are . instigated by virtue of the provisions of section 163 to produce to the inspectors all books and documents of, or relating to, the company or, as the case may be, the other body corporate which are in their custody or power and to attend before the inspectors, when required to do so and otherwise to give to the inspectors all assistance in connection with the investigation which they are reasonably able to give.

(2) An inspector may examine on oath the officers and agents, of the company or other body corporate in relation to its business, and may administer an oath accordingly.

(3) Where any officer or agent of the company or other body corporate refuses to produce to the inspectors any book or document which it is his duty under the provisions of this section so to produce, or refuses to answer any question which is put to him by the inspectors with respect to the affairs of the company or other body corporate, as the case may be, the inspectors may certify the refusal under their hand to the court, and the court may thereupon inquire into the case, and after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of court.

(4) Where an inspector thinks it necessary for the purpose of his, investigation that a person who he has no power to examine on oath should be so examined, he may apply to the court and the court may, if it sees fit, order that person to attend and be examined on oath before it on any matter relevant to

the investigation, and on any such examination-

- (a) the inspector may appear either personally or be represented by an attorney-at-law;
- (b) the court may put such question to the persons examined as the court thinks fit;
- (c) the person examined shall answer all such questions as the court may put or allow to be put to him, but may at his own cost be represented by an attorney at-law who shall be at liberty to put to him such questions as, the court may deem just for the purpose of enabling him to explain or qualify any answers given by him ; and notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him:

Provided that, notwithstanding anything in paragraph (c), the court may allow the person examined such costs as in its discretion it may think fit and any costs so allowed shall be paid as part of the expenses of the investigation.

(5) In this section, any reference to officers or to agents shall include past, as well as present, officers or agents, as the case may be, and the expression " agents " in relation to a company or other body corporate, shall include the bankers or attorneys-at-law of the company or other body corporate and any persons employed by the company or other body corporate as auditors, whether those persons are or are not officers of the company or other body corporate.

Inspector's report. **165.**

(1) In the course of an investigation an inspector may, and if so directed by the Registrar shall, make interim report[^] to the Registrar, and on the conclusion of such investigation shall make a final report to the Registrar. The final report shall be in writing or be printed, as directed by the Registrar.

(2) The Registrar shall-

- (a) forward a copy of any report made by the inspectors to the registered office of the company ;
- (b) where he thinks fit, furnish a copy of any report on request and on payment of the prescribed fee to any other person who is a member of the company or of any other body corporate dealt with in the report by virtue of the provisions of section 163, or whose interests as a creditor of the company or of any such other body corporate as, aforesaid appears to the Registrar to be affected ;
- (c) where the inspector is appointed under the provisions of section 161, furnish at the request of the applicants for the investigation, a copy to them ; and
- (d) where the inspector is, appointed under the provisions of section 162, in pursuance of an order of the court, furnish a copy to the court,

and may also cause the report to be published in the Gazette.

Proceedings on
inspector's report. **166.**

(1) Where from any report made under the provisions of section 165 it appears to the Registrar that any person has, in relation to the company or to any other body corporate whose affairs have been investigated by virtue of the provisions of section 163, been guilty of any offence for which he is criminally liable, the Registrar shall if it appears to him that the case is one in which the prosecution ought to be undertaken by the Attorney-General, refer the matter to the Attorney-General.

(2) Where in any matter referred to the Attorney-General under the provisions of subsection (1) the Attorney-General considers that the case is one in which a prosecution ought to be instituted, he shall institute proceedings accordingly,

Expenses of
investigation of
company's affairs.

167.

and it shall be the duty of all officers and agents of the company or other body corporate as aforesaid, as the case may be, (other than the defendant in the proceedings) to give him all assistance in connection with the prosecution which they are reasonably able to give and the provisions of subsection (5) of section 164, shall apply for the purposes of this subsection as they apply for the purposes of that section.

(3) Where, in the case of any body corporate liable to be wound up under this Act, it appears to the Registrar from any report made under the provisions of section 165 that it is expedient so to do by reason of any such circumstances as are referred to in sub-paragraph (i) or sub-paragraph (ii) of paragraph (b) of section 162, the Registrar may, unless the body corporate is already being wound up by the court, present a petition for it to be so wound up if the court thinks it just and equitable that it should be wound up or a petition for an order under section 210 or section 211, or both such petitions.

(4) Where from any report made under the provisions of section 165, it appears to the Registrar that proceedings ought in the public interest be instituted by the body corporate to which such report relates for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation of that body corporate or the management of its affairs, or for the recovery of any property of the body corporate which has been misapplied or wrongfully retained the Registrar may himself institute proceedings for that purpose in the name of such body corporate.

(5) The Registrar shall indemnify the body corporate against any costs or expenses incurred by it in or in connection with any proceedings instituted under the provisions of subsection (4).

(1) The expenses of, and incidental to, an investigation by an inspector appointed by the Registrar under the provisions of section 161 or section 162 shall be defrayed in the first instance by the Registrar but the following persons shall, to the extent specified, be liable to repay the Registrar-

(a) any person who is convicted on a prosecution instituted as a result of the investigation by the Attorney-General, or who is ordered to pay damages; or restore any property in proceedings instituted by virtue of the provisions of subsection (4) of section 166, may in the same proceedings be ordered to pay the said expenses to such extent as may be specified in the order;

(b) any body corporate in whose name proceedings are instituted as aforesaid shall be liable to the amount or value of any sum or property recovered by it as a result of those proceedings; and

(c) unless as a result of the investigation a prosecution is instituted by the Attorney-General-

(i) any body corporate dealt with by the report, where the inspector was appointed otherwise than of the Registrar's own motion shall be liable, except so far as the Registrar otherwise directs; and

(ii) any person making an application for the investigation, where the inspector was appointed under the provisions of section 161 shall be liable to such extent, if any, as the Registrar may direct,

and any amount for which a body corporate is liable by virtue of the provisions of paragraph (b) shall be a first charge on the sum or property referred to in that paragraph,

(2) The report of an inspector appointed otherwise than of the Registrar's own motion may, if he thinks fit, and shall, if the Registrar so directs, include a recommendation as to the directions' (if any) which such inspector thinks appropriate, as a result of his, investigation, to be given under the provisions of

paragraph (c) of subsection (1).

(3) For the purposes of this section, any costs or expenses incurred by the Registrar in, or in connection with, proceedings brought by virtue of the provisions of subsection (4) of section 166 (including expenses incurred by virtue of the provisions of subsection (5) of that section) shall be treated as expenses of the investigation giving rise to the proceeding.

(4) Any liability to repay the Registrar imposed by the provisions of paragraphs (a) and (b) of subsection (1) shall, subject to satisfaction of the Registrar's right to repayment, be a liability also to identify all persons against liability under the provisions of paragraph (c) of subsection (1) and any such liability imposed by the provisions of paragraph (a) shall, subject as aforesaid, be a liability also to indemnify all persons against liability under the provisions of paragraph (b) ; and any person, liable under the provisions of paragraph (a) or paragraph (b) or sub-paragraph (i) or sub-paragraph (ii) of paragraph (c) shall be entitled to contribution from any other person liable under the same paragraph or sub - paragraph, as the case may be, according to the amount of their respective liabilities thereunder.

(5) The expenses to be defrayed by the Registrar under the provisions of this section shall, so far as not recovered thereunder, be paid out of moneys provided by Parliament for the purpose.

Inspector's report to be evidence.

168. A copy of any report of any inspector appointed under the provisions of section 161 or section 162 authenticated by the seal of the company whose affairs they have investigated, shall be admissible in any legal proceedings as evidence of the opinion of the inspector in relation to any matter contained in the report.

Appointment and powers of inspector to investigate ownership of company.

169.

(1) Where it appears to the Registrar that there is good reason so to do, he may appoint one or more inspectors to investigate and report on the membership of any company and otherwise with respect to the company 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 company or able to control or materially to influence the policy of the company.

(2) The instrument of appointment of an inspector under the provisions of subsection (1) 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 the provisions of this section with respect to particular shares or debentures of a company is made to the Registrar by members of the company, 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 the provisions of section 161, the Registrar shall appoint an inspector to conduct the investigation unless he is satisfied that the application is vexatious, and any matter which the application seeks to include in such investigation other than those matters which the Registrar is satisfied is unreasonable to be investigated, shall be included within the scope of such investigation.

(4) Subject to the terms of appointment of an inspector, 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 the provisions of this section, the provisions of sections 163, 164 and 165 shall apply with the necessary modifications of references to the affairs of the company or to those of any other body corporate, so however that-

(a) the said sections shall apply in relation to all persons who are or have been, or whom the inspector has reasonable cause to believe to be or have been, financially interested in the success or

failure or the apparent success or failure of the company or any other body corporate whose membership is investigated with that of the company, 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 company or of the other body corporate, as the case may be; and (b) the Registrar is required to furnish the company with a copy of any report by an inspector appointed under the provisions of this section or with a complete copy thereof, provided that the company in turn is required to make available such report to a shareholder on application.

(6) The expenses of any investigation made under the provisions of this section shall be defrayed by the Registrar out of moneys provided by Parliament for the purpose.

Power to require information as to persons interested in shares or debenture. **170.**

(1) Where it appears to the Registrar that there is good reason to investigate the ownership of any shares in, or debentures of, a company and that it is unnecessary to appoint an inspector for the purpose, the Registrar may require any person whom he has reasonable cause to believe-

(a) to be or to have been interested in those shares or debentures; or

(b) to act, or to have acted, in relation to those shares or debentures as the attorney or agent of any person interested therein,

to give the Registrar any information which he has or can reasonably be expected to obtain 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.

(3) Any person who fails to give information required of him under the provisions of subsection (1) 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 to a fine not exceeding five thousand rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.

Power to impose restrictions on shares or debentures. **171.**

(1) Where in connection with an investigation under the provisions of section 169 or section 170, it appears to the Registrar that there is difficulty in finding out the relevant facts about any shares (whether issued or to be debentures, issued), and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned or any of them to assist the investigation as required by the Registrar, the Registrar may by order direct that the shares shall until further order, be subject to the restrictions imposed by the provisions of this section.

(2) So long as any shares are directed to be subject to the restrictions imposed by the provisions of this section-

(a) any transfer of those shares, or in the case of un issued shares any transfer of the right to be issued there-with and any

issue thereof, shall be void;

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

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

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

(3) Where the Registrar makes an order directing that shares shall be subject to the restrictions specified in sub section (2) or refuses to make an order directing that shares shall cease to be subject thereto, any person aggrieved by such order may appeal to the court against such order and the court may, if it sees fit, direct that the shares cease to be subject to such restrictions.

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

(5) Any person who-

(a) exercises or purports to exercise any right to dispose of any shares which, to his knowledge, are for the time being subject to the restrictions specified in subsection (2) or of any right to be issued with any such shares ; or

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

(c) being the holder of any such shares, fails to notify of their being subject to the restrictions specified in subsection (2) any person whom he does not know to be aware of that fact but does know to be entitled, apart from such restrictions, to vote in respect of those shares whether as holder or proxy,

shall be guilty of an offence and shall be liable to a fine not exceeding five thousand rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.

(6) Where shares in any company are issued in contravention of the restrictions specified in subsection (2), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding five thousand rupees.

(7) A prosecution shall not be instituted under the provisions of this section except by or with the consent of the Registrar.

(8) The provisions of this section shall apply in relation to debentures as it applies in relation to shares.

Saving for
attorneys-at-law
and bankers.

172. Nothing in the preceding provisions of this Part shall require disclosure to the Registrar or to an inspector appointed by the Registrar-

(a) by an attorney-at-law, of any privileged communication made to him in that capacity, except as respects the name and address of his client; or

(b) by a company's bankers, of any information as to the affairs of any of their customers other than the company.

Registrar's power
to verify assets
and liabilities.

173. The Registrar shall have the power to verify the assets and liabilities of any company.

DIRECTORS, SECRETARIES AND MANAGERS

Directors.

174. Every company registered after the appointed date (other than a private company) shall have at least two directors, and every private company shall have at least one director.

Secretary.

175.

(1) With every memorandum delivered for registration in accordance with the provisions of section 14, there shall be delivered, within such period as may be prescribed, a statement in the prescribed form containing the names and relevant particulars of-

(a) the person who is, or the persons who are, to be the first director or directors of the company ; and

(b) the person who is, or the persons who are, to be the first secretary or joint secretaries of the company."

Provided however, that in the case of a private company, the particulars referred to in paragraphs (a) and (b) shall be delivered within such period as may be prescribed, after incorporation.

(2) The relevant particulars referred to in subsection (1) shall be with respect to a person named as director, secretary, or as one of the joint secretaries, the particulars which by the provisions of subsection (1) of section 194 are required to be contained in the register kept under the provisions of that section.

(3) The statement required by the provisions of sub section (1) shall be signed by or on behalf of the subscribers of the memorandum and shall contain a consent signed by each of the persons named in it as a director; as secretary or as one of the joint secretaries to act in their respective capacity.

(4) Where the memorandum is delivered by a person as agent for the subscribers of the memorandum, the statement required by this section shall specify that fact and the name and address of that person.

(5) The persons named in the statement referred to in subsection (1) as the director or directors, secretary or joint secretaries of a company shall, on the incorporation of the company, be deemed to have been respectively appointed as the first director or directors, secretary or joint secretaries of the company; and any appointment by any articles delivered with the memorandum of a person as director or secretary of the company shall be void unless he is named as a director or as secretary in the statement.

(6) Where a statement complying with the requirements of this section is not delivered as required by subsection (1) with any memorandum delivered for registration in accordance with the provisions of section 14, the Registrar shall not register the memorandum or any articles delivered with it.

Qualification of secretary of company to be prescribed. **176.**

(1) The secretary of every company other than a private company shall have such qualifications as may be prescribed having regard to the nature of the duties the secretary will be called upon to discharge.

(2) Every private company, having a turnover of or paid-up capital of an amount prescribed under this Act, shall have a secretary who shall have such qualifications as may be prescribed.

Prohibition of certain persons being sole director or secretary. **177.** No company shall-

(a) have as secretary to the company, a corporal on the sole director of which is a sole director of the company ; or

(b) have as sole director of the company, a corporation the sole director of which is secretary to the company.

Avoidance of acts done by person in dual capacity as director and secretary. **178.** Any provision requiring or authorizing any act to be done by or to a director and the secretary shall not be satisfied by such act being done by or to the same person acting both as director and as, or in place of, the secretary.

Restrictions on appointment or advertisement of directors. **179.**

(1) A person shall not be capable of being appointed director of a company by the articles and shall not be named as a director or proposed director of a company in a prospectus issued by or on behalf of the company, or as

proposed director of an intended company in a prospectus issued in relation to that intended company, or in a statement in lieu of prospectus delivered to the Registrar by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus, or the delivery of the statement in lieu of prospectus, as the case may be, he has by himself or by his agent authorized in writing-

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

- (i) signed the memorandum for a number of shares not less than his qualification, if any ; or
- (ii) taken from the company and paid for, or agreed. to pay for, his qualification shares, if any ; or
- (iii) signed and delivered to the Registrar for registration an undertaking in writing to take from the company and pay for his qualification shares, if any : or
- (iv) made and delivered to the Registrar for registration a statutory declaration to the effect that number of shares, not less than his qualification, if any, are registered in his name.

(2) Where a person has signed and delivered as referred to in subsection (1) an undertaking to take and pay for his qualification shares, he shall, as regards those shares, be in the same position as if he had signed the memorandum for that number of shares.

(3) On the application for registration of the memorandum and articles of a company, the person making such application shall deliver to the Registrar a list of the persons who have consented to be directors of the company, and, where such list contains the name of any person who has not so consented, the person making such application shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees.

(4) Any reference in this section to the share qualification of a director or proposed director shall be construed as including only a share qualification required on appointment or within a period determined with regard to the time of appointment and any reference therein to qualification shares shall be construed accordingly.

(5) The provisions of this section shall not apply to-

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

Qualification of
director or
managers. **180.**

(1) Without a prejudice to the restrictions imposed by the provisions of section 179, it shall be the duty of every director who is by the articles of the company required to hold a specified share qualification and who is not already qualified to obtain his qualification within two months after his appointment or such shorter time as may be fixed by the articles.

(2) For the purpose of any provision in the articles requiring a director or manager to hold a specified share qualification the bearer of a share warrant shall not be deemed to be the holder of the shares specified in the warrant.

(3) Where any person appointed as director of a company does not, within two months from the date of his appointment, or within a period of such shorter time as may be fixed by the articles, obtains his share qualification, or if after the expiration of such period or such shorter time, as the case may be, ceases at any time to hold such share qualification, he shall be deemed to have vacated office as such director.

(4) A person vacating office under the provisions of subsection (3) shall not be

eligible of being reappointed director of the company until he has obtained his share qualification.

(5) Where after the expiration of such period or shorter time as is referred to in subsection (3) any person who does not have the necessary share qualification acts as a director of the company, he shall be guilty of an offence and shall be liable to a fine not exceeding two hundred and fifty rupees for every day between the expiration of such period or shorter time or the day on which he ceased to possess the necessary share qualification, as the case may be, and the last day on which it is proved that he acted as a director.

RETIRING AGE OF DIRECTORS

Age limit for directors. **181.**

(1) Save as otherwise provided in section 182, no person shall be capable of being appointed a director of a public company or of a private company which is a subsidiary of a public company, if he has attained the age of seventy years.

(2) Save as aforesaid, a director of a public company or of a private company which is a subsidiary of a public company shall vacate his office at the conclusion of the annual general meeting commencing next after he attains the age of seventy years:

Provided that the provisions of this subsection shall not apply to a director who is in office on the appointed date so as to require the termination of the appointment held by him before the conclusion of the third annual general meeting held after the appointed date, but shall apply so as to terminate such appointment at the conclusion of that meeting, if he had attained the age of seventy years before the date of commencement of the meeting.

(3) Where a person retires by virtue of the provisions subsection (2) no provision for the automatic reappointment of retiring directors in default of another appointment shall apply ; and if at the meeting at the conclusion of which he retires, the vacancy is not filled, it may be filled as a casual vacancy.

Age limit not to apply if company so resolves. **182.**

(1) Nothing in the provisions of section 181 shall prevent the appointment of a director who has attained the age of seventy years or require a director who has attained that age to retire if his appointment is or was made or approved by a resolution passed by the company at a general meeting and specially declaring that the age limit referred to in section 181 shall not apply to such director.

(2) Special notice shall be required of any such resolution referred to in subsection (1) and unless such notice is given, such resolution shall be void.

(3) Notice of any resolution referred to in subsection (1) given to the company, and by the company to its members, shall state or shall have stated the age of the person to whom it relates.

Duty of directors to disclose age. **183.**

(1) Any person who is appointed, or to his knowledge is proposed to be appointed, director of a company at a time when he has attained the age of seventy years or such lower age, if any, as may be specified in the company's articles in that behalf, shall give notice of his age to the company :

Provided that the provisions of this subsection shall not apply in relation to a person's reappointment on the termination of his previous appointment as director of the company, where notice has been given as aforesaid in connection with, or at any time during the continuance of, such previous appointment or any appointment as director prior to such previous appointment.

(2) Any person who-

Appointment of directors to be voted on individually.

184.

- (a) fails to give notice of his age as required by the provisions of subsection (1) ; or
- (b) acts as director under any appointment which is invalid, or which has terminated, by reason of his age,

shall be liable to a fine not exceeding fifty rupees for every day during which the failure continues or during which he continues to act as aforesaid, as the case may be.

(3) For the purposes of the provisions of paragraph (b) of subsection (2), a person who has acted as, director under an appointment which is invalid or has terminated, shall be deemed to have continued so to act throughout the period from the date of the invalid appointment or the date on which the appointment terminated, as the case may be, until the last day on which he acted thereunder.

(1) At a general meeting of a company other than a private company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be made, unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.

(2) A resolution moved in contravention of the provisions of subsection (1) shall be void, whether or not its being so moved was objected to at the time: Provided that-

(a) the provisions of this subsection shall not be taken as excluding the operation of the provisions of section 193 ; and

(b) where a resolution moved in contravention of the provisions of subsection (1) is passed, no provision for the automatic re-appointment of retiring directors in default of another appointment shall apply.

(3) For the purposes of this section, a motion for approving a person's appointment or for nominating a person for appointment shall be treated as a motion for his appointment.

(4) Nothing in this section shall apply to a resolution altering the company's articles.

Removal of directors.

185.

(1) A company may by ordinary resolution remove a director before the expiration of his period of office notwithstanding anything in its articles or any agreement between the company and him :

Provided that, in the case of a private company, the removal of a director holding office for life on the appointed date, whether or not subject to retirement under an age limit by virtue of the articles or otherwise, shall be by special resolution.

(2) Special notice shall be required of any resolution to remove a director under the provisions of this section or to appoint somebody instead of a director so removed at the meeting at which he is removed, and on receipt of notice of an intended resolution to remove a director under the provisions of this section, the company shall forthwith send a copy thereof to the director concerned, and the director (whether or not he is a member of the company) shall be entitled to be heard on the resolution at the meeting.

(3) Where notice is given of an intended resolution to remove a director under the provisions of this section and the director concerned makes with respect thereto representations to the company in writing (not exceeding a reasonable length) and requests their notification to members, of the company, the company shall, unless the representations are received within a period of fourteen days from the date of the notice, send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company), and where a copy of the representations is not sent because of the company's default, or because such representations were received after the expiry of

Power to restrain
persons convicted
of certain offences
from managing
companies. **186.**

such period, the director may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting:

Provided that no copies of the representations may be sent and the representations may not be read out at the meeting where, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by the provisions of this section are being abused to secure unnecessary publicity for defamatory matter; and the court may order the company's costs on such an application to be paid in whole or in part by the director, notwithstanding that he is not a party to the application

(4) Any vacancy created by the removal of a director under the provisions of this section, if not filled at the meeting at which he is removed, may be filled as, a casual vacancy.

(5) Any person appointed director in place of a person removed under the provisions of this section shall, for the purposes of determining the time at which he or any other director is to retire, be treated as if such person had become director on the day on which the person in whose place he is appointed was last appointed a director.

(6) Nothing in this section shall be taken as depriving a person removed thereunder of compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director or as derogating from any power to remove a director which may exist apart from the provisions of this section.

(1) Where a person is convicted of any offence in connection with the promotion, formation or management of a company, or in respect of any offence under Part V or Part VI, or with the offence of fraud and is sentenced to more than three months' imprisonment in respect of such latter offence, the court convicting such person may in, addition to imposing any punishment provided for such offence, order that such person shall-

(a) be removed from the office of director ; or

(b) be suspended from the office of director for a period specified in such order,

and the court may, whether or not in addition to an order with respect to paragraph (a) or paragraph (b), order that such person shall not, without the leave of the court, be a director, or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company for such period not exceeding five years as may be specified in such order.

(2) In subsection (1) the expression " the court" in relation to the making of an order against any person by virtue of the provisions of paragraph (a) includes the court before which he is convicted, as well as any court having jurisdiction to wind up the company, and in relation to the granting of leave means any court having jurisdiction to wind up the company as respects which leave is sought.

(3) A person intending to make an application, to the court having jurisdiction, for an order under the provisions of this section to wind up a company shall give not less than ten days' notice of such intention to the person against whom the order is sought, and on the hearing of such application the last-mentioned person may appear and himself give evidence or call witnesses.

(4) An application to the court having jurisdiction for an order under the provisions of this section to wind up a company may be made by the official receiver or by the liquidator of the company or by any person who is or has been a member or creditor of the company, and at the hearing of any such application for leave under the provisions of subsection (1) by a person against whom an order has been made, the official receiver or liquidator shall appear and call the attention of the court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses.

(5) An order may be made by virtue of the provisions of subsection (1),

notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made, and for the purposes of the said subsection (1) the expression " officer " shall include any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

(6) Any person acting in contravention of an order made under the provisions of this section, shall be guilty of an offence and shall be liable to a fine not exceeding five thousand rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.

Prohibition of tax-free payments to directors. **187.**

(1) No company shall pay a director remuneration (whether as director or otherwise), free of income tax or profits tax or otherwise calculated by reference to or varying with the amount of income tax or profits tax, or to or with the rate or standard rate of income tax or profits tax, except under a contract which is in force on the appointed date, and provides expressly, and not by reference to the articles, for payment of remuneration as aforesaid.

(2) Any provision contained in a company's articles or in any contract other than a contract referred to in subsection (1) or in any resolution of a company or a resolution of the board of directors, for payment to a director of remuneration as aforesaid shall have effect as if it provided for payment, as a gross sum subject to income tax and profits tax, of the net sum for which it actually provides.

(3) The provisions of this section shall not apply to remuneration due before the appointed date or in respect of a period before that date.

Prohibition of loans to directors. **188.**

(1) No company shall grant a loan to any person who is its director or a director of its holding company, or to enter into any guarantee or provide any security in connection with a loan granted to such a person by any other person:

Provided that nothing in this section shall apply either-

(a) to anything done by a subsidiary where the director is its holding company; or

(b) subject to the next following subsection, to anything done to provide any such person as aforesaid with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company ; or

(c) in the case of a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, to anything done by the company in the ordinary course of that business.

(2) The provision of paragraph (b) of the proviso to subsection (1) shall not authorize the making of any loan, or the entering into any guarantee or the provision of any security, unless-

(a) with the prior approval of the company given at a general meeting at which the purposes of the expenditure and the amount of the loan or the amount of the guarantee or security, as the case may be, are disclosed; or

(b) on condition that, if the approval of the company is not given as aforesaid at or before the next following annual general meeting, the loan shall be repaid or the liability under the guarantee or security shall be discharged, as the case may be, within six months from the date of conclusion of that meeting.

(3) Where the approval of the company is not given under the provisions of subsection (2), the directors authorizing the making of the loan, or the entering

Approval of company requisite for payment by it to director for loss of office, &c., or for any payment, in connection with transfer of its property, &c

189.

into the guarantee, or the provision of the security, shall be jointly and severally liable to indemnify the company against any loss arising therefrom.

(1) No company shall make to any director of such company, any payment by way of compensation for loss of office, or as consideration for, or in connection with, his retirement from office, unless particulars with respect to the payment (including the amount thereof) are disclosed to members of the company and the making of such payment is approved by the company:

Provided, however, that a company may make any such payment as aforesaid, if the payment is made in accordance with a scheme that is uniformly applicable in that company.

(2) No company shall in connection with the transfer of the whole or any part of the undertaking or property of such company, make any payment to any director of such company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, unless particulars with respect to the payment (including the amount thereof) are disclosed to the members of the company and the making of such payment is approved by the company.

(3) Where a payment is made to a director of the company in contravention of the provisions of subsection (1) the amount received by such director shall be deemed to have been received by him in trust for the company.

Duty of director to disclose payment for loss of office, &c., made in connection with transfer of shares in company.

190.

(1) Where, in connection with the transfer to any person of all or any of the shares in a company, being a transfer resulting from-

- (a) an offer made to the general body of shareholders:
- (b) an offer made by or on behalf of some other body corporate with a view to the company becoming its subsidiary or a subsidiary of the holding company ;
- (c) an offer made by or on behalf of an individual with a view to his obtaining the right to exercise or control the exercise of not less than one-third of the voting power at any general meeting of the company ; or
- (d) any other offer which is conditional upon acceptance to a given extent,

a payment is to be made to a director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, it shall be the duty of that director to take all reasonable steps to secure that particulars with respect to the proposed payment (including the amount thereof) shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(2) Where-

- (a) any such director fails to take reasonable steps as referred to in subsection (1) ; or
- (b) any person who has been lawfully required by any director to include such particulars in, or send them with, any such notice as is referred to in subsection (1), fails so to do,

he shall be guilty of an offence and shall be liable to a fine not exceeding two hundred and fifty rupees.

(3) Where-

- (a) the requirements of subsection (1) are not complied with in relation to any such payment as is referred to in that subsection; or
- (b) the making of the proposed payment is not, before the transfer of any shares in pursuance of the offer, approved by a meeting

Provisions
supplementary to
the provisions of
sections 189 and
190.

191.

summoned for the purpose of the holders of the shares to which the offer relates and of other holders of shares of the same class as any of the said shares,

any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any persons who have sold their shares as a result of the offer made, and the expenses incurred by him in distributing that sum amongst those persons shall be borne by him and not retained out of that sum.

(4) Where the shareholders referred to in paragraph (b) of subsection (3) are not all the members of the company and no provision is made by the articles for summoning or regulating such a meeting as is referred to in that paragraph, the provisions of this Act and of the company's articles relating to general meetings of the company shall, for that purpose, apply to the meeting either without modification or with such modifications as the Registrar on the application of any person concerned may direct for the purpose of adapting them to the circumstances of the meeting.

(5) Where at meeting summoned for the purpose of approving any payment as required by the provisions of paragraph (b) of subsection (3), quorum is not present and after the meeting has been adjourned to a later date, a quorum is again not present, the payment shall be deemed for the purposes of this subsection to have been approved.

(1) Where in proceedings for the recovery of any payment as having, by virtue of the provisions of subsections (2) and (3) of section 189 or subsections, (1) and (3) of section 190, been received by any person in trust, it is shown that-

(a) the payment was made in pursuance of any arrangement entered into as part of the agreement for the transfer in question, or within one year before or two years after that agreement or the offer leading thereto ; and

(b) the company or any person to whom the transfer was made was privy to such arrangement,

the payment shall be deemed, except in so far as the contrary is shown to be one to which the provisions of such subsections apply.

(2) Where in connection with any such transfer as is referred to in section 189 or section 190-

(a) the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him, is in excess of the price which could at the time have been obtained by the holders of like shares; or

(b) any valuable consideration is given to any such director, the excess or the money value of the consideration, as the case may be, shall, for the purposes of the provisions of that section, be deemed to have been a payment made to him by way of compensation for loss of office or as consideration for or in connection with his retirement from office.

(3) Any reference in the provisions of section 189 or section 190 to any payment made to any director of a company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, does not include any bona fide payment by way of damages for breach of contract or by way of pension in respect of past services.

For the purposes of this subsection the expression " pension" includes any superannuation allowance, superannuation gratuity or similar payment.

(4) Nothing in the provisions of section 189 or section 190 shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any such payments as are therein referred to or with respect to any other like payments made or to be made to the directors of a company.

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

192.

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

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

(2) The leave of the court for the purposes of subsection (1) shall not be given unless notice of intention to apply therefor has been served on the official receiver and it shall be the duty of the official receiver, where he is of opinion that it is contrary to the public interest that any such application should be granted, to attend at the hearing, and oppose the granting, of the application.

(3) In this section the expression " company " includes an unregistered company and a company incorporated out side Sri Lanka which has an established place of business within Sri Lanka.

Validity of acts of directors & c.

193. Any act of a director, secretary or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

Register of directors and secretaries.

194.

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

- (a) in the case of an individual, his present name and surname, any former name or surname, his usual residential address, his nationality, and, if that nationality is not the nationality of origin, his nationality of origin, his business occupation, if any, and particulars of any other directorships, held by him; and
- (b) in the case of a corporation, its corporate name and registered or principal office :

Provided that it shall not be necessary for the register to contain particulars of directorships held by a director of a company, in other companies of which such company is the wholly-owned subsidiary or such other companies are the wholly-owned subsidiaries either of such company or of another company of which such company is the wholly-owned subsidiary, and for the purposes of this proviso-

- (i) the expression " company" shall include any body corporate incorporated in Sri Lanka; and
- (ii) a body corporate shall be deemed to be the wholly owned subsidiary of another if it has no members except that other and that others wholly-owned subsidiaries and its or their nominees.

(2) The company shall send to the Registrar, within fourteen days from the date of appointment of the first director or that of the secretary of the company, a return in the prescribed form containing the particulars specified in the register referred to in subsection (1) and within fourteen days from the date of any change among its directors or any change of its secretary or in any of the particulars contained in such register a notification in the prescribed form together with, in the case of a change among its directors or a change of its secretary, a letter to the Registrar from each new director or the secretary

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

195.

stating that such director or the secretary has accepted the appointment.

(3) The register to be kept under the provisions of this section shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member of the company without charge and of any other person on payment of ten rupees, or such less sum as the company may prescribe for each inspection.

(4) Where any inspection required under the provisions of subsection (3) is refused or where default is made in complying with the provisions of subsection (1) or subsection (2), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine.

(5) Where any inspection required under the provisions of subsection (3) is refused unreasonably, in the case of any such refusal, the court may by order compel an immediate inspection of the register.

(6) For the purposes of this section, a person in accordance with whose directions or instructions the directors of a company are accustomed to act shall be deemed to be a director and officer of the company.

(1) Every company to which the provisions of this section apply shall, in all trade catalogues, trade circulars show cards and business letters on or in which the company's name appears and which are issued or sent by the company to any person, state in legible characters with respect to every director being a corporation, the corporate name, and with respect to every director being an individual, his present name, or the initials thereof, and present surname.

(2) The provisions of this section shall apply to-

(a) every company registered under this Act or under any written law repealed by this Act;

(b) every company registered in Sri Lanka as an offshore company; and

(c) every company incorporated outside Sri Lanka which has an established place of business within Sri Lanka.

(3) Where a company makes default in complying with the provisions of this section, every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding two hundred and fifty rupees, and for the purposes of this subsection where a corporation is an officer of the company, every officer of the corporation shall be deemed to be an officer of the company:

Provided that no proceedings shall be instituted for any offence under the provisions of this section except, by or with the consent of, the Registrar.

(4) For the purposes of this section-

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

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

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

(d) any preference to a former name or surname does not include-

(i) in the case of a person usually known by a name different from his surname, the name by which he was known previous to the adoption of that name;

(ii) in the case of a citizen of Sri Lanka a former name or surname where that name or surname was changed

or disused before the person bearing the name attained the age of eighteen years: or

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

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

Limited company may have directors with unlimited liability. **196.**

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

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

(3) Where any director, manager, or proposer makes default in adding the statement referred to in subsection (1) or where any promoter, director, manager, or secretary makes default in giving the notice referred to in that subsection, he shall be guilty of an offence and shall be liable to a fine not exceeding one thousand rupees, and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

Special resolutions of limited company making liability of directors unlimited. **197.**

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

(2) Upon the passing of any such special resolution as is referred to in subsection (1), the provisions of such resolution shall be as valid and effectual as if such provisions had been originally contained in the memorandum.

Register of directors' shareholdings & c, **198.**

(1) Every company shall keep a register showing as respects each director of the company (not being its holding company) or the spouse or son or daughter of such director as the case may be, the number, description and amount of any shares in or debentures of the company or any other body corporate, being the company's subsidiary or holding company, or a subsidiary of the company's holding company, which are held by or in trust for or of which such director or the spouse, son or daughter of such director has any right to become the holder (whether on payment or not) :

Provided that the register may not include shares in any body corporate which is the wholly-owned subsidiary of another body corporate, and for this purpose a body corporate shall be deemed to be the wholly-owned subsidiary of another if it has no members but that other and that others wholly-owned subsidiaries and its or their nominees.

In this section the expression " son " includes step-son and adopted son, and the expression " Daughter " includes step-daughter and adopted daughter.

(2) Where any shares or debentures fail to be or cease to be recorded in the said register in relation to any director or the spouse, son or daughter of such director by reason of a transaction entered into on or after the appointed date and while he is a, director, the register shall also show the date of and price or other consideration for the transaction :

Provided that where there is an interval between the agreement for any such transaction and the transaction itself, the date shown shall be the date of the agreement.

(3) The nature and extent of the interest or right of the director, or the spouse, son or daughter of such director in or over any shares or debentures recorded in relation to a loan on the said register shall, if he so requires, be indicated in the register.

(4) The company shall not, by virtue of anything done for the purposes of this section, be affected with notice of, or put upon inquiry as to the rights of, any person in relation to any shares or debentures, and the provisions of section 114 shall, notwithstanding anything in this section contained, have full force and effect.

(5) The said register shall, subject to the provisions left in this section, be open to inspection during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose), so that not less than two hours in each day be allowed for inspection, as follows:

(a) during the period beginning fourteen days immediately prior to the date of the annual general meeting of the company and ending three days immediately after the date of its conclusion, it shall be open to the inspection of any member or holder of debentures of the company; and

(b) during that or any other period, it shall be open to the inspection of any person acting on behalf of the Registrar.

In computing the fourteen days and the three days referred to in this subsection any day which is a bank holiday or a public holiday shall be disregarded.

(6) Without prejudice to the rights conferred by the provisions of subsection (5), the Registrar may at any time require a copy of the said register, or any part thereof.

(7) The said register shall also be produced at the commencement of the annual general meeting of the company and remain open and accessible during the continuance of the meeting to any person attending the meeting.

(8) Where default is made in complying with the provisions of subsection (7), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees, and (8) where default is made in complying with the provisions of subsection (1) or subsection (2), or where any inspection required under the provisions of this section is refused or any copy required thereunder is not sent within a reasonable time, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding five thousand rupees and further to a fine of two hundred and fifty rupees for every day during which the default continues.

(9) Where any inspection required under the provisions of subsection (7) is refused unreasonably, the court may by order compel an immediate inspection of the register.

(10) For the purposes of this section

(a) any person in accordance with whose directions or instructions the directors of a company are accustomed to act shall be deemed to be a director of the company ;

(b) a director of a company shall be deemed to hold or to have an interest or right in or over, any shares or debentures, if a body corporate other than the company holds them or has that interest or right in or over them, and either

(i) that body corporate or the directors are accustomed to act in accordance with his directions or instructions ;
or

(ii) he is entitled to exercise or control the exercise of one-third or more of the voting power at any general

Obligations of persons to notify company or acquisition changes in amounts of and disposal of shares in company. **199.**

meeting of that body corporate.

- (1) Any person who, immediately before the occurrence of an event is
- (a) uninterested in shares comprised in the relevant share capital of a company, and becomes, in consequence of the occurrence of that event, interested in such shares ; or
 - (b) interested in shares comprised in the relevant share capital of such company of a nominal value of less than one-tenth the nominal value of the share capital; or
 - (c) interested in shares comprised in the relevant share capital of such company of a nominal value of not less than one-tenth the nominal value of the share capital; or
 - (d) interested in shares comprised in the relevant share capital of such company of a nominal value equal to one-tenth or more of the nominal value of that share capital,
- shall be under obligation to notify the company in writing of the occurrence of the event (specifying it) and the date on which it occurred and whether such occurrence had the effect of increasing or decreasing the nominal value of the shares comprised in that share capital, and whether according to the circumstances of the case, the number of shares comprised in that share capital (specifying it) in which immediately after the occurrence of the event, he is interested in or the fact that immediately thereafter, he is not interested in that share capital.

(2) In the case of an obligation imposed by the provisions of subsection (1)

- (a) if at the time of the occurrence of the event giving rise to the obligation, the person so obliged has knowledge of such event, such obligation shall be fulfilled within a period of fourteen days from the date of occurrence of the event; and
- (b) if at the time of its occurrence, the person who becomes so obliged has no knowledge of such obligation, he shall fulfill such obligation within fourteen days from the date on which the occurrence giving rise to such obligation comes to his knowledge.

In reckoning such period of fourteen days, any day which is a bank holiday or a public holiday shall be disregarded.

Particulars in accounts of directors' salaries, pensions, &c. **200.**

(1) In any accounts of a company laid before it at a general meeting or in shall, subject to and in accordance with the provisions of this section, be shown so far as the information is contained in the company's books and papers or the company has the right to obtain it from the persons concerned

- (a) the aggregate amount of the directors' emoluments ;
- (b) the aggregate amount of directors' or past directors' pensions ;
- (c) the aggregate amount of any compensation to directors or past directors in respect of loss of office; and
- (d) the number of directors who have waived rights to receive emoluments which, but for 'the waiver, would have fallen to be included in the amount shown in those accounts under the provisions of paragraph (a) and the aggregate amount of the said emoluments.

(2) For the purposes of the provisions of paragraph (d) of subsection (1)

- (a) it shall be assumed that a sum not receivable in respect of a period would have been paid at the time at which it was due to be paid ;
- (b) a sum not so receivable that was payable only on demand,

being a sum the right to receive which has been waived, shall be deemed to have been due for payment at the time of waiver.

(3) The amount to be shown under the provisions of paragraph (b) of subsection (1)

(a) shall not include any pension paid or receivable under a pension scheme if the amount is such that the contributions therefrom are substantially adequate for the maintenance of the scheme, but save as aforesaid shall include any pension paid or recoverable in respect of any such services of a director or past director of the company as are referred to in subsection (2) whether to or by him or, on his nomination or by virtue of dependence on or other connection with him, to or by any other person ; and

(b) shall distinguish between pensions in respect of services as director, whether of the company or its subsidiary and other pensions ;

and for the purposes of this section the expression " pension " includes any superannuation allowance, superannuation gratuity or similar payment, the expression " pension scheme means a scheme for the provision of pensions in respect of services as director or otherwise which is maintained in whole or in part by means of contributions, and the expression " contribution " in relation to a pension scheme means any payment (including an insurance premium) paid for the purposes of the scheme by or in respect of persons rendering services in respect of which pensions will or may become payable under the scheme, except that it does not include any payment in respect of two or more persons if the amount paid in respect of each of them is not ascertainable.

(4) The amount to be shown under the provisions of paragraph (c) of subsection (1)

(a) shall include any sums paid to or receivable by a director or past director by way of compensation for the loss of office as director of the company or for the loss, while director of the company or on or in connection with his ceasing to be a director of the company, or any other office in connection with the management of the company's affairs or of any office as director or otherwise in connection with management of the affairs of any subsidiary thereof; and

(b) shall distinguish between compensation in respect of the office of the director, whether of the company or its subsidiary, and compensation in respect of other offices,

and for the purposes of this section references to compensation for loss of office shall include sums paid as consideration for or in connection with a person's retirement from office.

(5) The amounts to be shown under the provisions of each paragraph of subsection (1)

(a) shall include all relevant sums paid by or receivable from

- (i) the company; and
- (ii) the company's subsidiaries; and
- (iii) any other person,

except sums to be accounted for to the company or any of its subsidiaries or, by virtue of the provisions of section 190, to past or present members of the company or any of its subsidiaries or any class of those members and;

(b) shall distinguish, in the case of the amount to be shown under the provisions of paragraph (c) of subsection (1), between the sums respectively paid by or receivable from the company, the company's subsidiary and persons other than the company and

its subsidiaries.

(6) The amounts to be shown under this section for any financial year shall be the sums receivable in respect of that year, whenever paid, or, in the case of sums not receivable in respect of a period, the sums paid during that year, so however, that where

(a) any sums are not shown in the accounts for the relevant financial year on the ground that the person receiving them is liable to account therefor as referred to in the provisions of paragraph (a) of subsection (5) but the liability is thereafter wholly or partly released or is not enforced within a period of two years; or

(b) any sums paid by way of expense allowance are charged to Sri Lanka income tax after the end of the relevant financial year, those sums shall, to the extent to which the liability is released or not enforced or they are charged as aforesaid, as the case may be, shown in the first accounts in which it is practicable to show them or in a statement annexed thereto, and shall be distinguished from the amounts to be shown therein by virtue of the provisions of this Act other than this section.

(7) Where it is necessary so to do for the purpose of making any distinction required by the provisions of this section in any amount to be shown thereunder, the directors may apportion any payments between the matters in respect of which they have been paid or are receivable in such manner as they think appropriate.

(8) Where in the case of any accounts the requirements of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report thereon, so far as they are reasonably able to do so, a statement giving the required particulars.

(9) In this section any reference to a company's subsidiary-

(a) in relation to a person who is or was, while a director of the company, a director also, by virtue of the company's nomination, direct or indirect, of any other body corporate, shall, subject to the provisions of paragraph (b), include that body corporate whether or not it is or was in fact the company's subsidiary ; and

(b) shall for the purposes of subsection (2) and (3) be taken as referring to a subsidiary at the time the services were rendered, and for the purposes of subsection (4) be taken as referring to a subsidiary immediately before the loss of office as director of the company.

Particulars in
accounts of loans
to officers, &c. **201.**

(1) The accounts which, in pursuance of this Act, are to be laid before every company at a general meeting shall, contain particulars showing

(a) the amount of any loans made during the company's financial year to :

(i) any officer of the company ; or

(ii) any person who, after the making of the loan, became during, that year an officer of the company, by the company or a subsidiary thereof or by any other person under a guarantee from or on a security provided by the company or a subsidiary thereof (including any such loans which were repaid during that year) ; and

(b) the amount of any loans made in manner aforesaid to any such officer or person as aforesaid at any time before the company's financial year and outstanding at the expiration of such financial year.

(2) The provisions of subsection (1) shall not require the inclusion in the

accounts of particulars of

(a) a loan made in the ordinary course of its business by the company or a subsidiary thereof, where the ordinary business of the company, or, as the case may be, the subsidiary, includes the lending of money; or

(b) a loan made by the company or a subsidiary thereof to an employee of the company or subsidiary, as the case may be, where the loan does not exceed twenty thousand rupees and is 'certified by the directors of the company or subsidiary, as the case may be, to have been made in accordance with any practice adopted or to be adopted by the company or subsidiary with respect to loans to its employees, not being, in either case, a loan made by the company under a guarantee from or on a security provided by, a subsidiary thereof or a loan made by a subsidiary of the company under a guarantee from or on a security provided by the company or any other subsidiary thereof.

(3) Where in the case of any accounts referred to in subsection (1), the requirements of the provisions of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report on the balance sheet of the company, so far as they are reasonably able to do so, a statement giving the required particulars.

(4) Any reference in this section to a subsidiary shall be taken as referring to a subsidiary at the end of the company's financial year (whether or not a subsidiary at the date of the loan).

General duty to
make disclosure
for purposes of
section 198,200
and 201. **202.**

(1) It shall be the duty of any director of a company to give notice to the company of such matters relating to himself as may be necessary for the purposes of sections 198, 200 and 201 except so far as it relates to loans made, by the company or by any other person under a guarantee from or on a security provided by the company, to an officer thereof.

(2)

(a) Any notice given under the provisions of sub section (1) for the purposes of section 198 shall be in writing and shall be given within fourteen days from the day on which he knows of the existence of such duty, where he had prior knowledge of such interest or where he had no such prior knowledge within a period of fourteen days from the date on which the existence of such interest comes to his knowledge, and where such knowledge is not indicated at a meeting of directors, the director indicating it shall take reasonable steps to ensure that it is taken up on the agenda and read at the next meeting of directors held after such notice is given.

(b) In reckoning the period of fourteen days referred to in the provisions of paragraph (a) any day which is a bank holiday or a public holiday shall be disregarded.

(3) The provisions of subsection (1) shall apply

(a) for the purposes of section 201, in relation to officers Other than directors; and

(b) for the purposes of sections 200 and 201, in relation to persons who are or have at any time during the preceding five years been officers,

as it applies in relation to directors.

(4) Any person who makes default in complying with "the preceding provisions of this section shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees.

Disclosure by directors of interests in contracts.

203.

(1) It shall be the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company to make a declaration of the nature of his interest at a meeting of the directors of the company.

(2) In the case of a proposed contract the declaration required by the provisions of subsection (1) to be made by a director shall be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration, or where the director was not at the date of the meeting, interested in the proposed contract, at the next meeting of the directors held after he became so interested, and in a case where the director becomes interested in a contract after it is made, such declaration shall be made at the first meeting of the directors held after the director becomes so interested.

(3) For the purposes of this section, a general notice given to the directors of a company by a director to the effect that he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm, shall be deemed to be a sufficient declaration of interest in relation to any contract so made:

Provided that no such notice shall be of effect unless it is given at a meeting of the directors or the director concerned takes reasonable steps to ensure that it is taken up on the agenda and read at the next meeting of the directors held after such notice is given.

(4) Any director who fails to comply with the provisions of this section shall be guilty of an offence and shall be liable to a fine not exceeding one thousand rupees.

(5) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting directors of a company from having any interest in contracts with the company.

Provisions as to assignment of office by directors.

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

AVOIDANCE OF PROVISIONS IN ARTICLES OR CONTRACTS
RELIEVING OFFICERS FROM LIABILITY

Provisions as to liability of officers and auditors.

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

Provided that

(a) in relation to any such provision which is in force on the appointed date, the provisions of this section shall have effect only on the expiration of a period of six months from that date; and

(b) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force ; and

(c) notwithstanding anything in this section, a company may in pursuance of any such provision as aforesaid, indemnify any such director, manager, officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he

is acquitted or in connection with any application made under the provisions of section 447 in which relief is granted to him by the court.

ARRANGEMENTS AND RECONSTRUCTIONS

Power to
compromise with
creditors and
members. **206.**

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

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

(3) An order made under the provisions of subsection (2) shall have no effect until a certified copy of the order has been delivered to the Registrar for registration, and a copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made, or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

(4) Where a company makes default in complying with the provisions of subsection (3) the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding two hundred and fifty rupees for each copy in respect of which default is made.

(5) In this section and in section 207, the expression "company" means any company liable to be wound up under this Act, and the expression "arrangement" includes a reorganization of the share capital of the company by the consolidation of shares of different classes or by the division of shares, into shares of different classes or by both those methods.

Information as to
compromise with
creditors and
members. **207.**

(1) Where a meeting of creditors or any class of creditors or of members or of any class of members is summoned under the provision of section 206, there shall

(a) together with every notice summoning the meeting which is sent to a creditor or member, be sent a statement explaining the effect of the compromise or arrangement and in particular, stating any material interest of the directors of the company, whether as directors or 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 a statement as is referred to in paragraph (a) 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 rights of debenture holders of the company, the statement referred to in paragraph (a) of subsection (1) shall give the like explanation as respects the trustee of any deed for securing

the issue of the debentures as it is required to give as respects the directors of the company.

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

(4) Where a company makes default in complying with any requirement of the provision of this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding five thousand rupees, and for the purposes of this subsection any liquidator of the company and any trustee of a deed for securing issue of debentures of the company shall be deemed to be an officer of the company: Provided that a person shall not be liable under the provisions of this subsection if that person 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.

(5) It shall be the duty of any director of the company and of any trustee for debenture holders of the company to give notice to the company of such matters relating to himself as may be necessary for the purposes of this section, and any person who makes default in complying with the provisions of this subsection shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees.

(1) Where an application is made to the court under the provisions of subsection (1) of section 206 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the court that the compromise or arrangement has been proposed for the purposes of or in 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 (in this section referred to as a "transferor company") is to be transferred to another company (in this section referred to as the "transferee company"), the court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters:-

(a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company ;

(b) the allotting or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company ;

(d) the dissolution, without winding up, of any transferor company ;

(e) the provision to be made for any persons, who within such time and in such manner as the court directs, dissent from the compromise 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 under the provisions of this section provides for the transfer of property or liabilities, 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, and in the case of any

Power to acquire shares of shareholders dissenting from scheme or contract approved by majority. **209.**

property, where the order so directs, freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(3) Where an order is made under the provisions of this section, every company in relation to which the order is made, shall cause a certified copy of such order to be delivered to the Registrar for registration within fourteen days from the date of the order, and where default is made in complying with the provisions of this subsection, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine.

(4) In this section the expression " property" includes property, rights and powers of every description, and the expression " liabilities " includes duties.

(5) In this section the expression "company" does not include any company other than a company within the meaning of this Act.

(1) Where a scheme or contract involving transfer of shares or any class of shares in a company (in this section referred to as " the transferor company ") to another company whether a company within the meaning of this Act or not (in this section referred to as " the transferee company ") has, within four months from the date of making of the offer in that behalf by the transferee company, been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary), the transferee company may, at any time within two months from the date of expiration of such four months, 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 the court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms of which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company :

Provided that where shares in the transferor company of the same class or classes as the shares whose transfer is involved are already held as aforesaid to a value greater than one-tenth of the aggregate of their value and that of the shares (other than those already held as, aforesaid) whose transfer is involved, the preceding provisions of this subsection shall not apply unless

(a) the transferee company offers the same terms, to all holders of the shares (other than those already held as aforesaid) whose transfer is, involved, or, where those shares include shares of different classes, of each class of them; and

(b) the holders who approve the scheme or contract, besides holding not less than nine-tenths in value of the shares (other than those already held as aforesaid) whose transfer is involved, are not less than three-fourths in number of holders of those Shares.

(2) Where, in pursuance of any such scheme or contract as is referred to in subsection (1), 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, or by a nominee for, the transferee company or its subsidiary at the date of the transfer comprise or include nine-tenths in value of the shares in the first-mentioned company or of any class of such 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 as

the ease may be, who have not assented to the scheme or contract; and

(b) any such holder may within three months from the date of giving of the notice to him require the transferee company to acquire the shares in question,

and where a shareholder gives notice under the provisions of 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 may be agreed or as the court on the application of either the transferee company or the shareholder thinks fit to order.

(3) Where a notice has been given by the transferee company under the provisions of subsection (1) and the court has not, on an application made by the dissenting share holder, made an order to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given, or, if an application to the court by the dissenting shareholder is, then pending, one month from the date on which 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 behalf by the transferee company, and pay or transfer to the transferor company the amount of other consideration representing the price payable by the transferee company for the shares which by virtue of the provisions of this section that company is entitled to acquire, and the transferor company shall there upon register the transferee company as the holder of those shares:

Provided that an instrument of transfer shall not be required for any share for which a share warrant is for the time being outstanding.

(4) Any sum received by the transferor company under the provisions of this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received as referred to in subsection (1).

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

(6) In relation to an offer made by the transferee company to shareholders of the transferor company before the appointed date the provisions of this section shall have effect

(a) with the substitution, in subsection (1), for the words "the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary) ", of the words " the shares, affected " and with the omission of the proviso to that subsection ;

(b) with the omission of subsection (2) ; and

(c) with the omission, in subsection (3), of the words "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 of the proviso*to that subsection.

PREVENTION OF OPPRESSION AND MISMANAGEMENT

Oppression.

210.

(1) Any member or members of a company or a person on whom shares have devolved through the death of a member having complaint that the affairs of a company are being conducted in a manner oppressive to any member or members or a person on whom shares have devolved through the death of a member (including the member or members or such person with such

complaint) may make an application to the District Court of the district in which the registered office of the company is situate for an order Under the provisions of this section, where such member has, or such members have, or such person on whom shares have devolved through, the death of a member has, under the provisions of section 214, a right to make such an application.

(2) Where, on any application made under the provisions of subsection (1), the court is of opinion that the affairs of a company are being conducted in a manner oppressive to any member or members or a person on whom shares have devolved through the death of a member the court may, with a view to remedying the matters complained of, make such order as it thinks fit.

Mismanagement. **211.**

(1) Any member or members of a company having a complaint

(a) that the affairs of the company are being conducted in a manner prejudicial to the interests of the company ; or

(b) that a material change (not being a change brought about by, or in the interests of, any creditors including debenture holders, or any class of shareholders, of the company) has taken place in the management or control of the company whether by an alteration in its board of directors, or of its agent or secretary, or in the constitution or control of the firm or body corporate acting as its agent or secretary or in the ownership of the shares, of the company, or where it has no share capital in its membership or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company may be conducted in a manner prejudicial to the interests of the company,

may make an application to the District Court of the district in which the registered office of the company is situate for an order under the provisions of this section, where such member has, or such members have, or such person on whom shares have devolved through the death of a member have, under the provisions of section 214, a right to make such an application.

(2) Where, on any application made under the provisions of subsection (1), the court is of opinion that the affairs of the company are being conducted as referred to in subsection (1) or that by reason of any material change as referred to in that subsection in the management or control of the company, it is likely that the affairs of the company will be conducted as aforesaid, the court may, with a view to remedying or preventing the matters complained of or apprehended, make such order as it thinks fit.

Procedure.

212. Every application under the provisions of section 210 or section 211 shall be made by way of summary procedure and every party who is sought to be affected by the order shall be named a respondent in the petition.

Interim orders by court.

213.

(1) Pending the making by it of a final order under the provisions of section 210 or section 211 the court may, on the application of a party to the proceedings, make an interim order including a restraining order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable.

(2) An application for an interim order under the provisions of subsection (1) shall be made by petition supported by affidavit and every party who is sought to be affected by the order shall be named a respondent in the petition. Such order shall be made ex parte or after notice to the respondent at the discretion of the court

(3) A respondent to the petition referred to in subsection (2) may in like manner make an application for an order of revocation or variation of the exparte order.

Who may make an application to court. **214.**

(1) The following member or members of a company or a person on whom shares have devolved through the death of a member has or shall have the right to make an application under the provisions of section 210 or section 211, as the case may be :

(a) in the case of a company having a share capital, not less than five per centum of the total number of its members or the holders of not less than the aggregate of five per centum in the nominal value of the company's issued capital; or

(b) in the case of a company not having a share capital, a number of members; less than twenty per centum of the company's members.

(2) For the purposes of subsection (1), where any shares are held by two or more persons jointly such persons shall be counted only as one member.

(3) Where several members of a company are entitled to make an application in accordance with the provisions of subsection (1) any one or more of them having obtained the consent in writing of the remaining members may make the application on behalf and for the benefit of all of them.

(4) The executor or administrator of a deceased member shall be deemed to be a member of a company for the purposes of sections 210 and 211.

(5) Where at the conclusion of an inquiry under the provisions of section 210 or section 211 the court holds that the member or members of the company or a person on whom shares have devolved through the death of a member making the application has or have done so vexatiously or without reason or probable cause, the court may in addition to any award of costs against such member or members or a person on whom shares have devolved through the death of a former member have the discretion to direct that such member or members shall be disqualified from being appointed as a director or agent or secretary or manager of the company for a period not exceeding five years from the date of the order to be fixed by court or direct that the member or members or such person shall not have the right to convene or requisition any meeting of the company or have the right to be present in person or by proxy at any meeting of the company within the aforesaid period, or to vote upon a show of hands or at a poll by person or by proxy at such meeting.

Power of court to act under section 210 or section 211 during winding-up proceedings.

215. Notwithstanding the provisions of Part IX, at any stage of the winding-up proceedings in respect of a company, where a court is of the opinion that to wind up the company would be prejudicial to the interests of a member of the company, it shall be lawful for the court to act under the provisions of section 210 or section 211 in like manner as if an application has been made to court under the provisions of either of those two sections.

Powers of court on application under section 210 or section 211.

216. Without prejudice to the generality of the powers of the court conferred by section 210 or section 211, any order made under the provisions either of such sections may provide for

(a) the regulation of the conduct of the company's affairs in future;

(b) the purchase of the shares or interests of any members of the company by other members thereof or by the company ;

(c) in the case of a purchase of shares by the company as aforesaid, the consequent reduction of its share capital;

(d) the termination, setting aside or modification of any agreement, however arrived at, between the company on the one hand, and any of the following persons, on the other, namely

(i) the managing director,

(ii) any other director,

(iii) the board of directors,

(iv) the agent or secretary, or

(v) the manager,

upon such terms and conditions as may, in the opinion of the

court, be just and equitable in all the circumstances of the case ;
(e) the termination, setting aside or modification of any agreement between the company and any person not referred to in paragraph (d) upon such terms and conditions as may, in the opinion of the court, be just and equitable in all the circumstances of the case but always so that no such agreement shall be terminated, set aside or modified except after due notice to the party concerned and his being heard ;
(f) the setting aside of any transfer, delivery of goods payment, execution or other act relating to property made or done by or against the company within the three months immediately prior to the date of the application or the commencement of winding-up proceedings, as the case may be, which would, if made or done by or against an individual, be deemed in a case of his insolvency to be fraudulent preference; and
(g) any other matter for which in the opinion of the court it is just and equitable that provision should be made.

Effect of alteration of memorandum or articles of company by order under section 210 or section 211. **217.**

(1) Where an order under the provisions of section 210 or section 211 makes any alteration in the memorandum or articles or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make without the leave of the court, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.
(2) Subject to the provisions of subsection (1), the alterations made by the order shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act, and the said provisions shall apply accordingly to the memorandum or articles so altered.
(3) A certified copy of every order altering, or giving leave to alter, a company's memorandum' or articles, shall within fifteen days after the making of such order, be filed by the company with the Registrar who shall register the same.
(4) Where default is made in complying with the provisions of subsection (3), the company, and every officer of the company who is in default, shall be guilty of an offence and shall be liable to a fine not exceeding two hundred and fifty rupees for every day during which the default continues.

Addition of respondents to application under section 210 or section 211.

218. Where the managing director or any other director, the agent or secretary or the manager, of a company or any other person who has not been impleaded as a respondent to any application made under the provisions of section 210 or section 211, applies to be added as a respondent to such application, the court shall, where it is satisfied that there is sufficient cause for doing so, direct that he may be added as a respondent accordingly.

Consequences of termination or modification of certain agreements.

219.

(1) Where an order of a court made under the provisions of section 210 or section 211 terminates, sets aside, or modifies an agreement such as is referred to in paragraph (d) or paragraph (e) of section 216

(a) the order shall not give rise to any claim whatsoever against the company by any person for damages or for compensation for loss of office or in any other respect, either in pursuance of the agreement or otherwise ; and

(b) no managing director or other director, agent, secretary or manager whose agreement is so terminated or set aside and no person who, at the date of the order terminating or setting aside the agreement was, or subsequently becomes, an associate of such agent or secretary shall, for a period of five years from the date of the order terminating the agreement, be appointed, or act, as the managing director or other director, agent, secretary, or manager of the company, unless with the leave of the court.

(2)

(a) Any person who knowingly acts as a managing director or other director, agent or secretary or manager of a company in contravention of the provisions of paragraph (b) of subsection (1) shall be guilty of an offence and shall be liable to a fine not exceeding five thousand rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.

(b) Where an offence under the provisions of this section is committed by a body of persons

(i) if the body of persons is a body corporate, every director and officer of that body corporate shall be deemed to be guilty of such offence ; and

(ii) if the body of persons is a firm, every partner of the firm shall be deemed to be guilty of such offence :

Provided that no such person shall be deemed to be guilty of such offence, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence.

PART V

INSIDER DEALING

Prohibition on
stock exchange
deals by insiders,
&c. **220.**

(1) Subject to the provisions of subsection (8), an individual who is, or at any time during the six months immediately preceding the date of coming into operation of this Part has been, knowingly connected with a company shall not deal on a recognized stock exchange in securities of that company if he has information which-

(a) he holds by virtue of being connected with the company;

(b) it would be reasonable to expect a person so connected and in the position by virtue of which he is so connected not to disclose except for the proper performance of the functions attaching to that position; and

(c) he knows is unpublished price sensitive information in relation to those securities.

(2) Subject to the provisions of subsections (8) and (10), an individual who is or at any time in the six months immediately preceding the date of coming into operation of this Part has been knowingly connected with a company shall not deal on a recognized stock exchange in securities of any other company if he has information which

(a) he holds by virtue of being connected with the first-mentioned company ;

(b) it would be reasonable to expect a person so connected and in the position by virtue of which he is so connected to disclose except for the proper performance of the functions attaching to that position ;

(c) he knows is unpublished price sensitive information in relation to those securities of that other company ; and

(d) relates to any transaction whether actual or contemplated, involving both the first-mentioned company and that other company or involving one of them and securities of the other or to the fact that any such transaction is no longer contemplated.

(3) Subject to the provisions of subsections (8) and (10), where

(a) any individual has information which he knowingly obtained,

whether directly or indirectly, from another individual who is connected with a particular company, or was at any time in the six months immediately preceding the date of obtaining of the information so connected and who the former individual knows or has reasonable cause to believe, held the information by virtue of being so connected ; and

(b) the former individual knows or has reasonable cause to believe that, because of the latter's connection and position, it would be reasonable to expect him not to disclose the information except for the proper performance of the functions attaching to that position,

then, the former individual

(i) shall not himself deal on a recognized stock exchange in securities of that company if he knows that the information is unpublished price sensitive information in relation to those securities ; and

(ii) shall not himself deal on a recognized stock exchange in securities of any other company if he knows that the information is unpublished price sensitive information in relation to those securities and it relates to any transaction whether actual or contemplated, involving the first-mentioned company and the other company or involving one of them and securities of the other or to the fact that any such transaction is no longer contemplated.

(4) Subject to the provisions of subsections (8) and (10), where an individual is contemplating, or has contemplated, making, whether with or without another person, a take over offer for a company in a particular capacity, that individual shall not deal on a recognized stock exchange in securities of that company in another capacity if he knows that the information that the offer is contemplated or is no longer contemplated is unpublished price sensitive information in relation to those securities.

(5) Subject to the provisions of subsections (8) and (10), where an individual has knowingly obtained, whether directly or indirectly, from an individual to whom the provisions of subsection (4) apply, information that the offer referred to in subsection (4) is being contemplated or is no longer contemplated, the first-mentioned individual shall not himself deal on a recognized stock exchange in securities of that company if he knows that the information is unpublished price sensitive information in relation to those securities.

(6) Subject to the provisions of subsections (8) and (10), an individual who is for the time being prohibited by any provision of this section from dealing on a recognized stock exchange in any securities shall not counsel or procure any other person to deal in those securities, knowing or having reasonable cause to believe that that person would deal in them on a recognized stock exchange.

(7) Subject to the provisions of subsections (8) and (10), an individual who is for the time being prohibited as aforesaid from dealing on a recognized stock exchange in any securities by reason of his having any information, shall not communicate that information to any other person if he knows or has reasonable cause to believe that that or some other person will make use of the information for the purpose of dealing, or of counseling or procuring any other person to deal, on a recognized stock exchange in those securities.

(8) The provisions of this section shall not prohibit an individual by reason of his having any information from

(a) doing any particular thing otherwise than with the view to the making of a profit or the avoidance of a loss, whether for himself or another person, by the use of that information ;

(b) entering into a transaction in the course of the exercise in good faith of his functions as liquidator, receiver or trustee in bankruptcy; or

(c) doing any particular thing if the information

- (i) was obtained by him in the course of the business of a jobber in which he was engaged or employed; and
- (ii) was of a description which it would be reasonable to expect him to obtain in the ordinary course of that business,

and he does that thing in good faith in the course of that business.

(9) In subsection (3), "jobber" means an individual, partnership or company dealing in securities on a recognized stock exchange.

(10) An individual shall not, by reason only of having information relating to any particular transaction, be prohibited

(a) by the provisions of subsection (2), paragraph (ii) of subsection (3), subsection (4) or subsection (5) from dealing on a recognized stock exchange in any securities; or

(b) by the provisions of subsection (6) or subsection (7) from doing any other thing in relation to securities which he is prohibited from dealing in by any of the provisions referred to in paragraph (a),

if he does that thing in order to facilitate the completion or carrying out of the transaction.

(11) Where a trustee or legal representative, or, where a trustee or legal representative is a body corporate, an individual acting on behalf of that trustee or legal representative, who, apart from the provisions of paragraph (a) of subsection (8) would be prohibited by the provisions of this section from dealing, or counseling or procuring any other person to deal, in any securities, deals in those securities, or counsels or -procures any other person to deal in them, he shall be presumed to have acted as referred to in that paragraph if he acted on the advice of a person who

(a) appeared to him to be an appropriate person from whom to seek such advice; and

(b) did not appear to him to be prohibited by this section from dealing in those securities.

Prohibition on
abuse of
information
obtained in official
capacity. **221.**

(1) The provisions of this section shall apply to any information which

(a) is held by a public servant or former public servant by virtue of his position or former position as a public servant or is knowingly obtained by an individual (directly or indirectly) from a public servant or former public servant who he knows or has reasonable cause to believe, held the information by virtue of any Such position ;

(b) it would be reasonable to expect an individual in the position of the public servant or former position of the former public servant not to disclose except for the proper performance of the functions attaching to that position ; and

(c) the individual holding it knows, is unpublished price sensitive information in relation to securities of a particular company (hereafter in this section referred to as " relevant securities ").

(2) The provisions of this section shall apply to a public servant or former public servant holding information to which this section applies and to any individual who knowingly obtained any such information (directly or indirectly) from a public servant or former public servant who, that individual knows or has reasonable cause to believe, held the information by virtue of his position or former position as a public servant.

(3) An individual to whom the provisions of this section apply

(a) shall not deal on a recognized stock exchange in any relevant securities ;

(b) shall not counsel or procure any other person to deal in any such securities, knowing or having reasonable cause to believe that that other person would deal in them on a recognized stock exchange ; and

(c) shall not communicate to any other person the information held or, as the case may be, obtained by him as referred to in subsection (2) if he knows or has reasonable cause to believe that that or some other person will make use of that information for the purpose of dealing or of counseling or procuring any other person to deal, on a recognized stock exchange in any such securities.

(4) An individual shall not, by reason only of having information relating to a particular transaction, be prohibited by any provision of this section from doing anything, if he does that thing in order to facilitate the completion or carrying out of the transaction.

Penalty for
contravention of
the provisions of
section 220 or
section 221. **222.**

(1) An individual who contravenes the provisions of section 220 or section 221 shall be liable-

(a) on conviction on indictment to imprisonment for a term not exceeding ten years or a fine not exceeding fifty thousand rupees or to both such imprisonment and fine;

(b) on conviction after summary trial before a Magistrate to imprisonment for a term not exceeding two years or a fine not exceeding twenty-five thousand rupees or to both such imprisonment and fine.

(2) No transaction shall be void or voidable by reason only that it was entered into in contravention of "the provisions of section 220 or section 221.

Interpretation of
this part. **223.**

(1) For the purposes of this Part, an individual is connected with a company if, and only if

(a) he is a director of that company or a related company ; or

(b) he occupies a position as an officer (other than director) or employee of that company or a related company or a position involving a professional or business relationship between himself (or his employer or a company of which he is a director) and the first company or a related company which in either case may reasonably be expected to give him access to information which, in relation to securities, of either company, is unpublished price sensitive information, and which it would be reasonable to expect a person in his position not to disclose except for the proper performance of his function.

(2) Any reference in this Part to unpublished price sensitive information in relation to any securities of any company is a reference to information which

(a) relates to specific matters relating, or of concern, (directly or indirectly) to that company that is to say, is, not of a general nature relating or of concern to that company; and

(b) is not generally known to those persons who 'are accustomed or would be likely to deal in those securities but which would if it were generally known to them be likely to affect materially the price of those securities.

(3) For the purposes of this Part a person deals in securities if (whether as principal or agent) he buys or sells or agrees to buy or sell any securities ; and references in this Part to dealing in securities on a recognised stock exchange shall include references to dealing in securities through an investment exchange.

(4) In this Part except where the context otherwise requires-

" company " means any company within the meaning of this Act or not;

" debenture" has; the same meaning in relation to companies which were not incorporated under this Act as it has in relation to companies which were so incorporated ;

" investment exchange " means an organization maintaining a system whereby an offer to deal in securities made by a subscriber to the organization is communicated, without his identity being revealed, to other subscribers to the organization, and whereby any acceptance of that offer by any of those other subscribers is recorded and confirmed ;

" listed securities ", in relation to a company, means any securities of the company listed on a recognized stock exchange ;

" public servant" means an individual who holds office under, or is employed by, the Republic ;

" recognized stock exchange" means a stock exchange recognized as such by or under any written law;

" related company", in relation to any company, means any body corporate which is that company's subsidiary or holding company, or a subsidiary of that company's holding company ;

" securities " means listed securities, and in the case of a company means any shares, any debentures, or any right to subscribe for, call for or make delivery of a share or debenture ;

" share " has the same meaning in relation to companies which were not incorporated under this Act as, it has in relation in companies which were so incorporated; and

" take-over offer for a company " means an offer made to all the holders (or all holders other than the person making the offer and his nominees) of the shares in the company to acquire those shares or a specified proportion of them, or to all the holders, or all the holders other than the person making the offer and his nominees, of a particular class of those shares, to acquire the shares of that class or specified proportion of them.

PART VI

WHEN PRIVATE COMPANIES SHALL BECOME PUBLIC LIMITED

LIABILITY COMPANIES

Registrar to issue **224.**
show cause
notice.

(1) Where it appears to the Registrar that, in the national interest or in the interest of the national economy, a private limited liability company should be called upon to offer a proportion of its shares to the public he shall issue a notice to such company to show cause why it should not become a public limited liability company under the provisions of this Part.

(2) After the issue of notice under subsection (1), no company shall register any transfer of its shares or make any issue of its shares, save and except any transfer resulting upon the operation of law, so as to defeat the provisions of this Part.

(3) After the issue of notice under subsection (1), no resolution for the winding up, or an application to the court for the winding up of the company or any subsidiary thereof shall be passed by the company or made to the court.

Consequences of **225.** Upon receipt of a notice under the provisions of section 224, the company shall, within show cause
notice. thirty days from the date of receipt of the notice or before the expiration of such extended time as may be granted by the Registrar in his discretion, notify the Registrar in writing either that it consents to become a public limited liability company or that it refuses for good cause to

become a public limited liability company and where it so refuses shall state its reasons therefor.

Consequences of private company consenting or refusing to become public limited liability company. **226.**

(1) The Registrar shall on receipt of the notification from the company request the company, where such company has consented to become a public limited liability company, to state the period of time, not exceeding six months from the date of such request or before the expiration of such extended time as may be granted by the Registrar in his discretion within which it will become a public limited liability company, the number of shares it proposes to offer to the public and submit an outline of the steps the company proposes to take in regard thereto.

(2) The Registrar shall confirm the proposals made in that behalf by the company subject to such variation as the Registrar may, having regard to the circumstances, impose, and direct the company accordingly.

(3) Where the company notifies the Registrar of its refusal to become a public limited liability company, or where the number of shares the company proposes to offer to the public is in the opinion of the Registrar inadequate, the Registrar shall thereupon refer the matter to the District Court within whose jurisdiction the registered office of the company is situated for adjudication as to whether or not the company should become a public limited liability company, and if so, the proportion of shares, it should offer to the public.

Any person in the national interest to request Registrar to call upon private company to become public. **227.** Any person may, giving adequate reasons in writing, request the Registrar to call upon a private limited liability company to become a public limited liability company and the Registrar on the receipt of such a request Registrar may, where he is satisfied that it is in the national interest or in the interest of the national economy to do so, take steps as provided in section 224 and the provisions of sections 225 and 226 shall apply, as the case may be.

Form of reference to court. **228.**

(1) Any reference to court by the Registrar under the provisions of section 226 or section 227 of any matter shall be in the form of a petition setting out such facts and circumstances as are available for the adjudication of the matter. The Registrar may annex to such petition such documents as he may deem necessary or relevant.

(2) On receipt of the petition of the Registrar under the provisions of subsection (1), the court shall issue notice on the company to show cause why the company should not become a public limited liability company under the provisions of this Part.

(3) The company shall upon receipt of the notice referred to in subsection (1), file a statement of objections and the court shall thereupon fix a date for hearing and adjudication of the matter. The court shall give any matter referred to court under the provisions of section 226 or section 227 by the Registrar priority over other cases listed before it and dispose of such matter with the least possible delay. The court shall have power to summon witnesses and hear evidence as in civil suits and rules of procedure applicable to civil suits shall with such modifications as the court deems necessary, apply to any matter so referred to court.

(4) The adjudication by the court of any reference made to it under the provisions of section 226 or section 227 may be subject to such terms and conditions as the court may impose, and the court may, if it considers it necessary in the circumstances, give such directions, including directions for the alteration of the company's memorandum of association and articles of association, the alteration or variation of the share capital of the company and the proportion of the shares that should be offered to the public.

(5) Notwithstanding any adjudication made by the court under subsection (4), the Registrar shall be entitled at any time to make any application to the court to review and revise any order made by such court under the aforesaid subsection.

Effect of direction **229.** Upon the direction by the Registrar or adjudication, by the court that a private limited

or adjudication. liability company shall be converted into a public limited liability company, such company shall be deemed to be a public limited liability company notwithstanding any other provisions of this Act; and accordingly the provisions of this Act applicable to public limited liability companies shall apply to such company.

Offences and penalties. **230.** Where any company contravenes or fails to comply with any of the provisions of this Part or of any direction given by the Registrar or any direction or order given by the court, the company and every officer or agent of the company who knowingly and wilfully authorizes or permits such contravention or non-compliance shall be guilty of an offence and shall be liable to a fine not exceeding ten thousand rupees or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

PART VII

PROVISIONS AS TO PEOPLE'S COMPANIES

Value of each share. **231.** The nominal value of each share in a people's company shall not exceed ten rupees.

Limitation on maximum share holding. **232.** No person shall either individually or together with his wife or minor child or children hold, either directly or through nominees, more than ten per of the issued share capital of a people's company:
Provided, however, that the State shall be entitled to be a shareholder, capable of holding unrestricted share capital. The State shall be deemed to be a corporation for purposes of representation.

Manner of investment. **233.** Any person may invest in one or more shares of a people's company at any allotment of shares by the company or by purchase.

Number of directors. **234.** There shall be three or more directors of a people's company, each holding one or more shares.

Election of directors. **235.** The directors of a people's company shall be elected by the shareholders and they shall retire every year, and be eligible for re-election at an annual general meeting.

Limitation on directors. **236.** No director of one people's company shall hold the office of director of any other people's company.

Exclusion of other companies from holding shares in a people's company. **237.** No company shall hold any share in any people's company either directly or through nominees save and except any other people's company within the meaning of this Act.

Taxation. **238.** A people's company shall be subject to such rates of income tax under the law for the time being relating to income tax.

Provisions applicable to a public company to apply to a people's company. **239.** Subject to the provisions of this Part, the provisions of this Act applicable to public companies shall apply to a people's company.

When a people's company shall be deemed to be public company or a private company. **240.** Where at any time the number of persons constituting the membership of a people's company is reduced to below fifty and remains below fifty for a period or more than six months, such company shall cease to be a people's company and shall be deemed for all purposes to be a public company within the meaning of this Act and where such number is reduced to below seven such company shall be deemed to be a private company and the provisions of this Act relating to public companies or private companies, as the case may be, shall apply.

PART VIII

PROVISIONS RELATING TO OFF-SHORE COMPANIES

Company incorporated for business outside Sri Lanka. **241.**
(1) Subject to the provisions hereinafter contained any company may make an

application to the Registrar to be registered in Sri Lanka as an off-shore company and to so referred to and in the case of a company incorporated abroad deemed to "be continued in Sri Lanka as if it had been incorporated under the provisions of this Act.

(2) An application for registration made by the company under the provisions of subsection (1) shall have annexed thereto the following documents for registration

(a) a certified copy of the charter, statutes or memorandum and articles of association of the company, or other instrument constituting or defining the constitution of the company, and, where such instrument is not in the official language of Sri Lanka, in such language as may be specified by the Registrar ;

(b) a list of the directors or those managing the affairs of the company, containing their full names, addresses, occupations and offices they hold in the company ;

(c) the names and addresses of the persons resident in, and being a citizen of, Sri Lanka, authorized to represent the company;

(d) a statement containing the full address of

(i) the registered or principal office of the company in the country of incorporation ; and

(ii) the principal place of business of the company in Sri Lanka;

(e) a certified copy, certified of recent date, of the incorporation of the company.

The company shall also notify the Registrar of any amendments or alterations in respect of any of the aforesaid particulars within the prescribed time, and in the prescribed form.

Grant of certificate
of registration to
off-shore
company. **242.**

(1) Subject to the provisions of subsection (2), the Registrar may, having regard to the national interest, or in the interest of the national economy, issue a certificate of registration to an off-shore company for the carrying on of its business outside the shores of Sri Lanka where such off-shore company

(a) makes payment of the prescribed fee ; and

(b) produces to the Registrar, a certificate from a bank that the prescribed sum to defray the expenses of the off-shore company for the purposes of its office in Sri Lanka has been deposited to the credit of a bank account in such bank in the name of such offshore company.

Such certificate of registration issued to the off-shore company shall exempt such company from complying with any other provisions of this Act:

Provided that no such certificate of registration shall be granted where

(a) the winding up of such company has commenced ;

(b) a receiver of the property of such company has been appointed;

(c) there is any scheme or order in relation thereto where- by the rights of creditors are suspended or restricted.

(2) Before the Registrar issues the certificate of registration to the off-shore company under the provisions of this section he shall satisfy himself that

(a) in the case of a company incorporated abroad that there is no legal impediment in the country of incorporation to such company engaging in the business of an off-shore company ;

(b) the issue of such certificate does not render defective any

legal or other proceedings instituted or to be instituted by or against the company, and embody in the certificate such conditions as he may deem necessary in the national interest.

(3) The Registrar may for good cause cancel the registration and upon such cancellation such off-shore company shall cease to enjoy the privileges and benefits granted under this Part or under any other written law.

Continuation of business of off-shore company.

243. An off-shore company shall if it intends to continue its business as an Off-shore company under the provisions of this Act

(a) produce to the Registrar proof of payment of the prescribed fee in the prescribed manner at the commencement of each calendar year and not later than the thirty-first day of January of that year ; and

(b) produce to the Registrar not later than the thirty-first day of January of each calendar year or before the expiration of such extended time as may be granted by the Registrar in his discretion, a bank certificate as required under section 242 (1) (b) in regard to defraying of the expenses of the off-shore company for that year.

Prohibition of business in Sri Lanka but saving benefits.

244.

(1) An off-shore company shall not be entitled to carry on any business in Sri Lanka, its powers being restricted to only the carrying on of any business outside the shores of Sri Lanka.

(2) Nothing in subsection (1) shall however preclude the off-shore company securing in Sri Lanka any benefits or advantages available under any other written law as maybe made applicable to it.

Cessation of business by off-shore company. Interpretation of this Part.

245. An off-shore company may cease carrying on business as an off-shore company by giving to the Registrar notice of cessation in the prescribed form.

246. In this Part "a company" means a company or body corporate incorporated under the laws of any country including Sri Lanka.

PART IX

WINDING UP

(I) PRELIMINARY

Modes of Winding up

Mode of winding up.

247.

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

(a) by the court; or

(b) voluntary; or

(c) subject to the supervision of the court.

(2) The provisions of this Act with respect to winding up shall apply unless the contrary appears, to the winding up of a company in any manner set out in subsection (1).

Contributories

Liability as contributories of present and past members.

248.

(1) In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an

amount sufficient for members, payment of its debts and liabilities, and the costs, charges, and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to the provisions of subsection (2) and the following qualifications:

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

(b) 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 the provisions 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 the provisions of subsection (3), be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;

(f) nothing in this 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 of a company, in his character of a member, by way of dividends, profits or otherwise shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor who is not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

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

Provided that

(a) a past director or manager shall not be liable to make such further contribution where he has ceased to hold office for a year or more prior to the date of commencement of the winding up ;

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

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

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

Definition of contributory.

249. In this Part the expression " contributory " means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all

proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

Nature of liability of contributory.

250. 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.

Contributories in death of member.

251.

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

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

Contributories in case of insolvency or bankruptcy of members.

252. Where a contributory becomes insolvent or bankrupt, either before or after he has been placed on the list of contributories

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

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

Provision as to married women.

253.

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

(2) Subject to the provisions of subsection (1), nothing in this Act shall affect the provisions of the Married Women's Property Ordinance.

(II) WINDING UP BY THE COURT

Jurisdiction

Jurisdiction to wind up companies registered in Sri Lanka.

254.

(1) The District Court of the district in which the registered office of a company is situated shall have jurisdiction to wind up that company.

(2) For the purposes of this section, the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the date of presentation of the petition for winding up.

Cases in which Company "may be wound up by Court

Circumstances in which company may be wound up by court.

255. A company may be wound up by the court if

(a) the company has by special resolution resolved that the company be

wound up by the court;

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

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

(d) the number of members is reduced to, in the case of a private company, below two, or, in the case of public company, below seven;

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

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

Definition of inability to pay debts.

256. A company shall be deemed to be unable to pay its debts where

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

(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.

Provisions as to applications for winding up.

Petition for Winding up and Effects thereof

257.

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

Provided that-

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

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

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

(b) a winding-up petition shall not, where the ground of the petition is default in delivering the statutory report to the Registrar or in holding the statutory meeting, be presented by any person except a shareholder, and

Powers of court
on hearing
petition.

258.

before the expiration of fourteen days from the last day on which the meeting ought to have been held ; and
(c) the court shall not give a hearing to a winding-up petition presented by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable and until a prima facie case for winding up has been established to the satisfaction of the court; and
(d) the Registrar may present a winding-up petition in the case of a company referred to in subsection (3) of section 166.

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

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

Power to stay or
restrain
proceedings
against company.

259. 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

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

(2) Where a winding-up petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the court shall, where it is of opinion that

(a) the petitioners are entitled to relief either by winding up the company or by some other mean ; any

(b) in the absence of any other remedy it would be just and equitable that the company should be wound up,

make a winding-up order, unless it is of the opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

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

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

(b) order the costs to be paid by any persons who, in the opinion of the court, are responsible for the default.

(a) where any action or proceeding against the company is pending in any court in Sri Lanka, make an application to the court in which such action or proceeding is pending for a stay of proceedings therein ; and

(b) where any other action or proceeding is pending against the company,

make an application to the court having jurisdiction to wind up the company to restrain further proceedings in such action or proceeding, and the court to which application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit.

Avoidance of dispositions of property, and;c., after commencement of winding up. Avoidance of attachments, &c.

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

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

Commencement of Winding up

Commencement of winding up by the court.

262.

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

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

Consequences of Winding-up Order

Copy of order to be forwarded to Registrar.

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

Actions stayed on winding up.

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

Effect of winding up order.

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

Official receiver in winding up

Official receiver.

266. For the purposes of this Act, the expression "official receiver" so far as it relates to the winding up of a company by the court, means the official receiver, if any, attached to the court for insolvency purposes, or, if there is no such official receiver so attached, then such person as the Minister may appoint as official receiver to that court.

Appointment of official receiver by court in certain cases.

267. If in the case of the winding up of any company by court it appears to the court desirable, with a view to securing a more convenient and economical conduct of such winding up, that some officer, other than the person who would by virtue of the provisions of section 266 be the official receiver, should be the official receiver for the purposes of that winding up, the court may appoint that other officer to act as official receiver in that winding up, and the person so appointed shall be deemed to be the official receiver in that winding up for all purposes of this Act.

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

268.

(1) Where the court has made a winding-up order or appointed a provisional liquidator, there shall, unless the court thinks fit to order otherwise and so orders, be made out and submitted to the official receiver a statement in the

prescribed form, of the affairs of the company, verified by affidavit, and showing the particulars of its assets, debts, and liabilities, the names, residences, and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.

(2) The statement referred to in subsection (1) shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the secretary of the company or by such of the persons hereafter in this subsection mentioned as the official receiver, subject to the direction of the court, may require to submit and verify the statement, that is to say, persons

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

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

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

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

(3) The statement referred to in subsection (1) shall be submitted within fourteen days from the relevant date, or within such extended time as the official receiver or the court may for special reasons appoint.

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

(5) Where any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be guilty of an offence and shall be liable to a fine not exceeding two hundred and fifty rupees for every day during which the default continues.

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

(7) Any person claiming to be a creditor or contributory knowing it to be false shall be guilty of a contempt of court and shall, on the application of the liquidator or of the official receiver, be punishable for such contempt.

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

Report by official receiver. **269.**

(1) In any case where a winding-up order is made, the official receiver shall, as soon as practicable after receipt of the statement to be submitted under the provisions of section 268 or, in any case where the court orders that no such statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the court

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

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

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

company, or the conduct of the business thereof.

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

(3) Where the official receiver states in any such further report as is referred to in subsection (2) that in his opinion a fraud has been committed, the court shall have the powers set out in section 300.

Liquidators

Power of court to appoint liquidators. **270.** For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the court may impose the court may appoint a liquidator or liquidators.

Appointment and power of provisional liquidator. **271.**

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

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

Appointment style &c., liquidators. **272.** The following provisions with respect to liquidators shall have effect on a winding-up order being made

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

(b) the official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the court for appointing a liquidator in the place of the official receiver ;

(c) the court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories 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 ;

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

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

Provisions where person other than official receiver is appointed liquidator. **273.** 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 such appointment, and given security in the prescribed manner, to the Registrar;

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

General provisions as to liquidators. **274.**

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

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

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

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

(5) Subject to the provisions of section 361, no act of a liquidator shall be or shall be deemed to be invalid by reason only of any defect in the appointment or qualification of such liquidator.

Custody of company's property.

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

Vesting of property of company in liquidator.

276 where a company is being wound up by the court, the court may on the application of the liquidator, by order direct that 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 by his official name, and thereupon the property to which the order relates shall vest accordingly, and the liquidator may, after giving such indemnity, if any, as the court may direct, bring or defend in his official name any action or other legal proceedings 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-

Power of liquidator.

277

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

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

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

(c) to appoint an. attorney-at-law to assist him in the performance of his duties :

Provided that where the liquidator is an attorney-at-law he shall not appoint his partner unless the latter agrees to act without remuneration ;

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

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

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

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

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

(b) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal;

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

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

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

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

Provided that nothing herein empowered shall be deemed to affect the rights, duties, and privileges of the Public Trustee appointed under the Public Trustee Ordinance ;

(g) to appoint an agent to do any business on behalf of such liquidator;

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

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

Exercise and control of liquidator's powers.

278.

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

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

(3) The liquidator may make an application to court in the prescribed manner for directions in relation to any particular matter arising under the winding up.

(4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the

creditors.

(5) Where any person is aggrieved by any act or decision of the liquidator, that person may appeal to the court against such act or decision, and the court may confirm, reserve, or modify the act or decision complained of and make such order as it thinks just.

(6) Where any person is aggrieved by any act or decision of the liquidator, that person may appeal to the court against such act or decision, and the court may confirm, reserve, or modify the act or decision complained of and make such order as it thinks just.

Books to be kept
by liquidator.

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

Payments
liquidator into
bank.

280.

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

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

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

(3) A liquidator of a company which is being wound up by the court shall not pay any sums received by him as liquidator into his private banking account.

Audit of liquidator
accounts.

281.

(1) Every liquidator of a company which is being wound up by the court shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the Registrar an account of his receipts and payments as liquidator.

(2) The account shall be in the prescribed form, shall be made in duplicate, and shall be certified by a statutory declaration in the prescribed form.

(3) The Registrar shall cause the account to be audited and for the purpose of the audit the liquidator shall furnish the Registrar with such vouchers and information as the Registrar may require, and the Registrar may at any time require the production of, and inspect any books or accounts kept by, the liquidator.

(4) When the account has been audited, one copy thereof shall be filed and kept by the Registrar, and the other copy shall be delivered to the court for filing and each copy shall be open to the inspection of any person on payment of the prescribed fee.

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

Control of Registrar over liquidator.

282.

(1) The Registrar shall take cognizance of the conduct of liquidators of companies which are being wound up by the court, and where a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by any written law or other wise, with respect to the performance of his duties, or where any complaint is made to the Registrar by any creditor or contributory in regard thereto, the Registrar shall inquire into the matter, and if necessary report to the court.

(2) The Registrar may at any time require any liquidator of a company which is being wound up by the court to answer any inquiry in relation to any winding up in which he is engaged, and may, where the Registrar thinks fit so to do, make an application to court to examine him or any other person on oath on any matter concerning the winding up.

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

Release of liquidator.

283.

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

(2) Where the release of a liquidator is withheld, the court may, on the application of any creditor or contributory or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act done or default made by him in the administration of the affairs of the company.

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

(4) Where the liquidator has not previously resigned or been removed from office, his release shall have the effect of a removal of a liquidator from his office.

Committee of Inspection

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

284.

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

(2) The court may make any appointment or order required to give effect to any such determination and where there is any difference between the determinations of the meetings of the creditors and contributories in respect of the matters referred to in subsection (1), the court shall decide the difference and make such order thereon as the court may think fit.

Constitution and proceedings of committee of inspection. **285.**

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

(2) The committee shall meet at such times as they, from time to time appoint, provided that a meeting is held at least once in every month. The liquidator or any member of the committee may also call a meeting of the committee as and when such liquidator or member, as the case may be, thinks necessary.

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

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

(5) Where a member of the committee becomes insolvent or bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together with him self represent the creditors or contributories, as the case may be, his office shall 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, notice of such meeting being given seven days prior to the date, and also stating the objects, of such meeting.

(7) On a vacancy occurring in the committee, the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may be, to fill the vacancy, and the meeting may, by resolution, reappoint the same or appoint another creditor or contributory to fill the vacancy :

Provided that where the liquidator, having regard to the state of the winding up is of the opinion that it is unnecessary for the vacancy to be filled he may make an application to court for an order that the vacancy shall not be filled and the court may make such an order, or an order that such vacancy shall not be filled except in such circumstances as may be specified in the order.

Powers of court where there is no committee of inspection. **286.** Where in the case of a winding up there is no committee of inspection, the court may, on the application of the liquidator do any act or give any direction or permission which by this Act is authorized or required to be done or given by the committee.

General Powers of Court in Case of Winding up by Court

Power to stay winding up. **287.**

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

(2) On any application made under the provisions of subsection (1), the court may, before making an order, require the official receiver to furnish to the court a report with respect to any facts or matters which are in his opinion relevant to the application.

(3) A copy of every order made under the provisions of this section shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall forthwith make a minute of the order in his books relating to the company.

Settlement of list of contributories and application of assets. **288.**

(1) As soon as may be after making a winding-up order, the court shall settle a

list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities: Provided that, where it appears to the court that it will not be necessary to make calls on or adjust the rights of contributories, the court may dispense with the settlement of a list of contributories.

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

Delivery of property to liquidator.

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

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

290.

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

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

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

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

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

Power of court to make calls.

291.

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

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

Payment into bank of moneys due to company.

292.

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

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

Order on contributory conclusive evidence. **293.**

- (1) An order made by the court on a contributory shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due, or ordered to be paid, is due.
- (2) All other relevant matters; stated in the order shall be taken to be truly stated as against all persons and in all proceedings whatsoever.

Appointment of special manager. **294.**

- (1) Where the official receiver becomes the liquidator of a company, whether provisionally or otherwise he may, where 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, make an application to court for the appointment of a special manager of the estate or business of the company, and the court may on such application, appoint a special manager of the said estate or business to act during such time as the court may direct, with such powers including any of the powers of receiver or manager, as may be entrusted to him by the court.
- (2) The special manager appointed under the provisions of subsection (1) shall give such security and account in such manner as the court directs.
- (3) The special manager appointed under the provisions of subsection (1) shall receive such remuneration as may be fixed by the court.

Power to exclude creditors not proving in time.

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

Adjustment of right of contributories.

296.

- (1) The court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.
- (2) Nothing in this section shall be taken as excluding or restricting any statutory rights of a Government department or person acting under the authority of a Government department.

Inspection of books creditors and contributories.

297. The court may, at any time after making a winding-up order, make such order for inspection of the books and papers of the company by creditors and contributories as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly.

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

298. The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges, and expenses incurred in the winding up in such order of priority as the court thinks just.

Power to summon persons suspected of having property of company.

299.

- (1) The court may, at any time after the appointment of a provisional liquidator or the making of a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or alleged to be indebted to the company, or any person whom the court deems capable of giving information concerning the promotion, formulation, trade, dealings, affairs, or property of the company.
- (2) The court may examine on oath any officer or person summoned under the provisions of subsection (1) on any matter referred to in that subsection, either orally or on written interrogatories, and may, where such examination is conducted orally, reduce the answers to writing and require such officer or person to sign it.
- (3) The court may require any officer or person summoned under the provisions, of subsection (1) to produce any books and papers in his custody or power relating to the company, but, where such officer or person claims any

lien on such books or papers produced by him, the production shall be without prejudice to that lien, and the court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) Any officer or person summoned under the provisions of subsection (1) who refuses or fails without reasonable cause to appear before court or to produce any books or papers required to be produced by him, at the time and on the date specified in the summons, shall be liable to be arrested and produced before court for examination.

Power to order public examination of promoters, directors, &c. **300.**

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

(2) The official receiver may make representations at the examination referred to in subsection (1) and for that purpose may be represented by an attorney-at-law.

(3) The liquidator, where the official receiver is not the liquidator, and any creditor or contributory, may also take part in the examination either personally or by attorney-at-law.

(4) The person or officer examined under the provisions of this section shall be examined on oath or affirmation and shall answer all such questions as the court may put or allow to be put to him.

(5) A person or officer directed to be examined under the provisions of this section shall at his own cost, before being so examined, be furnished with a copy of the report of the official receiver and may at his own cost be represented by an attorney-at-law, who shall be at liberty to put to such person or officer such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him:

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

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

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

Power to arrest absconding contributory.

301. The court may, at any time either before or after making a winding-up order, on reasonable cause being shown for believing that a contributory is about to leave Sri Lanka 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 with respect to the affairs of the company, may cause the contributory to be arrested, and his books and papers and movable personal property to be seized, and kept in safe custody until such time as the court may specify.

Powers of court cumulative.

302. Any power by this Act conferred on the court shall be in addition to, and not in restriction of, any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

Delegation to liquidator of certain powers of court.

303. The Minister may make rules for enabling or requiring all or any of the powers and duties conferred and imposed on the court by this Act, 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 and 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 ;
- (e) the fixing of a time within which debts and claims shall be proved,

to be exercised or performed by the liquidator as an officer of the court, and subject to the control of the court:

Provided that the liquidator shall not, without the special leave of the court, rectify the register of members, and shall not make any call without either the special leave of the court or the sanction of the committee of inspection.

Dissolution of company.

304.

(1) Where the affairs of a company have been completely wound up, the court shall, where the liquidator makes an application in that behalf, make an order that the company be dissolved from the date of such order, and the company shall be dissolved accordingly.

(2) A copy of the order made under the provisions of sub section (1) shall within fourteen days from the date of such order, be forwarded by the liquidator to the Registrar who shall make in his books a minute of the dissolution of the company.

(3) Where the liquidator makes default in complying with the requirements of this section, he shall be guilty of an offence and shall be liable to a fine not exceeding two hundred and fifty rupees for every day during which the default continues.

ENFORCEMENT OF APPEAL FROM ORDERS

Manner of enforcing orders of court, Enforcement of winding up order in another court.

305. Any order made by a court under this Act, may be enforced in the same manner in which a decree of such court made in any suit pending therein may be enforced.

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

Appeals.

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

(III) VOLUNTARY WINDING UP

Resolutions for and Commencement of Voluntary Winding up

Circumstance in which company may be wound up voluntarily.

308

(1) A company may be wound up voluntarily

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

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

(c) where the company resolves by extraordinary resolution to the

effect that it cannot, by reason of its liabilities continue its business, and that it is advisable to wind up.

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

Notice of
resolution to wind
up voluntarily. **309.**

(1) When a company has passed a resolution for voluntary winding up, it shall, within fourteen days from the date of the passing of the resolution, give notice of the resolution by publication in the Gazette.

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

(3) For the purposes of this section the liquidator of the company shall be deemed to be an officer of the company.

Commencement
of voluntary
winding up. **310.** A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up.

Consequences of voluntary winding up

Effect of voluntary
winding up on
business and
status of
company. **311.** In the case of a voluntary winding-up, the company shall, from the date of commencement of the winding-up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof :

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

Avoidance of
transfer, &c., after
commencement of
voluntary winding
up. **312.** Any transfer of shares, not being a transfer made to, or with the sanction of, the liquidator, and any alteration in the status of the members of the company, made after the date of commencement of a voluntary winding up, shall be void.

Declaration of Solvency

Statutory
declaration of
solvency in case
of proposal to
wind up
voluntarily. **313.**

(1) Where it is proposed to wind up a company statutory voluntarily, the directors of the company or, in the case of solvency a company having more than two directors, the majority of in case proposal to the directors may, at a meeting of the directors, make a voluntarily, statutory declaration to the effect that they have made a full inquiry into the affairs of the company, and that they are of the opinion that the company will be able to pay its abets in full within such period, not exceeding twelve months from the date of commencement of the winding up as may be specified in the declaration.

(2) A declaration made under the provisions of sub section (1) shall have no effect for the purposes of this Act, unless

(a) it is made within the five weeks immediately pre- ceding the date of the passing of the resolution for winding up the company and is delivered to the Registrar for registration by that date; and

(b) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of such declaration.

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

(4) The provisions of subsection (1) shall not apply to a winding up commenced before the appointed date and accordingly in any such case the

provisions of the Companies Ordinance shall apply.

Provisions Applicable to a Members' Voluntary Winding up

Provisions relating to a members' winding up. **314.** The provisions of sections 315 to 321 (both inclusive) shall, subject to the provisions of section 315, apply in relation to a members' voluntary winding up.

Power of company to appoint and fix remuneration of liquidators. **315.**

(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 each such liquidator.

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

Power to fill vacancy in office of liquidator. **316.**

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

(2) For the purpose of filling a vacancy in the office of liquidator a general meeting of the company may be convened by any contributory or, where there are more liquidators than one, by the continuing liquidators.

(3) The meeting referred to in subsection (2) shall be held in the manner provided by this Act, or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

Power of liquidation to accept shares, &c in consideration for sale of property of company. **317.**

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

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

(3) Where any member of the transferor company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days from the date of 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 court upon application made to court by the member or the liquidator in the manner provided by this section.

(4) Where 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 may be determined by special resolution.

(5) 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, where an order is made within a year of the date of passing of the resolution for winding up the company by, or

subject to the supervision of, the court, the special resolution shall not be valid unless sanctioned by the court.

Duty of liquidator to call creditors' meeting in case of insolvency. **318.**

(1) Where, in the case of winding up commenced after the appointed date, the liquidator is at any time of opinion that the company will not be able to pay its debts in full within the period stated in the declaration made under the provisions of section 313, he shall forthwith summon a meeting of the creditors and shall lay before the meeting a statement of the assets and liabilities of the company.

(2) Where the liquidator fails to comply with the provisions of this section, he shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees.

Duty of liquidator to call general meeting at end of each year. **319.**

(1) Subject to the provisions of section 321 in the event of the winding up continuing for more than one year the liquidator shall summon a general meeting of the company at the end of the first year from the date of commencement of the winding up, and of each succeeding year, or at the first convenient date within three months from the end of the year or such longer period as the Registrar may allow, 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) Where the liquidator fails to comply with this section, he shall be guilty of an offence and shall be liable to a fine not exceeding two hundred and fifty rupees.

Final meeting and dissolution. **320.**

(1) Subject to the provisions of section 321, as soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) The meeting referred to subsection (1) shall be called by advertisement in the Gazette, specifying the date, time place, and object thereof, and published at least one month before such date.

(3) Within one week after the meeting referred to in subsection (1) the liquidator shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meeting and of its date, and where the copy is not sent or the return is not made in accordance with the provisions of this subsection, the liquidator shall be guilty of an offence and shall be liable to a fine not exceeding three hundred and fifty rupees for every day during which the default continues :

Provided that, where a quorum is not present at the meeting, the liquidator shall, in lieu of the return referred to in the preceding provisions, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this subsection as to the making of the return shall be deemed to have been complied with.

(4) The Registrar on receiving the account and either of the returns referred to in subsection (3) shall forthwith register them, and on the expiration of three months from the date of registration of the return the company shall be deemed to be dissolved :

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under the provisions of this section is made, within seven days from the date

of making of the order, to deliver to the Registrar a certified copy of such order for registration, and where such person fails so to do. he shall be guilty of an offence and shall be liable to a fine not exceeding two hundred and fifty rupees for every day during which the default continues.

(6) Where a liquidator fails, to call a general meeting of the company as required by the provisions of this section, he shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees.

Alternative provision as to annual and final meetings in case of insolvency.

321. In any case where the provisions of section 318 have effect, the provisions of section 329 and 330 thereof shall apply to the winding up to the exclusion of the provisions of section 319 and 320 as if the winding up were a creditors' voluntary winding up and not a members' voluntary winding up :

Provided that the liquidator shall not be required to summon a meeting of creditors under the provisions of section 329 at the end of the first year from the date of commencement of the winding up, unless the meeting held under the provisions of section 318 is held more than three months before the end of that year.

Provisions Applicable to a Creditor's Voluntary Winding up

Provisions applicable to a creditors' winding up.
Meeting of creditors.

322. The provisions of sections 323 to 330 (both inclusive) shall apply in relation to a creditor's voluntary winding up.

323.

(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 such meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the said meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised in the Gazette and at least in two local newspapers circulating in the district where the registered office or principal place of business of the company is situate.

(3) The directors of the company shall

(a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of creditors to be held as referred to in subsection (1) ; and

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

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

(5) Where the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of the provisions of subsection (1) shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company

(6) Where default is made

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

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

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

such company, or directors or director, as the case may be, shall be guilty of an offence and shall be liable to a may not exceeding one thousand rupees, and in the case of default by the company, every officer of the company who is

in default shall be guilty of an offence and shall be liable to such fine.

Appointment of liquidator.

324. The creditors and the company at their respective meetings referred to in section 323 may nominate a person to be liquidator for the purpose of winding up the affair and distributing the assets of the company, and where the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and where no person is nominated by the creditors the persons, if any, nominated by the company shall be liquidator :

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

Appointment of committee of inspection.

325.

(1) The creditors at the meeting held in pursuance of the provisions of section 323 or at any subsequent meeting, may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and where 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 at a general meeting, appoint such number of persons not exceeding five as they think fit, to act as members of the committee:

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection, and where the creditors so resolve the persons specified 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 the provisions of this section the court may, if it thinks fit, appoint other persons to act as such members in place of the persons specified in the resolution.

(2) Subject to the provisions of any rule made under this Act, the provisions of section 285 other than the provisions of subsection (1) of that section, shall apply with respect to a committee of inspection appointed under the provisions of this section as they apply with respect to a committee of inspection appointed in a winding up by the court.

Fixing of liquidators' remuneration and ceasing of directors' powers.

326.

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

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

Power to fill vacancy in office of liquidator,

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

Application of section 317 to a creditors' voluntary winding up.

328. The provisions of section 317 shall apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up, with the modification that the powers of the liquidator under that section shall not be exercised except with the sanction either of the court or of the committee of inspection.

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

329.

(1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of the creditors at the end of the first year from the commencement of the winding up, and each succeeding year or at the first convenient date within three months from the end of the year or such longer period as the Registrar may allow, and shall lay before the meetings an account of his acts and

dealings and of the conduct of the winding up during the preceding year.
(2) Where liquidator fails to comply with the provisions of this section, he shall be guilty of an offence and shall be liable to a fine not exceeding two hundred and fifty rupees.

Final meeting and dissolution. **330.**

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

(2) Every meeting referred to in subsection (1) shall be called by advertisement in the Gazette, specifying the date, time, place, and object thereof, and published at least one month before such date.

(3) Within one week from the date of the meetings referred to in subsection (1) or, where such meetings are not held on the same date, from the date of the later meeting, the liquidator shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meetings and of their dates, and where the copy is not sent or the return is not made in accordance with the provisions of this subsection the liquidator shall be guilty of an offence and shall be liable to a fine not exceeding two hundred and fifty rupees for every day during which the default continues :

Provided that, where a quorum is not present at either such meeting, the liquidator shall, in lieu of the return referred to in the preceding provisions, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this subsection as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.

(4) The Registrar on receiving the account and in respect of each meeting referred to in subsection (1), either of the returns referred to in subsection (3), shall forthwith register them, and on the expiration of three months from the date of registration thereof, the company shall be deemed to be dissolved :

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under the provisions of this section is made, within seven days from the date of making of the order to deliver to the Registrar a certified copy of the order for registration, and where that person fails so to do, he shall be guilty of an offence and shall be liable to a fine not exceeding two hundred and fifty rupees for every day during which the default continues.

(6) Where a liquidator fails to call a general meeting of the company or a meeting of the creditors as required by the provisions of this section, he shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees.

Provisions Applicable to Every Voluntary Winding up

Provisions applicable to every voluntary winding up.
Distribution of property of company.

331. The provisions of sections 332 to 339 (both inclusive) shall apply to every voluntary winding up whether a members' or a creditors' winding up.

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

Power and duties of liquidator in voluntary winding

333.

up.

(1) The liquidator may

(a) in the case of a members' voluntary winding up, with the sanction of an extraordinary resolution of the company, and, in the case of a creditors' voluntary winding up, with the sanction of either the court or the committee of inspection or (if there is no such committee) a meeting of creditors, exercise any of the powers specified in the provisions of paragraphs (d), (e) and (f) of subsection (1) of section 277 to a liquidator in a winding up by the court;

(b) without sanction, exercise any power other than those referred to in paragraph (a) by this Act given to the liquidator in a winding up by the court ;

(c) exercise the power of the court under the provisions of 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 ;

(e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution or for any other purpose he may think fit,

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

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

Power of court to appoint and remove liquidator in voluntary winding up. **334.**

(1) Where from any cause whatever there is no liquidator acting, the court may appoint a liquidator.

(2)The court may, on cause shown, remove a liquidator and appoint another liquidator.

Notice by liquidator of his appointment. **335.**

(1) A liquidator appointed under any of the Notice by provisions of this Act shall, within fourteen days of his from the date of his appointment, publish in the Gazette and deliver to the Registrar for registration, a notice of his appointment, in the prescribed form.

(2) Where the liquidator fails to comply with the requirements of subsection (1) he shall be guilty of an offence and shall be liable to a fine not exceeding three hundred and fifty rupees for every day during which the default continues.

Arrangement when binding on creditors. **336.**

(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 the provisions of this section, be binding on the company where sanctioned by an extraordinary resolution, and on the creditors where acceded to by three-fourths the number and value of the creditors.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the court against such arrangement, and the court may thereupon, as it thinks just, amend, vary or confirm the Arrangement

Power to apply to court to have question determined or powers exercised. **337.**

(1) The liquidator or any contributory or creditor may make an application to court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls, or any other matter, all or any of the powers which the court might exercise if the company were being wound

up by the court.

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

(3) A copy of an order made by virtue of the provisions of subsection (2) staying the proceedings in the winding up shall forthwith be forwarded by the company, or otherwise as may be prescribed to the Registrar who shall make a minute of the order in his books relating to the company.

Costs of voluntary winding up. **338.** All costs, charges, and expenses properly incurred in the winding up, including the remuneration of the Liquidator, shall be payable out of the assets of the company in priority to all other claims.

Saving for rights of creditors and contributories. **339.** The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the court, but where an application for winding up is made by a contributory, the court shall be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

(iv) WINDING UP SUBJECT TO SUPERVISION OF COURT

Power to order winding up subject to supervision. **340.** When a company has passed a resolution for voluntary winding up, the court may make an order that the voluntary winding up shall continue but subject to such supervision of the court, and with such liberty for creditors, contributories or others to apply to the court, and generally on such terms and conditions, as the court thinks just.

Effect of petition for winding up subject to supervision. **341.** A petition for the continuance of a voluntary winding up subject to the supervision of the court shall, for the purpose of giving jurisdiction to the court over actions, be deemed to be a petition for winding up by the court.

Application of sections 260 and 261 to winding up subject to supervision. **342.** A winding up subject to the supervision of the court shall for the purposes of sections 260 and 261 be deemed to be a winding up by the court.

Power of court to appoint or remove liquidators. **343.**

(1) Where an order is made by court for a winding up subject to supervision, the court may, by that or any subsequent order, appoint an additional liquidator.

(2) A liquidator appointed by the court under the provisions of subsection (1) shall have the same powers, be subject to the same obligations, and in all respects have the same position, as if he had been duly appointed in accordance with the provisions of this Act with respect to the appointment of liquidators in a voluntary winding up.

(3) The court may remove any liquidator appointed under the provisions of subsection (1) or any liquidator in a winding up continued under the supervision of court and fill any vacancy occasioned by such removal, or by death or resignation.

Effect of supervision order. **344.**

(1) Where an order is made under the provisions of section 340 for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the court, exercise all his powers without the sanction or intervention of the court, in the same manner as if the company were being wound up voluntarily :

Provided that, the powers specified in the provisions of paragraphs (d), (e) and (f) of subsection (1) of section 277 shall not be exercised by the liquidator except with the sanction of the court or, in a case where before the order the winding up was, a creditors' voluntary winding up, with the sanction of either the court of the committee of inspection or, where there is no such committee, a meeting of the creditors.

(2) A winding up subject to the supervision of the court shall not constitute a winding up by the court for the purpose of the provisions of this Act which are set out in the Eighth Schedule hereto, but, subject as aforesaid, an order for a winding up subject to supervision shall, for all purposes, be deemed to be an order for winding up by the court:

Provided that, where the order for winding up subject to supervision was made in relation to a creditors' voluntary winding up in which a committee of inspection had been appointed, the order shall be deemed to be an order for winding up by the court for the purposes of the provisions of section 285 other than the provisions of subsection (1) of that section, except in so far as the operation of that section is excluded in a voluntary winding up by rules made under this Act.

(v) PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP

Proof and Ranking of Claims

Debts of all descriptions to proved .

345. In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Act or the law of insolvency) 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 as evidence against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

Application of insolvency rules in winding up of insolvent companies.

346. In the winding up of an insolvent company such rules as are in force for the time being under the law of insolvency or bankruptcy with respect to the estates of persons adjudged insolvent or bankrupt, shall be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities 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 take part by the winding up, and make such claims against the company as they respectively are entitled to By virtue of the provisions of this section .

Preferential payments.

347.

(1) In a winding up there shall be paid in priority to all other debts-

(a) income tax charged or chargeable for one complete year prior to the relevant date, such year to be selected by the Commissioner-General of Inland Revenue in accordance with the provisions of the Inland Revenue Act, No. 28 of 1979 ;

(b) business turnover tax charged or chargeable for one complete year prior to the relevant date, such year to be selected by the Commissioner-General of Inland Revenue in accordance with the provisions of the Finance Act, No. 11 of 1963 ;

(c) all rates, or taxes (other than income tax) due from the company at the relevant date, and having become due and payable within the twelve months immediately prior to that date ;

(d) all dues to the Government of Sri Lanka as recurring payments for any services given or rendered periodically;

(e) all provident fund dues, gratuity payments, and industrial court awards payable to any employee or workman ;

(f) all wages or salary (whether or not earned wholly or in part by way of commission) of any clerk or servant in respect of services rendered to the company during the four months immediately prior to the relevant date and all wages (whether payable for time of work or for piece work) of any workman or labourer in respect of services so rendered;

(g) all accrued holiday remuneration becoming payable to any clerk, servant, workman or labourer (or in the case of his death to

any other person in his right) on the termination of his employment before or by the effect of the winding up order or resolutions

(h) unless the company is being wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company, or unless the company has at the commencement of the winding up, under such a contract with insurers as is referred to in section 24 of the Workmen's Compensation Ordinance rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under such Ordinance, being amounts which have accrued before the relevant date.

(2) Notwithstanding anything in paragraph (c) of subsection (1), the sum to which priority is given under the provisions of that paragraph shall not in the case of any one claimant, exceed two thousand rupees :

Provided that, where a claimant under the provisions of such paragraph is a labourer who has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the period of hiring, he shall have priority in respect of the total sum, or a part thereof, as the court may decide, to be due under the contract, proportionate to the time of service up to the relevant date.

(3) Where any compensation under the Workmen's Compensation Ordinance is a fortnightly payment, the amount due in respect thereof shall for the purposes of paragraph (e) of subsection (1) be taken to be the amount of the lump sum for which such payment may be commuted under that Ordinance.

(4) Where any payment has been made

(a) to any clerk, servant, workman or labourer in the employment of the company, on account of wages or salary ; or

(b) to any such clerk, servant, workman or labourer or, in the case of his death, to any other person in his right, on account of accrued holiday remuneration,

out of money advanced by some 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 clerk, servant, workman or labourer or other person in his right, would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

(5) The debts referred to in the preceding provisions of this section shall

(a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and

(b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in, or subject to, that charge.

(6) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the debts referred to in subsection (1) shall be discharged forthwith so far as the assets are sufficient to meet them.

(7) In the event of a landlord or any other person distaining or having distained on any goods or effects of the company within three months immediately prior to the date of a winding-up order, the debts to which priority is given by the provisions of this section shall be a first charge on the goods or effects so distained on or the proceeds of the sale thereof:

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

(8) For the purposes of this section

(a) any remuneration in respect of a period of holiday or of

absence from work through sickness or other reasonable cause shall be deemed to be wages in respect of services rendered to the company during that period;

(b) the expression "accrued holiday remuneration", includes, in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment (including any order made or direction given under any written law), are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday, had his employment with the company continued until he became entitled to be allowed the holiday;

(c) the expression " the relevant date " means

(i) in the case of a company ordered to be wound up compulsory, the date of the appointment (or of first appointment) of a provisional liquidator, or, where no such appointment was made, the date of the winding-up order. unless in either case the company had commenced to be wound up voluntarily before that date; and

(ii) in any case where the provisions of sub-paragraph (i) do not apply, the date of the passing of the resolution for the winding up of the company ; and

(d) the expression " rates " or " taxes " means any rate, charge, tax, or assessment imposed or made by the Government or by any Development Council, Municipal Council, Urban Council, Town Council, Village Council, or other Authority established under the provisions of any written law for the time being in force in that behalf.

(9) The provisions of subsection (1) shall not apply in the case of a winding up where the relevant date as defined in subsection (7) of section 253 of the Companies Ordinance occurred before the appointed date and in such a case the provisions relating to preferential payments which would have applied if this Act had not been brought into operation shall be deemed to remain in force.

Effect of winding up on Antecedent and other Transactions

Fraudulent reference. **348.**

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

(2) For the purposes of this section, the commencement of the winding up shall be deemed to correspond with the act of insolvency in the case of an individual.

(3) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

Liabilities rights of certain fraudulently preferred persons. **349.**

(1) Where, in the case of a company wound up in Sri Lanka, anything made or done after the appointed date is void under the provisions of section 348 as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then (without prejudice to any rights or liabilities arising apart from the provisions of this section) the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as surety for the debt to the extent of the charge on the property or the value of his interest, whichever is the less.

(2) The value of the interest of the person preferred shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest is free of all encumbrances other than those to which the charge for the debt of the company was then subject.

(3) On any application made to the court with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the court shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up, and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of an action for the recovery of the sum paid.

The provisions of this subsection shall apply, with the necessary modifications, in relation to transactions other than the payment of money as they apply in relation to payments.

Effect of floating charge.

350. Where a company is being wound up, a floating charge on the undertaking or property of the company created within twelve months of the date of 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 per annum on that amount at the legal rate:

Provided that, in relation to a charge created more than six months before the appointed date, the provisions of this section shall have effect with the substitution, for the words " twelve months ", of the words " six months " .

Disclaimer of onerous property .

351.

(1) Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, unprofitable contracts, or of 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 and subject to the provisions of this section, by writing signed by him at any time within twelve months from the date of commencement of the winding up or such extended period as may be allowed by the court disclaim the property :

Provided that ,where any such property has not come to the knowledge of the liquidator within one month from the date of commencement of the winding up, the power of disclaiming the property under the provisions of this section may be exercised at any time within twelve months from the date he has become aware thereof or such extended period as may be allowed by the court.

(2) The disclaimer shall operate to determine, as from the date of the 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, 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 such leave, and make such other order in the matter, as the court thinks just.

(4) The liquidator shall not be entitled to disclaim any property under the provisions of this section in any case where 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 twenty-eight days from the date of receipt of the application or such further period as may be allowed by the court, given notice to the applicant that he intends to make an application to court, for leave to disclaim. and, in the case of a contract, where the liquidator upon receipt of an application as aforesaid, does not within the said period or further period, disclaim the contract, the

company shall be deemed to have adopted it.

(5) The court may, on the application of any 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 such order to any such person may be proved by him as a debt in the winding up.

(6) The court may, on an application by any 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 any such person as it thinks fit, make order for the vesting of the property in, or the delivery of the property to, any persons entitled thereto, or to whom it may seem 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, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose:

Provided that, 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 sub-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 date of commencement of the winding up ; or

(b) where 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 sub-lessee or mortgagee declining to accept a vesting order upon such terms shall be excluded from all interest in, and security upon, the property, and, where there is no person claiming under the company who is willing to accept an order upon such terms, the court shall have power to vest the estate and interest of the company in the property in any person liable either personally or in a representative character, and either by himself or jointly with the company to perform the lessor's covenants in the lease, freed and discharged from all estates, encumbrances and interests created therein by the company.

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

Restriction of
rights of creditors
as to execution r
attachment of in
case of company. **352.**

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

Provided that

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

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

liquidator;

(c) the rights conferred by the provisions of this sub-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 may think fit.

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

(3) In this section the expression " goods " includes all movable property.

Duties of Fiscal as to goods taken in execution. **353.**

(1) Subject to the provisions of 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 Fiscal that a provisional liquidator has been appointed or that a winding-up order has been made or that a resolution for voluntary winding up has been passed, the Fiscal shall on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.

(2) Subject to the provisions of subsection (3), where under an execution in respect of a judgment for a sum exceeding two hundred and fifty rupees the goods of a company are sold or money is paid in order to avoid sale, the Fiscal shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for fourteen days, and if within that time notice is served on him of a petition for the winding up of the company have been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up of the company and an order is made or a resolution is passed, as the case may be, (or the winding up of the company, the Fiscal shall pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor.

(3) The rights conferred by the provisions of 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 may think fit.

(4) In this section the expression " goods" include ail movable property and the expression " Fiscal" includes any officer charged with the execution of a writ or other process.

Offences Antecedent to or in Course of Winding up

Offences by officers of companies in liquidation. **354.**

(1) Where any person, being a past or present officer of a company which at the time of the commission of the alleged offence is being wound up, whether by or under the supervision of the court or voluntarily, or is companies in subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up

(a) does not to the best of his knowledge and belief fully and truly make known 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 course of the business of the company; or

(b) does not deliver to the liquidator, or as he directs, all such part of the movable and immovable property of the company as is in his custody or under his control, and which he is required by law

to deliver; or

(c) does not deliver to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver; or

(d) within the twelve months immediately prior to the date of commencement of the winding up or at anytime thereafter conceals any part of the property of the company to the value of one hundred rupees or more, or conceals any debt due to or from the company; or

(e) within the twelve months immediately prior to the date of commencement of the winding up or at any time thereafter fraudulently removes any part of the property of the company to the value of one hundred rupees or more; or

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

(g) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of a month to inform the liquidator thereof; or

(h) after the date of commencement of the winding up prevents the production of any book or paper affecting or relating to the property or affairs of the company; or

(i) within the twelve months immediately prior to the date of commencement of the winding up or at any time thereafter, conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation or, falsification of any book or paper affecting or relating to the property or affairs of the company; or

(j) within the twelve months immediately prior to the date of commencement of the winding up or at any time thereafter makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company; or

(k) within the twelve months immediately prior to the date of commencement of the winding up or at any time thereafter fraudulently parts with, alters, or makes any omission in, or is privy to the fraudulent parting with, altering, or making any omission in, any document affecting or relating to the property or affairs of the company; or

(l) after the date of commencement of the winding up or at any meeting of the creditors of the company within the twelve months immediately prior to the date of commencement of the winding up attempts to account for any part of the property of the company by factious losses or expenses ; or

(m) has within the twelve months immediately prior to the date of commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for ; or

(n) within the twelve months immediately prior to the date of commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for; or

(o) within the twelve months immediately prior to the date of commencement of the winding up or at any time thereafter pawns, pledges, or disposes of any property of the company which has been obtained :on credit and has not been paid for, unless such pawning, pledging, or disposing is in the ordinary way of the business of the company; or

(p) is 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,

he shall be guilty of an offence and shall, in the case of the offences referred to in paragraphs (m), (n) and (o), be liable to imprisonment of either description for a term not exceeding five years, and in the case of any other offence under the provisions of this subsection shall be liable to imprisonment of either description for a term not exceeding two years :

Provided that it shall be a good defence, to a charge under the provisions of, any of paragraphs (a), (b), (c), (d), (f), (n) and (o), for the accused to prove that he had no intent to defraud, and to a charge under the provisions of any of paragraphs (h), (i) and (j) to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.

(2) Where any person pawns, pledges or disposes of any property in the circumstances which amount to an offence under the provisions of paragraph (o) of subsection (1), every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged, or disposed of, in such circumstances as aforesaid shall be guilty of an offence, and shall be liable to imprisonment of either description for a term not exceeding seven years.

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

Penalty for falsification of books.

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

Frauds by officers of companies which have gone into liquidation.

356. Where any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up

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

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

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

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

Liability where proper accounts not kept.

357.

(1) Where in the course of winding up of a company it is shown that proper books of accounts were not kept by the company throughout the period of two years immediately preceding the date of commencement of the winding up, or the period between the incorporation of the company and the date of, commencement of the winding up, whichever is the shorter, every officer of the company who is in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on, the default was inevitable, be guilty of an offence and shall be liable on conviction to imprisonment of either description for a term not exceeding one year.

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

Responsibility for
fraudulent trading
of persons
concerned. **358.**

showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

(1) Where in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the court may, on the application of the official receiver, or the liquidator or any creditor or contributory of the company, where it thinks proper so to do, declare that any persons who were knowingly parties to the carrying on of the business, in the manner referred to in section 350 shall be personally responsible, without any limitation or liability, for all or any of the debts or other liabilities of the company as the court may direct. At the hearing of an application under the provisions of this subsection the official receiver or the liquidator, as the case may be, may himself give evidence or call witnesses.

(2) Where the court makes any declaration under the provisions of subsection (1), it may give such further directions as it thinks proper for the purpose of giving effect to the declaration, and in particular may make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage on any assets of the company held by or vested in him, or any company or person on his behalf, or any person claiming as assignee from or through the person liable or any company or person acting on his behalf, and may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under the provisions of this subsection.

For the purposes of this subsection, the expression " assignee " includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage 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.

(3) Where any business of a company is carried on with such intent or for such purpose as is referred to in subsection (1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five thousand rupees or to imprisonment of either description for a term not exceeding two years or to both such fine and imprisonment.

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

Powers of court to
assess damages
against delinquent
directors. **359.**

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

(2) The provisions of this section shall have effect notwithstanding that the

offence is one for which the offender may be criminally liable.

(3) Where an order for payment of money is made under the provisions of this section, the order shall for the purposes of the Insolvency Ordinance, be deemed to be a judgment for the recovery of a debt or money demand referred to in section 12 of that Ordinance.

(1) Where it appears to the court in the course of a winding up by, or subject to the supervision of, the court 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, the court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator either himself to prosecute the offender or to refer the matter to the attorney-general.

(2) Where 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 Attorney-General and shall furnish to him such information and give to him such access to, and facilities for, inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as he may require.

(3) Where any report is made under the provisions of subsection (2) to the Attorney-General he may, if he thinks fit, refer the matter to the Registrar for inquiry and the Registrar shall thereupon investigate the matter and may, where he thinks it expedient, make an application to court for an order conferring on him or any person designated by him for the purpose with respect to the company concerned 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.

(4) Where on any report to the Attorney-General under the provisions of subsection (2) it appears to the Attorney-General 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 sanction of the court, the liquidator may himself take proceedings against the offender.

(5) Where 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 Attorney-General under the provisions of subsection (2) . 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 report, and on a report being made accordingly the provisions of this section shall have effect as though the report has been made in pursuance of the provisions of subsection (2).

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

For the purposes of this subsection, the expression " agent" in relation to a company shall be deemed to include any banker or attorney-at-law of the company and any person employed by the company as auditor whether that person is or is not an officer of the company.

(7) Where any person fails or neglects to give assistance in the manner required by subsection (6) the court may, on the application of the Attorney-General, direct that person to comply with the requirements of the said subsection, and where any such application is made 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 so to do, direct that the costs of the application shall

be borne by the liquidator personally.

Supplementary Provisions as to Winding up

Disqualification for appointment as liquidator. **361.**

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

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

Corrupt inducement affecting appointment as liquidator.

362. Any person who gives or agrees or officers to give to any member or creditor of a company any valuable consideration with a view to securing his own appointment of 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 two thousand rupees.

Enforcement of duty of liquidator to make return, &c.

363.

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

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

(3) Nothing in this section shall be taken to prejudice the operation of any written law imposing penalties on a liquidator in respect of any such default as is referred to in subsection (1).

Notification that a company is in liquidation. **364.**

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

(2) Where default is made in complying with the provisions of this section, the company and any of the following persons who knowingly and wilfully authorizes or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be guilty of an offence and shall be liable to a fine of two hundred and fifty rupees.

Exemption of certain documents from stamp duty on winding up of companies. **365.** In the case of a winding up by the court or of creditors' voluntary winding up of a company

(a) every deed relating solely to movable or immovable property or creating any mortgage, charge or other encumbrance on, or any estate, right or interest in, any such property which forms part of the assets of the company and which, after the execution of the deed, is or remains part of the assets of the company; and

(b) every power of attorney, proxy paper, writ, order, certificate, affidavit, bond

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

Books of company to be evidence. **366.** Where a company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be prima facie evidence of the truth of all matters purporting to be therein recorded.

Disposal of books and papers of company. **367.**

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

(a) in the case of a winding up by, or subject to the supervision of, the court in such way as the court directs ;

(b) in the case of a members' voluntary winding up, in such way as the company by extraordinary resolution directs, and, in the case of a creditors voluntary winding up, in such way as the committee of inspection or, where there is no such committee, as the creditors of the company, may direct.

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

(3) Rules may be made for enabling the Registrar to prevent, for such period (not exceeding five years from the date of dissolution of the company) as he thinks fit, the destruction of the books and papers of a company which has been wound up, and for enabling any creditor or contributory of the company to make representations to the Registrar and to appeal to the court from any direction which may be given by the Registrar in the matter.

(4) Where any person acts in contravention of any rule made under the provisions of subsection (3) or of any direction of the Registrar thereunder, he shall be guilty of an offence and shall be liable to a fine not exceeding one thousand rupees.

Information as to pending liquidations. **368.**

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

(2) Where a liquidator fails to comply with the provisions of this section, he shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees for each day during which the default continues.

Unclaimed assets to be paid in companies liquidation Account. **369.**

(1) In the winding up of a company where it appears either from any statement sent to the Registrar under the Provisions of section 368 or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months from the date of their receipt or any money held by the company in trust in respect of dividends or other sums due to any person as a member of the company the liquidator shall forthwith pay the said money to the Companies Liquidation Account and shall be entitled to the prescribed certificate of receipt for the money so paid, and that certificate shall be an effectual discharge to him in respect thereof.

(2) For the purpose of ascertaining and getting in any money payable into the Companies Liquidation Account in pursuance of the provisions of this section,

the Registrar "may order any liquidator or other person to submit to him an account verified by affidavit, of any such money as is referred to in subsection (1) and may direct and enforce an audit of that account in such manner as may be prescribed. The Registrar may from time to time appoint a person to collect and get in any such money and for the purposes of this section any court having jurisdiction in insolvency shall have, and, at the instance of the person so appointed or of the Registrar, may exercise all the powers conferred by the Insolvency Ordinance with respect to the discovery and realization of the property of an insolvent, and the provisions of that Ordinance with respect thereto shall apply accordingly to proceedings under the provisions of this section, with such modifications as may be necessary.

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

(4) Any person dissatisfied with the decision of the Registrar in respect of a claim made in pursuance of the provisions of this section may appeal to court against such decision, in such manner as may be prescribed. The decision of the court on such appeal shall be final.

(5) Where any money paid into the Companies Liquidation Account in pursuance of the provisions of this section remains unclaimed thereafter for a period of fifteen years, such money shall be credited to the Consolidated Fund :

Provided, however, that where any person makes a claim in the prescribed manner to the total sum or any part of such money and establishes such claim to the satisfaction of the Deputy Secretary to the Treasury, the Minister in charge of the subject of Finance may authorize the payment to that person out of the Consolidated Fund, of the sum to which he so establishes claim.

Resolutions passed at adjourned meeting of creditors and contributories.

370. Where after the appointed date a resolution is passed at an adjourned meeting of any creditors or contributories of a company, the resolution shall for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

Supplementary Powers of Court

Meetings to ascertain wishes of creditors or contributories.

371.

(1) The court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any sufficient evidence, and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held, and conducted in such manner as the court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or the articles.

Provisions as to Dissolution

Power of court declare dissolution of company void.

372.

(1) Where a company has been dissolved, the court may at any time within two years from the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had

Register may
strike off defunct
company from
register.

373.

not been dissolved.

(2) It shall be the duty of the person on whose application the order under the provisions of subsection (1) was made, within seven days from the date of the order, or such further time as the court may allow, to deliver to the Registrar for registration, a certified copy of such order, and where such person fails so to do, he shall be guilty of an offence and shall be liable to a fine not exceeding two hundred and fifty rupees for every day during which the default continues.

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

(2) Where the Registrar does not within one month of the date of sending the letter referred to in subsection (1) receive any answer thereto, he shall within fourteen days from the date of expiry of the said period of one month, send to the company a letter by registered post referring to the first letter, and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Gazette with a view to striking off name of the company from the register.

(3) Where the Registrar, under the provisions of subsection (2), either receives an answer to the effect that the company is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Gazette, and send to the company by post, a notice that at the expiration of three months from the date of that notice the name of the company specified therein will, unless cause is shown to the contrary, be struck off the register and be dissolved.

(4) Where, in the winding up of a company the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator under the provisions of this Act have not been made for a period of six consecutive months, the Registrar shall publish in the Gazette and send to the company or the liquidator, if any, a notice as is referred to in subsection (3).

(5) Upon the expiration of the period specified in the notice given under the provisions of subsection (4), the Registrar may, unless cause to the contrary is previously shown by the company, strike off the name of the company from the register, and shall publish a notice thereof in the Gazette, and upon such publication the company shall be dissolved:

Provided that

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

(b) nothing in the provisions of this subsection shall affect the power of the court to wind up a company the name of which has been struck off the register

(6) Where a company or any member or creditor thereof is aggrieved by the company having been struck off the register, the court on an application made by the company or member or creditor, as the case may be, before the expiration of ten years from the publication in the Gazette of the notice referred to in subsection (5) may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the name of the company be restored to the register, order the name of the company to be restored to the register, and upon a certified copy of the order being delivered to the Registrar for registration, the company shall be deemed to have continued in existence as if its name had not been struck off the register ; and the court may by such order give such directions and make such provisions as to it seems 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 the register.

(7) A notice to be sent under the provisions of 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 the provisions of this section to a company may be addressed to the company at its registered office, or where no office has been registered, to the care of some officer of the company, or where there is no officer of the company whose name and address are known to the Registrar, to each of the persons who subscribed to the memorandum addressed to the Registrar at the address specified in the memorandum.

Property of dissolved company to vest in the State.

374. Where a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before the date of its dissolution (including leasehold property but not including property held by the company on trust for any other person) shall, subject and without prejudice to any order which may at any time be made by the court under the provisions of sections 372 and 373, vest in and be at the disposal of the State.

Companies Liquidation Account.

375.

(1) An account, to be called the Companies Liquidation Account, shall be kept by the Registrar with such bank as may from time to time be approved by the Minister in charge of the subject of Finance.

(2) All payments out of money standing to the credit of the Registrar in the Companies Liquidation Account shall be made in the prescribed manner.

Investment of surplus funds on general account.

376.

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

(2) When any part of the money invested under the provisions of subsection (1) is, in the opinion of the Registrar, required to answer any demands in respect of companies' estates, the Registrar shall notify the requirement to the Deputy Secretary to the Treasury who shall thereupon repay to the Registrar such sum as may be required to the credit of the Companies Liquidation Account, and for that purpose may direct the sale of such part of the securities referred to in subsection (1) as may be necessary..

(3) The dividends on investments made under the provisions of this section shall be paid into the Companies Liquidation Account.

Separate accounts of particular estates.

377.

(1) An account shall be kept by the Registrar of the receipts and payments in the winding up of each company, and, when the cash balance standing to the credit of the account of any company is in excess of the amount which, in the opinion of the committee of inspection, is required for the time being to answer demands in respect of that company's estate, the Registrar shall, on the request of such committee, invest the amount not so required in Government securities, to be placed to the credit of the such account for the benefit of the company.

(2) When any part of the money invested under the provisions of subsection (1) is, in the opinion of the committee of inspection, required to answer any demands in respect of the estate of the company, the Registrar shall, on the request of the committee, raise such sum as may be required by such sale of such part of the securities referred to in subsection (1) as may be necessary.

(3) The dividends on investments made under the provisions of this section shall be paid to the credit of the company.

(4) When the balance at the credit of any company's account in the hands of the Registrar exceeds twenty thousand rupees, and the liquidator gives notice

to the Registrar that the excess is not required for the purposes of the liquidation, the company shall be entitled to interest on the excess at such rate as may be prescribed and until so prescribed at the rate of two per centum per annum.

Rules and Fees

Rules and fees for winding up. **378.**

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

PART X

RECEIVERS AND MANAGERS

Disqualification for appointment as receiver. **379.**

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

Disqualification of uncertificated insolvent or undischarged bankrupt from acting as receiver or manager. **380.**

- (1) Where any person being an uncertificated insolvent or undischarged bankrupt acts as receiver or manager of the property of a company on behalf of the debenture holders or other creditors, he shall, subject to the provisions of subsection (2), be guilty of an offence and shall be liable to a fine not exceeding five thousand rupees or to imprisonment of either description for a term not exceeding two years or to both such fine and imprisonment.
- (2) The provisions of subsection (1) shall not apply to a receiver or manager where

- (a) the appointment under which he acts and the insolvency or bankruptcy, as the case may be, were both made before the appointed date ; or
- (b) its acts under an appointment made by order of a court.

Power to appoint official receiver as receiver for debenture holders or creditors. **381.** Where an application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the court, the official receiver may be so appointed.

Receivers and managers appointed out of court. **382.**

- (1) A receiver or manager of the property of a company appointed under the powers contained in any instrument may make an application to court for directions in relation to any particular matter arising in connection with the performance of his functions, and on any such application the court may give such directions or may make such order declaring the rights of persons before the court or otherwise, as the court thinks just.
- (2) A receiver or manager of the property of a company appointed under the provisions of section 381 shall not be personally liable on any contract entered into by him in the performance of his functions

- (a) unless his contract other and expressly provides ; and
- (b) except to the extent so provided, and shall, where he is so personally liable, be entitled in respect of that liability to indemnity out of the assets to the same extent as if he had been appointed by order of a court:

Provided that nothing in the preceding provisions of this subsection shall be taken as limiting any right to indemnity which he would have apart from this subsection or as limiting his liability or contracts entered into without authority or as conferring any right to indemnity in respect of -that liability.

(3) The provisions of this section shall apply whether the receiver or manager was appointed before or after the appointed date but the provisions of subsection (2) shall not apply to contracts entered into before that date.

Notification that receiver or managers appointed. **383.**

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

(2) Where default is made in complying in the requirements of this section, the company and any officer, liquidator, receiver or manager of the company who knowingly and wilfully authorizes or permits such default, shall be guilty of an offence and shall be liable to a fine of two hundred and fifty rupees.

Power of court to fix remuneration application of liquidator. **384.**

(1) The court may, on an application made to the court 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 referred to in subsection (1) shall, where no previous order has been made with respect thereto under the provisions of that subsection

- (a) extend to fixing the remuneration for any period before the making of the order or the application therefor ; and
- (b) be exercisable notwithstanding that the receiver or manager had died or has 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 so fixed for that period, extend to requiring him or his legal representatives to account for the excess or such part thereof as may be specified in the order :

Provided that the power conferred by the provisions of paragraph (c) shall not be exercised with respect to 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.

(3) 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 the provisions of sub section (1).

(4) The provisions of this section shall apply whether the receiver or manager was appointed before or after the appointed date, and to periods before, as well as to periods after, that date.

Provisions as to information where receiver or manager appointed. **385.**

(1) Where in the case of a company registered in Sri Lanka, a receiver or manager of the whole or substantially the whole of the property of the company (hereafter in this section and in section 386 referred to as " the receiver") is appointed on behalf of the holders of any debentures of the

company secured by a floating charge, then subject to the provisions of this section and section 386.

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

(b) there shall, within fourteen days from the date of receipt of the notice, or such longer period, not exceeding three months as may be allowed by the court or allowed with the previous consent of the Registrar, be made out and submitted to the receiver in accordance with the provisions of section 386, a statement in the prescribed form as to the affairs of the company ; and

(c) the receiver shall, within two months from the date of receipt of the said statement send

(i) to the Registrar and to court a copy of the statement and his comments, if any, thereon and in the case of the Registrar, together with a summary of such statement and such comments ; and

(ii) 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) to any trustees for the debenture holders on whose behalf he was appointed and, so far as he is aware of their addresses, to all such debenture holders a copy of the said summary,

(2) The receiver shall within two months, or such longer period as the court may allow, after the date of expiration of the period of twelve months from the date of his appointment and of every subsequent period of twelve months, and within two months or such longer period as the court may allow, after he ceases to act as receiver or manager of the property of the company, send to the Registrar, to any trustees for the debenture holders of the company on whose behalf he was appointed, to the company and to all such debenture holders so far as he is aware of their addresses, an abstract in the prescribed form showing his receipts and payments during such period of twelve months or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and the aggregate amounts of his receipts and of his payments during all preceding periods since his appointment,

(3) Where the receiver is appointed under the powers contained in any instrument, the provisions of this section shall have effect

(a) with the omission in subsection (1), of any reference to the court; and

(b) with the substitution in subsection (2), for any reference to the court, of the reference to the Registrar,

and in any other case any reference to the court shall be taken as referring to the court by which the receiver was appointed.

(4) The provisions of 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 the provisions of that subsection apply to a receiver or manager who dies or ceases to act before such provisions have been fully complied with, the references in para graphs (b) and (c) thereof to the receiver shall, subject to the provisions of subsection (5), include references to his successor and to any existing receiver or manager.

Nothing in this subsection shall be taken as limiting the meaning of the expression " the receiver " where used in or relation to the provisions; of subsection (2).

(5) The provisions of this section and of section 386, shall, where the company is being wound up, apply notwithstanding that the receiver or manager and the liquidator are the same person, but with any necessary modifications.

Special provisions **386.**
as to statement
submitted to
receiver.

(6) Nothing in subsection (2) shall be taken to prejudice the duty of the receiver to render proper accounts of his receipts and payments to the persons to whom, and at the times at which, he may be required to do so other than under the provisions of that subsection.

(7) Where the receiver makes default in complying with the requirements of this section, he shall be guilty of an offence and shall be liable to a fine not exceeding two hundred and fifty rupees for each day during which the default continues.

(1) The statement as to the affairs of a company required by the provisions of paragraph (b) of subsection (1) of section 385 to be submitted to the receiver (or his successor), shall show as at the date of the receiver's appointment, the particulars of the company's assets, debts and liabilities, the names, residences and occupations of its creditors, the securities held by them respectively, the date when the securities were respectively given and such further or other information as may be prescribed.

(2) The statement referred to in subsection (1) shall be submitted by, and be verified by affidavit of, one or more of the persons who are at the date of the receiver's appointment the directors and by the person who is at that date the secretary of the company, or by such of the persons here after in this subsection referred to as the receiver (or his successor), subject to the direction of the court, may require to submit and verify the statement, that is to say, persons

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

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

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

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

(3) Any person making the statement and affidavit referred to in subsection (2) 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) Where the receiver is appointed under the powers contained in any instrument, the provisions of this section shall have effect with the substitution, for any reference to the court of the reference to the Registrar and for any reference TO an affidavit, of references to a statutory declaration ; and in any other case, any reference to the court shall be taken as referring to the court by which the receiver was appointed.

(5) If any person without reasonable excuse makes default in complying with the requirements of this section he shall be guilty of an offence and shall be liable to a fine not exceeding two hundred and fifty rupees for every day during which the default continues.

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

Delivery to
Registrar of
accounts of
receivers and
managers.

387.

(1) Except where the provisions of subsection (2) of section 385 applies, every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument shall, within one month, or such longer period as the Registrar may allow, after the expiration of the period of

six months from the date of his appointment and of every subsequent period of six months, and within one month after he ceases to act as receiver or manager, deliver to the Registrar for registration an abstract in the prescribed form showing his receipts and his payments during that period of six months, or, where he ceases to act as aforesaid during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and the aggregate amount of his receipts and of his payments during all preceding periods since his appointment.

(2) Every receiver or manager who makes default in complying with the provisions of this section shall be guilty of an offence and shall be liable to a fine not exceeding two hundred and fifty rupees for every day during which the default continues.

Enforcement of
duty of receiver or
manager to make
return, &c. **388.**

(1) Where-

(a) any receiver or manager of the property of a company who has made default in filing, delivering or making any account, document or return or in giving any notice, which a receiver or manager is by law required to file, deliver, make or give, fails to make good the default within fourteen days from the date of service on him of a notice requiring him to do so ; or

(b) any receiver or manager of the property of a company who has been appointed under the powers contained in any instrument, has, after being required at any time by the liquidator of the company so to do, failed to render proper accounts of his receipts and payments and to vouch the same and to pay over to the liquidator the amount properly payable to him,

the court may, on an application in accordance with the provisions of subsection (2) being made for the purpose, make an order directing the receiver or manager, as the case may be, to make good the default within such time as may be specified in the order.

(2) In the case of any such default as is referred to in paragraph (a) of subsection (1) an application for the purposes of this section may be made by any member or creditor of the company or by the Registrar and in the case of any such default as is referred to in paragraph (b) of that subsection, the application shall be made by the liquidator, and in either case the order may provide that all the costs of and incidental to the application shall be borne by the receiver or manager, as the case may be.

(3) Nothing in this section shall be taken to prejudice the operation of any enactments imposing penalties on receivers in respect of any such default as is referred to in subsection(1).

Construction of
reference to
receivers and
managers.

389. It is hereby declared that, except where the context otherwise requires

(a) any reference in this Act to a receiver or manager of the property of a company, or to a receiver thereof, includes a reference to a receiver or manager, or (as the case may be) to a receiver of part of that property and to a receiver only of the income arising from that property or from part thereof ; and

(b) any reference in this Act to the appointment of a receiver or manager under powers contained in any instrument includes a reference to an appointment made under powers which, by virtue of any enactment, are implied in and have effect as if contained in an instrument.

PART XI

GENERAL PROVISIONS AS TO REGISTRATION

Authentication
documents by
seal.

390. The Registrar may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies.

Registration of documents copies of documents, notices, &c. **391.**

(1) The Registrar may, subject to the provisions subsections (2) and (3), accept and register, or record file-

(a) any document which is by any provision of this Act required or authorized to be registered, or recorded by, or filed with, the Registrar ; and

(b) any document or copy of a document, and any return or notice, which is by any such provision required or authorized to be sent, forwarded, given, delivered, produced or in any way notified to the Registrar.

(2) Where the Registrar is not satisfied that any document or copy of a document or any return or notice is in order or in compliance with the provisions of this Act, it shall be lawful for him to refuse to register, record or file such document, copy of a document, return or notice except on an order of the court.

(3) Where no special provision is made for the payment of a fee in respect of any registration, recording or filing of any document, copy of a document, return or notice, the fees prescribed for such purpose shall be paid to the Registrar in respect of such registration, recording or filing, the fee for filing being deemed to be the same as the fee for making a record of any fact

Fees.

392. Regulations may be made prescribing the fees payable to the Registrar for

(a) the registration of a company limited by shares;

(b) the registration of a company not having a share capital;

(c) the registration of a company limited by guarantee and having a share capital or an unlimited company having a share capital;

(d) the registration of an increase in the share capital of any company;

(e) the registration of an increase in the membership of a company limited by guarantee or an unlimited company;

(f) the registration of any existing company except such companies as are by this Act, exempted from payment of fees in respect of registration under this Act;

(g) the registration or any document required or authorized to be registered or required to be delivered, sent, given or forwarded to, or filed with, the registrar other than the memorandum or abstract required to be delivered to the Registrar by a receiver or manager, or the statement required to be sent to the Registrar by the liquidator in winding up in Sri Lanka ;

(h) the registration of any return or notice required to be furnished, sent, forwarded, given, delivered or be produced to the Registrar ;

(i) the recording of any fact required or authorized by this Act to be recorded by the Registrar;

(j) the registration of off-shore companies ; and

(k) the registration of companies incorporated outside Sri Lanka and carrying on business within Sri Lanka.

PART XII

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

Application of Act to companies formed under former written law.

393. In the application of the provisions of this Act to existing companies, it shall apply in the same manner

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

(ii) in the case of a company limited by guarantee, as if the company had been formed and registered under the provisions of this Act as a company limited by guarantee; and

(iii) in the case of a company other than a limited company, as if the company had been formed and registered under the provisions of this Act as an unlimited company:

Provided that

(a) nothing in the provisions of Table A of the First Schedule hereto shall apply to a company formed and registered under any written law repealed by this Act unless adopted by special resolution of the company; and

(b) any reference, express or implied, to the date of registration shall be construed as a reference to the date on which the company was registered under any written law repealed by this Act

PART XIII

COMPANIES INCORPORATED OUTSIDE SRI LANKA CARRYING ON BUSINESS WITHIN SRI LANKA

Companies to which part XIII applies.

394. Subject to the provisions of the Companies (Special Provisions) Law, No. 19 of 1974, the provisions of this Part shall apply to all companies incorporated outside Sri Lanka which, after the appointed date, establish a place of business within Sri Lanka, and to all companies incorporated outside Sri Lanka which have, before the appointed date, established a place of business within Sri Lanka and continue to have an established place of business within Sri Lanka on the appointed date.

Documents, &c., to be delivered to Registrar by companies carrying on business in Sri Lanka.

395.

(1) Every company incorporated outside Sri Lanka which, after the appointed date, establishes a place of business within Sri Lanka, shall within one month from the date of establishment of the place of business, deliver to the Registrar for registration

(a) a certified copy of the charter, statutes or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and, where such instrument is not in the official language of Sri Lanka, in such language as may be specified by the Registrar;

(b) a list of the directors of the company, containing such particulars with respect to the directors as are by this Act, required to be contained with respect to directors in the register of the directors of a company;

(c) the names and addresses of some one or more persons resident in Sri Lanka authorized to accept on behalf of the company service of process and any notices required to be served on the company ;

(d) a statement containing the full address of

(i) the registered or principal office of the company; and

(ii) the principal place of business of the company within Sri Lanka:

(e) a certified copy, certified of recent date, of the incorporation of the company:

Provided, however, that the Registrar may, upon sufficient cause being shown by the defaulting company, extend the aforesaid period of one month.

(2) Every company incorporated outside Sri Lanka which, on or before the appointed date, establishes or has established a place of business within Sri Lanka shall, subject as hereinafter provided, within a period of one month from that date, deliver to the Registrar for registration the documents and particulars specified in subsection (1) :

Provided that where any such company has filed with the Registrar appointed under the Joint Stock Companies Ordinance, 1861, the particulars required to be filed under section 111 of that Ordinance, it shall be sufficient for such company to deliver to the Registrar for registration, within the period aforesaid,

only the particulars specified in paragraph (d) of subsection (1); and where any such company so delivers such particulars, it shall be deemed for all the purposes of this Act, to have delivered to the Registrar all the documents and particulars specified in subsection (1), in accordance with the provisions of this subsection :

Provided also that where the documents and particulars specified in subsection (1) have, at any time between the 31st day of March, 1939, and the aforesaid period of one month, been delivered by any such company to the Registrar and accepted by the Registrar for registration, the company shall be deemed for all the purposes of this Act, to have delivered to the Registrar the documents and particulars specified in subsection (1), in accordance with the provisions of this subsection:

Provided further that the Registrar may extend the aforesaid period of one month if it appears to him expedient so to do having regard to the circumstances of any particular case.

Power of companies incorporated outside Sri Lanka to hold lands. Return to be delivered to Registrar where documents, &c altered.

396. A company incorporated outside Sri Lanka which has delivered to the Registrar the documents and particulars specified in subsection (1) of section 395 have the same power to hold lands in Sri Lanka as if it were a company incorporated under this Act.

397. Where in the case of any company to which this Part applies any alteration is made in

- (a) the charter, statutes, or memorandum and articles of the company or any such instrument as aforesaid ; or
- (b) the directors of the company or the particulars contained in the list of the directors ; or
- (c) the names and addresses of the persons authorized to accept service on behalf of the company; or
- (d) the address of

- (i) the registered or principal office of the company ; or
- (ii) the principal place of business of the company within Sri Lanka,

the company shall, within the prescribed time, deliver to the Registrar for registration a return containing the prescribed particulars of the alteration.

Accounts of a company to which this Part applies.

398.

(1) Every company to which this Part applies, shall in every calendar year make out a balance sheet and profit and loss account, and, where the company is a holding company, group accounts, in such form and containing such particulars and including such documents, as under the provisions of this Act (subject, however, to any prescribed exceptions) it would, if it had been a company of the same description within the meaning of this Act, have been required to make out and lay before the company at a general meeting, and deliver certified copies of those documents to the Registrar for registration.

(2) Where any such document as is referred to in subsection (1) is not in the official language of Sri Lanka, there shall be annexed to it a translation thereof in a language specified by the Registrar and certified in the prescribed manner.

Obligation to state name of company whether limited, and country where incorporated.

399. Every company to which this Part applies shall

- (a) in every prospectus inviting subscriptions for its shares or debentures in Sri Lanka state the country in which the company is incorporated; and
- (b) conspicuously exhibit on every place where it carries on business in Sri Lanka the name of the company and the country in which the company is incorporated ; and
- (c) cause the name of the company and of the country in which the company is incorporated to be stated in legible characters in all bill-heads and letter paper, notices, advertisements and other official publications of the company; and

(d) where the liability of the members of the company is limited, cause notice of that fact to be stated in legible characters in every such prospectus as afore- . said and in all bill-heads letter paper, notices, advertisements and other official publications of the company in Sri Lanka and to be affixed on every place where it carries on its business.

Service on company to which Part XIII applies.

400. Any process or notice required to be served on a company to which this Part applies shall be sufficiently served if addressed to any person whose name has been delivered to the Registrar under this Part and left at or sent by post to the address which has been so delivered:

Provided that

(a) where any such company makes default in delivering to the Registrar the name and address of a person resident in Sri Lanka who is authorized to accept on behalf of the company service of process or notices ; or

(b) where at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on behalf of the company, or for any reason cannot be served,

a document may be served on the company by leaving it at or sending it by post to any place of business established by the company in Sri Lanka.

Registrar to be notified when company ceases to have place of business in Sri Lanka.

401. Where any company to which this Part applies, ceases to have a place of business in Sri Lanka, it shall forthwith give notice of the fact to the Registrar, and as from the date on which notice is so given the obligation of the company to deliver any document to the Registrar shall cease.

Penalties.

402. Where any company to which this Part applies fails to comply with any of the preceding provisions of this Part, the company, and every officer or agent of the company, who knowingly and wilfully authorizes or permits such default shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees, or in the case of a continuing offence two hundred and fifty rupees for every day during which the default continues.

Enforcement of duty to comply with provisions of this Part.

403.

(1) Where any company to which the provisions of this Part apply, having made default in complying with any such provision, fails to make good the default within fourteen days from the date of service of a notice on the company requiring it to do so, the court may, on an application made to the court by the Registrar or by any creditor of the company or by any other person who may appear to the court to be interested, make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.

(2) Any order made under the provisions of subsection (1) may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company responsible for the default.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any default referred to in subsection (1).

Interpretation on Part XIII.

404. For the purposes of this Part the expressions

(a) " certified " means certified in the prescribed manner to be a true copy or a correct translation ;

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

(c) " place of business " includes a share transfer or share registration office;

(d) " prospectus " has the same meaning as when used in relation to a company incorporated under this Act;

(e) " secretary" includes any person occupying the position of secretary by whatever name called.

RESTRICTIONS ON SALE OF SHARES AND OFFER OF SHARE
FOR SALE.

Dating of
prospectus and
particulars to be
contained therein.

405.

(1) It shall not be lawful for any person to issue, circulate, or distribute in Sri Lanka any prospectus offering for subscription any shares in or debentures or a company, incorporated or to be incorporated, outside Sri Lanka whether the company has or has not established, or when formed will or will not establish, a place of business in Sri Lanka, unless the prospectus is dated and

(a) contains particulars with respect to the following matters :

(i) the instrument constituting or defining the constitution of the company ;

(ii) the enactments or provisions having the force of an enactment, by or under which the incorporation of the company was effected ;

(iii) an address in Sri Lanka where the said instrument, enactments, or provisions or copies thereof and if the same are in a language other than the official language of Sri Lanka a translation thereof in a language specified by the Registrar certified in the prescribed manner, can be inspected;

(iv) the date on which and the country in which the company was incorporated :

(v) whether the company has established a place of business in Sri Lanka, and, if so, the address of its principal office in Sri Lanka;

(b) states the matters specified in Part I of the Third Schedule hereto and, subject to the provisions contained in Part III, sets out the reports specified in Part II, of that Schedule:

Provided that the provisions of sub-paragraphs (i), (ii) and (iii) of paragraph (a) shall not apply in the case of a prospectus issued more than two years from the date on which the company is entitled to commence business and, in the application of Part I of the Third Schedule hereto for the purposes of this subsection, paragraph 3 of Part I of such Schedule shall have effect with the substitution, for the reference to the articles, of a reference to the constitution, of the company.

(2) Any condition requiring or binding an applicant for shares or debentures to waive compliance with any requirements imposed by virtue of paragraph (a) or paragraph (b) of subsection (1) or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(3) It shall not be lawful for any person to issue to any person in Sri Lanka a form of application for shares in or debentures of such a company or intended company as is referred to in subsection (1) unless the form is issued with a prospectus which complies with this Part and the issue whereof in Sri Lanka does not contravene the provisions of subsection (1) of section 406 :

Provided that the provisions of this subsection shall not apply where it is shown that the form of application was issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

(4) In the event of non-compliance with or contravention of any of the requirements imposed by paragraphs (a) and (b) of subsection (1), a director or other person responsible for the issue of the prospectus shall not incur any liability by reason of such non-compliance or contravention, where

(a) as regards any matter not disclosed, he proves he was not

cognizant thereof ; or

(b) he proves that such non-compliance or contravention arose from a bona fide mistake of fact on his part;

(c) such non-compliance or contravention was in respect of matters which, in the opinion of the court dealing with the case, were immaterial or were otherwise such as ought, in the opinion of that court having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters contained in paragraph 17 of the Third Schedule hereto, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(5) The provisions of this section

(a) shall not apply to the issue to existing members or debenture holders of a company, of a prospectus or form of application relating to shares in or debentures, of the company, whether an applicant for shares or debentures has or does not have right to renounce in favour of other persons; and

(b) except in so far as it requires a prospectus to be dated, shall not apply to the issue of a prospectus relating to shares or debentures which are or are to be in all respects uniform with the shares or debentures previously issued,

but, subject as aforesaid, the provisions of this section shall apply to a prospectus or form of application whether issued on, or with reference to, the formation of a company or subsequently.

(6) Nothing in this section shall limit or diminish any liability which any person may incur under the provisions of this Act other than this section.

Provisions as to expert's consent and allotment.

406.

(1) It shall not be lawful for any person to issue, circulate or distribute in Sri Lanka any prospectus offering for subscription shares in or debentures of a company incorporated outside Sri Lanka, whether the company has or has not established, or when formed will or will not establish, a place of business in Sri Lanka

(a) if, where the prospectus includes a statement purporting to be made by an expert, he has not given, or has before delivery of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included or there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as aforesaid; or

(b) if the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by all the provisions other than penal provisions of section 52 so far as applicable thereto.

(2) In this section, the expression " expert" includes an engineer, a valuer, an accountant and any other person whose profession gives authority to a statement made by him, and for the purposes of this section a statement shall be deemed to be included in a prospectus if it is contained in, or in any report or memorandum appearing on the face of or by reference incorporated in, or issued with, such prospectus.

Registration of prospectus .

407. It shall not be lawful for any person to issue, circulate or distribute in Sri Lanka any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Sri Lanka whether the company has or has not established, or when formed will or will not establish, a place of business in Sri Lanka, unless before the issue, circulation or distribution of the prospectus in Sri Lanka, a copy thereof certified by the chairman of the company as having been approved by resolution of the managing body has

been so delivered and there is endorsed on or attached to the copy

(a) any consent to the issue of the prospectus required by the provisions of section 406 ; and

(b) where the persons making any report in accordance with Part II of the Third Schedule hereto have made therein or have without giving reasons, indicated therein any such adjustments as are mentioned in paragraph 30 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

Penalty for contravention of section 405, section 406 or section 407.

408. Any person who is knowingly responsible for the issue, circulation or distribution of a prospectus, or for the issue of a form of application for shares or debentures, in contravention of any of the provisions of section 405, section 406, or section 407 shall be guilty of an offence and shall be liable to a fine not exceeding five thousand rupees.

Civil liability for mis-statements in prospectus.

409. The provisions of section 45 shall extend to every prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Sri Lanka, whether the company has or has not established, or when formed will or will not establish, a place of business in Sri Lanka, with the substitution, for any reference to section 41, of the reference to section 406.

Interpretation of provisions as to prospectuses.

410.

(1) Where any document by which shares in or debentures of a company incorporated outside Sri Lanka are offered for sale to the public would, where the company concerned had been a company within the meaning of this Act, have been deemed by virtue of the provisions of section 47 to be a prospectus issued by the company, that document shall be deemed to be, for the purposes of this Part, a prospectus issued by the company.

(2) An offer of shares or debentures for subscription or sale to any person whose ordinary business it is to buy or sell shares or debentures whether as principal or agent shall not be deemed to be an offer to the public for the purposes of this Part.

(3) In this Part, the expressions " prospectus ", " shares * and " debentures " shall have the same meanings as and when used in relation to a company incorporated under this Act.

PART XIV

PROVISIONS RELATING TO BANKS

Definition of banking company.

411. A " banking company" means a company which carries on as its principal business the accepting of deposits of money, subject to withdrawal on demand by cheque, draft, order or otherwise, notwithstanding that it engages in any one or more of the following forms of business, namely :

(a) the borrowing, raising or taking up of money ; the lending or advancing of money either upon or without security ; the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hoondees, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips and other instruments, and securities whether transferable or negotiable or not; the granting and issuing of letters of credit, travelerâ€™s cheques and circular notes; the buying, selling and dealing in bullion and specie ; the buying and selling of foreign exchange including foreign bank notes, the acquiring, holding, issuing on commission, under writing and dealing in stock, funds, shares, debentures, debenture stock, bonds) obligations, securities and investments of all kinds, the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others ; the negotiating of loans and advances ; the receiving of all kinds of bonds, scrips or valuables on deposit, or for safe custody or otherwise and the carrying on of the business of safe deposit; the collecting and transmitting of money and securities ;

- (b) acting as agents for Governments or local authorities or for any other person or persons ; the carrying on of agency business of any description other than the business of a managing agent of any company, which is not a banking company, but including the clearing and forwarding of goods, the power to act as attorneys and to give discharges and receipts ;
- (c) contracting for public and private loans and negotiating and issuing the same ;
- (d) the promoting, effecting, insuring, guaranteeing, underwriting, participating in managing and carrying out of any issue, public or private, of State, municipal or other loans or of shares, stock, debentures, or debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue;
- (e) carrying on and transacting every kind of guarantee and indemnity business;
- (f) promoting or financing or assisting in promoting or financing any business undertaking or industry, either existing or new, and developing or forming the same either through the instrumentality of syndicates or otherwise ;
- (g) acquisition by purchase, lease, exchange, hire or otherwise of any property immovable or movable and any rights or privileges which the company may think necessary or convenient to acquire or the acquisition of which in the opinion of the company is likely to facilitate the realization of any securities held by the company or to prevent or diminish any apprehended loss or liability ;
- (h) managing, selling and realizing all property movable and immovable which may come into the possession of the company in satisfaction or part satisfaction of its claims;
- (i) acquiring and holding and generally dealing with any property and any right, title or interest in any property movable or immovable which may from the security or part of the security for any loans or advances or which may be connected with any such security;
- (j) undertaking and executing trusts;
- (k) undertaking the administration of estates as executor, trustee or otherwise ;
- (l) taking or otherwise acquiring and holding shares in any other company having objects similar to those of the company;
- (m) establishing and supporting or aiding in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the company or the dependants or connections of such persons ; granting pensions and allowances and making payments towards insurance; subscribing to or guaranteeing moneys for charitable or benevolent objects or for any exhibition or for any public, general or useful object;
- (n) the acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purposes of the company ;
- (o) selling, improving, managing, developing, exchanging, leasing, mortgaging, disposing of or turning into account or otherwise dealing with all or any part of the property and rights of the company ;
- (p) acquiring and undertaking the whole or any part of the business of any person or company when such business is of a nature enumerated or described in this section;
- (q) doing all such other things as, are incidental or conducive to the promotion or advancement of the business of the company ; ,
- (r) engaging in management consultancy services ;
- (s) providing for the training in banking, accounting, valuation, project and credit appraisal and allied subjects;
- (t) engaging in the business of hire-purchase services, factoring, leasing and warehousing ;
- (u) providing for medium and long term credit for development.

Registration on the carrying on of ensuring business. **412.**

(1) No company, association, or partnership shall carry on the business of banking unless it is registered as a public company under this Act.

(2) No company, association or partnership which is formed outside Sri Lanka shall carry on the business of banking in Sri Lanka unless

(a) it is formed in pursuance of some written law of the Government of a foreign country, Royal Charter or Letters Patent or is duly incorporated as a banking company outside Sri Lanka, and

(b) has an established place of business in Sri Lanka and has complied with the provisions of Part XIII of this Act.

(3) Where any company, association or partnership carries on the business of banking in contravention of the provisions of subsection (1) or subsection (2), each of such persons

(a) shall be guilty of an offence and shall be liable to a fine not exceeding live hundred rupees or to imprisonment of either description for a term not exceeding three months or to both such fine and imprisonment; and

(b) shall, without prejudice to the provisions of paragraph (a), be severally liable for the payment of the whole debts of the company, association or partnership of which he is or was a member, and may be sued accordingly without the joinder in the suit of any other member of the company, association or partnership.

Limitation of activities of banking companies.

413.

(1) No company formed after the appointed date for the purpose of carrying on business as a banking company or which uses as part of the name under which it proposes to carry on business the word "bank", "banker" or "banking" shall be registered under this Act, unless the memorandum limits the objects of the company to the carrying on of the business of accepting deposits of money subject to withdrawal on demand by cheque, draft, order or otherwise along with some or all of the forms of business specified in section 411.

(2) No company other than a banking company shall use as part of its name or its description any of the words "banks", "banker" or "banking" or any other derivative or their equivalent in another language and no company shall carry on the business of banking in Sri Lanka unless it uses as part of its name at least one of such words:

Provided that a banking company formed outside Sri Lanka and carrying on the business of banking and whose name does not contain the words "bank", "banker" or "banking" in any language may carry on such business in Sri Lanka notwithstanding the commission of these words in its name.

(3) No firm, individual or group of individuals shall, for the purpose of carrying on any business, use as part of its or his name or description any of the words "bank", "banker" or "banking" or any of their derivatives or their equivalent in another language.

(4) No banking company incorporated in Sri Lanka, and no banking company incorporated outside Sri Lanka which has established a place of business within Sri Lanka, shall after the expiry of two years from the appointed date carry on any form of business other than those specified in section 411:

Provided that the Minister may, having regard to the national interest and in the interest of the national economy, by notification published in the Gazette specify, in addition to the business specified in section 411, other forms of business which it may be lawful under this Part for a banking company to engage in.

Banking company not to employ managing agent other than a banking company. restriction on

414. No banking company shall, after the expiry of two years from the appointed date, employ or be managed by a managing agent other than a banking company.

415. Notwithstanding anything contained in section 107, no banking company shall

commencement of business unless it satisfies such capital requirements as may be determined from time to time by the Central Bank of Ceylon having regard to the interest of the national banking company. economy.

Prohibition of charge on unpaid capital. **416.** No banking company shall create any charge upon any unpaid capital of the company, and any such charge shall be invalid.

Reserve fund. **417.**

(1) Every banking company shall, after the Reserve appointed date, maintain a reserve fund.

(2) Every banking company shall out of the declared profits of each year and before any dividend is declared transfer to the reserve fund

(a) a sum equivalent to not less than twenty per centum of such profits until the amount of the said reserve fund is equal to fifty per centum of the paid-up capital; and

(b) thereafter, in every year in which the liabilities exceed the paid-up capital, a sum equivalent to not less than ten per centum of such profits until the amount of the said reserve fund is equal to the paid-up capital.

(3) A banking company shall invest the amount standing to the credit of its reserve fund in securities mentioned in section 20 of the Trusts Ordinance or in any approved security or keep such amount deposited in a special account to be opened by the company for the purpose in any prescribed banking company:

Provided that the provision of this subsection shall not apply to a banking company incorporated before the appointed date till after the expiry of two years from such date.

(4) In this section "approved security" means any security approved by the Minister by notification published in the Gazette.

(5) Subject as hereinafter provided, the preceding provisions of this section shall apply to every banking company in incorporated in Sri Lanka and to every banking company incorporated outside Sri Lanka which has an established place of business within Sri Lanka :

Provided, however, that such provisions shall not apply to any prescribed banking company.

Restriction on nature of subsidiary company. **418.**

(1) A banking company shall not form any subsidiary company which is not a banking company.

(2) Save as provided in subsection (1), a banking company shall not hold shares in any company whether as pledgee, mortgagee or absolute owner of an amount exceeding forty per centum of the issued share capital of that company :

Provided that nothing in this subsection shall apply to shares held by a banking company before the appointed date.

Penalty for default in complying with certain requirements of this Part. **419.** Where default is made in complying with any of the requirements of section 413, section 414, section 415, section 416, section 417 or section 418, every director or other officer of the company who is knowingly and wilfully a party to the default shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues.

Power of court to stay proceedings. **420.**

(1) The court may, on the application of a banking company which is temporarily unable to meet its obligations, make an order staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and condition as it shall think fit and proper and may from time to time extend the period.

(2) No application shall be made under the provisions of subsection (1), unless it is accompanied by a report of the Director of Bank Supervision of the Central Bank of Ceylon :

Provided, however, that the court may, for sufficient reasons grant interim relief, even if such application is not accompanied by such report.

(3) The provisions of this section shall apply to every banking company incorporated in Sri Lanka and every banking company formed outside Sri Lanka which has an established place of business within Sri Lanka.

Definition of "business of banking".

421. For the purposes of this Part, " the business of banking " means the business of accepting deposits of money, subject to withdrawal on demand by cheque, draft, order or otherwise whether or not such business is carried on along with any one or more of the forms of business specified in section 411.

PART XV

CONSTITUTION AND POWERS OF ADVISORY COMMISSION

Appointment
amp;c. of Advisory
Commission.

422.

(1) For the purposes of advising the Minister on any matter referred to him in relation to the law relation to companies, the Minister may

(a) constitute a Commission (hereinafter referred to as the " Advisory Commission ") consisting of not less than five and not more than ten persons with suitable qualifications; and

(b) appoint one of such persons to be Chairman of the said Advisory Commission.

(2) It shall be the duty of the Advisory Company

(a) to inquire into and report to the Minister on any matter or question relating to companies and the law applicable to companies as may be referred to it by the Minister from time to time ;

(b) to review the law relating to and applicable to companies from time to time and to make proposals to the Minister for the alteration, modification or addition to such law ;

(c) in making the recommendations referred to in paragraph (a) or (b) to consult and take into consideration where the Advisory Commission deems necessary the views of trade chambers, professional organizations, monetary institutions; governmental authorities and the general public.

(3) The Registrar shall be an ex officio member of the Advisory Commission and shall also function as its Convener and Secretary.

(4) The Minister may give special or general directions in writing as to the performance of the duties and the exercise of the powers of the Advisory Commission, and the Advisory Commission shall give effect to such directions.

(5)

(a) Subject to the provisions of subsection (6), the term of office of the members of the Advisory Commission shall be three years:

Provided that a member appointed in place of a member who resigns or is removed or otherwise vacates office, shall hold office for the unexpired part of the term of office of the member whom he succeeds.

(b) Any member of the Advisory Commission who vacates office by efflux ion of time shall be eligible for reappointment.

(6)

(a) A member of the Advisory Commission may resign from office by letter addressed to the Minister.

(b) All members of the Advisory Commission shall hold office during good behaviour and may be removed from office by the Minister.

(c) Where a member is temporarily unable to discharge the duties of his office on account of ill health, absence from Sri Lanka or any other cause, the Minister may appoint some other person to act as a member in his place

(7) The Advisory Commission may, with the approval of the Minister, appoint such officers and servants to assist the Advisory Commission in carrying out its duties under this Part.

(8) The members of the Advisory Commission, its Secretary and other officers and servants may be paid such remuneration out of the Fund as may be determined by the Minister.

PART XVI

MISCELLANEOUS

APPOINTMENT OF OFFICERS, & C.

Appointment of
officers &c. **423.**

(1) There may be appointed

(a) a person, by name or by office, to be or to act as the Registrar of Companies ;

(b) a person, by name or by office, to be or to act as the Deputy Registrar of Companies ;

(c) persons, by name or by office, to be or to act as Assistant Registrars; and

(d) such other officers and servants as may from time to time be required for the purposes of this Act.

(2) Any person appointed under the provisions of subsection (1) to be or to act as the Deputy or an Assistant Registrar of Companies, may subject to the general directions of the Registrar, exercise all the powers, perform all the duties and discharge all the functions of the Registrar under the Act.

Copies of
damaged or
illegible document. **424.** Where any document filed with, or in the custody of, the Registrar is damaged or is in danger of becoming illegible, the Registrar may, if he thinks fit, direct a copy thereof to be made, verified, and certified in any such manner as he may determine, and thereupon such copy shall be substituted for, and shall for all purposes of this Act be deemed to be, the document so damaged or in danger of becoming illegible.

Fund

Fund. **425.**

(1) For the purposes of this Act there shall be established a Fund which shall be maintained in such manner as the Secretary to the Ministry of the Minister in charge of the subject of Trade in consultation with the Registrar may direct.

(2) There shall be paid into the Fund two-thirds of every fee or charge prescribed, levied or recovered under this Act by the Registrar.

(3) One-third of every fee or charge prescribed, levied or recovered under this Act by the Registrar shall be paid into the Consolidated Fund.

(4) There shall be paid out of the Fund referred to in subsection (1), all sums of money required to defray any expenditure incurred by the Registrar in the exercise, discharge and performance of his powers, functions and duties under this Act and all sums of money as are required to be paid out of such Fund by or under this Act or any regulation made thereunder.

(5) The Secretary to the Ministry of the Minister in charge of the subject of Trade shall as soon as possible after the end of each financial year prepare a

report on the administration of the Fund and shall cause to be maintained a full and appropriate account of the Fund in respect of each financial year.

(6) The Auditor-General shall audit the accounts of the Fund in accordance with Article 154 of the Constitution.

PROHIBITION OF PARTNERSHIP WITH MORE THAN TWENTY MEMBERS

Prohibition of partnership with more than twenty member.

426.

(1) No company, association, or partnership consisting of more than twenty persons which is formed outside purpose of carrying on any business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act or under some other enactment.

(2) No company, association or partnership consisting of more than twenty persons, which is formed outside Sri Lanka, shall carry on in Sri Lanka any business that has for its object the acquisition of gain by the company, association OF partnership or by the individual members thereof unless

- (a) it is duly incorporated as a company outside ; and
- (b) has an established place of business within,

Sri Lanka.

(3) 'Where any company, association or partnership consisting of more than twenty persons is formed in contravention of the provisions of subsection (1) or carries on any business in contravention of the provisions of subsection (2). each of such persons

(a) shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees or to imprisonment of either description for a term not exceeding three months or to both such fine and imprisonment ; and

(b) shall, without prejudice to the provisions of para- graph (a), be severally liable for the payment of the whole debts of the company, association or partnership of which he is or was a member, and may be sued accordingly without the joinder in the suit of any other member of the company, association or partnership.

INSPECTION AND PRODUCTION OP DOCUMENTS, ENFORCEMENT ON DUTY OF COMPANIES TO MAKE RETURNS AND THE PRODUCTION AND INSPECTION OF BOOKS

Inspection, production and evidence of documents kept by Registrar.

427.

(1) Any person may

(a) inspect the documents kept by the Registrar on payment of such fee, as may be prescribed ;

(b) require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document to be certified by the Registrar, on payment for the certificate, certified copy or extract of such fees as may be prescribed:

Provided that the right conferred by the provisions of this subsection shall not extend to any document annexed to an annual return referred to in sections 123 and 124 to any private company, other than a private company which is a subsidiary of a public company, unless the person applying for the inspection or requiring a copy or extract of any document aforesaid, is a member of creditor of that company :

Provided further that the right conferred by the provisions of paragraph (a) of this subsection shall not extend to any copy sent to the Registrar under section 385 of a statement as to the affairs of a company or of any comments of the receiver or his successor or a continuing receiver or manager thereon, but only to the summary thereof, except where the person claiming the right either is, or is the agent of, a person stating himself in writing to be a member or creditor of the company to which the statement relates, and the right conferred by the provisions of paragraph (b) of this subsection shall be similarly limited.

(2) No process for compelling the production of any document kept by the Registrar shall issue from any court except with the leave of that court, and any such process if issued shall bear thereon a statement that it is issued with the leave of the court.

(3) A copy of, or extract from, any document kept and registered at any of the offices for the registration of companies in Sri Lanka, certified to be a true copy under the hand of the Registrar shall in all legal proceedings be admissible in evidence as of equal validity with the original document.

(4) Any person untruthfully stating himself in writing for the purposes of the proviso to subsection (1) to be a member or creditor of a company shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees.

Enforcement of
duty of company
make return to
Registrar. **428.**

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

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

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

Unlawful
disclosure of
information
relating to
companies.

429. Any person who, being or having been employed in the Department of the Registrar, communicates any information relating to any documents filed by a company, under the provisions of this Act with the Registrar or matters connected therewith obtained by him during the course of his employment in or at the Department of the Registrar to any person not entitled or authorized to receive such information, or makes any other unlawful use of such information, shall be guilty of an offence, and shall be liable to a fine not exceeding twenty thousand rupees or to imprisonment for a term not exceeding twelve months or to both such fine and such imprisonment.

Production and
inspection of
books where
offence
suspected.

430.

(1) Where on an application made to a Magistrate in chambers by the Attorney-General, the Registrar or any officer of police not below the rank of Assistant Superintendent, there is shown to be reasonable cause to believe that any person has, whilst being an officer of a company, committed an offence in connection with the management of the company's affairs and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company, an order may be made

(a) authorizing any person named therein to inspect the said books or papers or any of them for the purpose of investigating and obtaining evidence of the offence; or

(b) requiring the secretary of the company or such other officer thereof as may be named in the order to produce the said books

or papers or any of them to a person named in the order at a place so named.

(2) The provisions of subsection (1) shall apply also in relation to any books or papers of a person carrying on the business of banking so far as they relate to the company's affairs, as it applies to any books or papers, of or under the control of the company, except that no such order as is referred to in paragraph (b) of that subsection shall be made by virtue of the provisions of this subsection.

(3) An appeal shall not lie from a decision of a Magistrate on an application made under the provisions of this section.

Registrar's power to call for information and to inspect books, registers and documents. **431.**

(1) The Registrar may, by written notice, direct any company (

a) to furnish before a date specified in the notice such information relating to the company as the Registrar may require for any purpose of this Act or such information or explanations as the Registrar may by the notice require in respect of any particulars stated in any return, declaration, or other document furnished by the company ; and

(i) which have or should have been stated in any return, declaration or other document furnished by the company; or

(ii) which should have been stated in any return or other document which should have, but actually has not, been furnished by the company ; as at the date or dates specified in the notice ; and

(b) to produce before a date specified in the notice any book, register or other document kept or required to be kept by the company in connection with its business or transactions.

(2) Where default is made in complying with any direction given by the Registrar under the provisions of subsection (1), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine.

Powers of Registrar to carry out investigations or conduct inquiries into affairs of companies.

432. Where the Registrar considers it necessary for any purpose under this Act to carry out an investigation or to conduct an inquiry into the affairs of a company, he may appoint one or more competent inspectors to investigate or inquire into the affairs of such company, and to report thereon in such manner as the Registrar directs ; and the provisions of sections 163, 164 and 165 shall, mutatis mutandis, apply in any such instance.

MISCELLANEOUS OFFENCES

Penalty for false statement.

433. Where any person in any return, report, certificate, balance sheet, or other document, required by or for the purpose of any of the provisions of this Act specified in the Ninth Schedule hereto, wilfully makes a statement false in any material particular, knowing it to be false, he shall be guilty of an offence, and shall be liable to a fine not exceeding twenty thousand rupees or to imprisonment of either description for a term not exceeding one year or to both such fine and imprisonment.

Penalty for improper use of word " Limited".

434. Where any person or persons trade or carry on business under any name or title of which " Limited" or any contraction or imitation of that word, is the last word, that person or those persons shall, unless duly incorporated with limited liability, be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees for every day upon which the name or title has been used.

GENERAL PROVISIONS AS TO OFFENCES

Provision with respect to default fines and meaning of "officer who is in default". **435.**

(1) Where by any provision in this Act it is provided that a company and every officer of the company who is in default shall be liable to default fine, the company and every such officer shall, for every day during which the default continues, be liable to a fine not exceeding such amount as is specified in such provision or, where the amount of the fine is not so specified, to a fine not exceeding five hundred rupees for every day during which the default continues-

(2) Where any default, refusal or contravention, for which a company or any officer of the company is liable to a default fine is continued after conviction in respect thereof by a court, then, in addition to any such fine as may have been imposed by the court at the time of such conviction, the court may from time to time, upon the production of a certificate to that effect from the Registrar, impose a further fine under the provisions of subsection (1) for every day during which the default, refusal or contravention, as the case may be, is so continued.

(3) For the purpose of any provision in this Act which provides that an officer of a company who is in default shall be liable to a fine or penalty, the expression " officer who is in default" means any director, manager, secretary or other officer of the company, who knowingly and wilfully authorizes or permits the default, refusal or contravention referred to in that provision.

Compounding of certain offences. **436.**

(1) Where any company has made default in complying with any provision of this Act requiring it to file with, or deliver or send to the Registrar any account, document or return or to give notice to him of any matter, and has by reason of such default committed an offence against this Act, the Registrar may, if he thinks fit, instead of instituting proceedings in court or, where such proceedings have already been instituted, instead of continuing such proceedings against the company or any officer of the company in respect of such offence, accept from the company or such officer such sum of money as the Registrar thinks proper in composition of the offence; and any sum so accepted shall be credited to the Fund established under this Act.

(2) Where the Registrar has accepted any sum of money under the provisions of subsection (1) in composition of any offence, proceedings shall not be taken against the company or any officer of the company in respect of that offence, or if already taken, shall not be continued.

(3) Where any sum of money payable in composition of an offence under the provisions of subsection (1) remains unpaid for a period of one month from the date fixed for its payment by the Registrar or such extended time as the Registrar may allow, the Registrar may report the said default in such payment to a Magistrate and the amount thereof shall be recovered from the company or any officer of the company in respect of such default in the same manner as if it were a fine imposed by court, and such court shall direct that the amount in default be credited to the Fund.

Offence summarily triable. **437.** All offences under this Act, made punishable

(a) by a fine only ;

(b) by a fine not exceeding twenty thousand rupees with imprisonment of either description for a term not exceeding one year ; or

(c) by imprisonment of either description for a term not exceeding one year,

may be tried summarily by a Magistrate.

Imposition and application of fines. **438.**

(1) A fine may be imposed by a court for any offence under this Act notwithstanding that such fine exceeds the amount of the " fine which the court may impose in the exercise of its ordinary jurisdiction-

(2) The court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings or in or towards rewarding the persons on whose information or at whose suit the fine is recovered.

Savings as to private prosecutors.

439. Nothing in this Act relating to the institution of criminal proceedings by the Attorney-General shall be taken to preclude any person from instituting or carrying on any such proceedings.

Savings for privileged communications.

440. Where proceedings are instituted under this Act against any person by the Attorney-General, nothing in this Act shall be taken to require any person who has acted as attorney-at-law for the accused to disclose any privileged communication made to him in that capacity.

SERVICE OF LEGAL PROCESS AND DOCUMENTS

Application and Reference to Court

Procedure.

441.

(1) Every application or reference to court under the provisions of this Act unless otherwise expressly provided, or unless the court otherwise directs, shall be by way of petition and affidavit and every person against whom such application or reference shall be made shall be named a respondent in the petition and shall be given notice of the same and be entitled to object to such application or reference.

(2) Pending the making of a final order in any application or reference made under the provisions of subsection (1) the court may on the application of a party to the proceedings make an interim order including a restraining order which it thinks fit.

(3) Every application or reference made to the court in the course of any proceedings under the Act, incidental thereto, shall be made by motion and a memorandum in writing of such motion shall be at the same time delivered to the court.

(4) The Registrar shall be entitled to be heard or represented in any application or reference made to the court under this Act at any stage of any such application or reference.

(5) In all proceedings before court by way of application or reference under this Act; the costs of the Registrar shall be in the discretion of the court, but the Registrar shall not be ordered to pay costs of any other of the parties.

Service of documents on company.

442. A document may be served on a company

(a) by leaving it at or sending it by post to the registered office of the company ; or

(b) by delivering it, or sending it by post, to any director secretary, manager, or other officer of the company ;or

(c) if for any reason it cannot be served as aforesaid, on such director, secretary, manager or other officer, by delivering it, or sending it by post it may be served in such manner as may be ordered by the court.

Documents to be received in evidence.

443. Any document purporting to be made or furnished for the purposes of this Act by or on behalf of a company or by any person shall for all purposes be, until the contrary is proved, deemed to have been made or furnished by such company or person, as the case may be. Any person signing any such document shall be deemed to be cognizant of all matters therein.

Cost in actions by certain limited companies.

444. Where a limited company is plaintiff in any action or other legal proceeding, any judge having jurisdiction in the matter may, where it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given-

Recovery expenses and

445. Where an expenses or fees payable to the Registrar under this Act are not paid by the

fees. person liable to pay the same upon demand, such default may be reported to a Magistrate, and the amount thereof shall be recovered in the same way as if it were a fine imposed by such Magistrate, who shall direct that the amount in default be credited to the Fund.

Proceeding in actions by shareholder or debenture holder against a to be by way of summary procedure. **446.**

- (1) Where an action is instituted against any company by any person in his capacity as a holder of shares in or of debentures of such company, the proceedings in such action shall be taken by way of summary procedure
- (2) Notwithstanding anything to the contrary in any other written law, the petition presented in court in any action referred to in subsection (1) shall bear a stamp or stamps of the value of fifty rupees.

Power of court to grant relief in certain cases. **447.**

- (1) Where in any proceeding for negligence, default, breach of duty, or breach of trust against an officer of a company or a person employed by a company as auditor (whether he is or not an officer of the company) it appears to the court hearing the case that that officer or person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that court may relieve him, either wholly or partly, from his liability on such terms as the court may think fit.
- (2) Where any such officer or person referred to in subsection (1) has reason to apprehend that any claim will or might be made against him, in respect of any negligence, default, breach of duty or breach of trust, he may apply to the court for relief, and the court on any such application shall have the same power to relieve him as under this section it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

Regulations. **448.**

- (1) The Minister may make regulations for or in respect of all matters which are stated or required by this Act to be prescribed or for which regulations are required or authorized by this Act to be made.
- (2) Every regulation made by the Minister shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.
- (3) Every regulation made by the Minister shall as soon as convenient after its publication in the Gazette, be brought before Parliament for approval. Any regulation which is not so approved shall be deemed to be rescinded as from the date of disapproval but without prejudice to any thing previously done there under. Notification of the date on which any regulation is so deemed to be rescinded shall be published in the Gazette.

INTERPRETATION

Interpretation. **449.**

- (1) In this Act, unless the context otherwise requires
 - " accounts" Includes a company's group accounts, whether prepared in the form of accounts or not;
 - " agent" does not include a person's lawyer acting as such ;
 - " annual return "annual return" means the return required to be made, in the case of a company having a share capital, under the provisions of section 120, and, in the case of a company not having a share capital, under the provisions of section 121;
 - " articles " means articles of association of a company, as originally framed or as altered by special resolution, including so far as they apply to the company,

the regulations contained in Part C of the Schedule to the Joint Stock Companies Ordinance, 1861, or in Table B in the Schedule to the Joint Stock Banking Ordinance, 1897, or in Table A in the First Schedule to the Companies Ordinance, or in Table A in the First Schedule hereto ;

" banking company " means a banking company as defined in section 411;

" book and paper" and " book or paper" include accounts, deeds, writings and documents ;

"company" means a company formed and registered under this Act or an existing company ;

"the court" used in relation to a company means the District Court having jurisdiction to wind up the company;

"debenture" includes debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of the company or not;

" director " includes any person occupying the position of director by whatever name called;

" district" means a judicial district as determined by the Minister in charge of the subject of Justice under section 4 of the Judicature Act, No. 2 of 1978;

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

" existing company" means a company formed and registered under the Joint Stock Companies Ordinance, 1861, or the Joint Stock Banking Ordinance, 1897, or the Companies Ordinance;

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

" Fund " means the Fund established under section 425 ;

" issued generally" means, in relation to a prospectus, issued to persons who are not existing members of the company ;

"legal rate" means the rate to be prescribed by regulation under this Act;

"legal representative" means an executor or administrator or in the case of an estate not administrable in law the next-of-kin who have adiated the inheritance;

"manager" includes any person occupying the position of manager by whatever name called ;

" managing agents" means a person, firm or company entitled to the management of the whole affairs of a company by virtue of an agreement with the company, and under the control and direction of the directors except to the extent, if any, otherwise provided for in the agreement, and includes any person, firm or company occupying such position by whatever name called ;

Explanation. If a person occupying the position of a managing agent ,calls himself a manager he shall nevertheless be regarded as managing agent and not as manager for the purposes of this Act;

" memorandum " means the memorandum of association of a company, as originally framed or as altered in pursuance of any enactment;

" officer" in relation to a body corporate, includes a director, manager or secretary;

" prescribed " means as respects the provisions of this Act, relating to the winding up of companies, prescribed by rules, and as respects the other provisions of this Act. prescribed by regulation :

" prospectus" means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription to or purchase of any shares or debentures of a company and includes any such notice, circular, advertisement, or other Invitation notwithstanding that it may contain on the face thereof that it is not a prospectus or offer of shares to the public;

" Registrar " means the Registrar of Companies or other officer performing under this Act, the duty of registration of companies ;

" regulation" means a regulation made by the Minister under this Act; and

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

(2) A person shall not be deemed to be within the meaning of any provision in this Act a person in accordance with whose directions or instructions the directors of a company are accustomed to act, by reason only that the

directors of the company act on advice given by him in a professional capacity.
(3) Any reference in this Act to a body corporate or to a corporation should be construed as not including a corporation sole but as including a company incorporated outside Sri Lanka.

TRANSITIONAL PROVISIONS AND SAVINGS

Transitional provisions.

450.

(1) Without prejudice to the provisions of section 5 and 10 of the Interpretation Ordinance-

(a) nothing in the repeal of any former written law relating to companies shall affect any order, rule, regulation, scale of fees, appointment, conveyance, mortgage, deed or agreement made, resolution passed, direction given, proceeding taken, instrument issued or thing done under any former written law relating to companies, but any such order, rule, regulation, scale of fees, appointment, conveyance mortgage, deed, agreement, resolution, direction, proceeding, instrument or thing shall, if in force on the appointed date, continue in force, and so far as it could have been made, passed, given, taken, issued or done under this Act, shall have effect as if made, passed, given, taken, issued, or done under the provisions of this Act;

(b) any document referring to any former written law relating to companies shall be construed as referring to the corresponding provision of the provisions of this Act;

(c) any person appointed to any office under or by virtue of any former written law relating to companies shall be deemed to have been appointed to that office under or by virtue of the provisions of this Act;

(d) any register kept under any former written law relating to companies shall be deemed part of the register to be kept under the corresponding provisions of this Act;

(e) all funds and accounts constituted under the provisions of this Act, shall be deemed to be in continuation of the corresponding funds and accounts constituted under the former written law relating to companies.

(2) In this section the expression " former written law relating to companies " means any written law repealed by the Companies Ordinance or this Act.

Savings.

451. Nothing in this Act, shall affect-

(1) the incorporation of any company registered under any written law repealed by the Companies Ordinance or this Act;

(2) Part C of the Schedule to the Joint Stock Companies Ordinance, 1861, or any part thereof, so far as the same applies to any company in existence on the appointed date ;

(3) Table B in the Schedule to the Joint Stock Banking Ordinance, 1897, or any part thereof, so far as the same applies to any company in existence on the appointed date.

(4) Tables A and C in the First Schedule to the Companies Ordinance or any part thereof, so far as the same applies to any Company in existence on the appointed date.

Savings of pending proceedings for winding up.

452. Subject as hereinafter provided, the provisions of this Act with respect to winding up shall not apply to any company of which the winding up has commenced before the appointed date, but every such company shall be wound up in the same manner and with the same incidents as if this Act had not been enacted, and for the purposes of the winding up the written law under which the winding up commenced shall be deemed to remain in full force: Provided, however, that where any such company is being so wound up the court may, on application made by the Registrar or by any creditor of the company and where the court is of

opinion that it is expedient to do so in the circumstances of the case, make order that any specified provision of this Act with respect to winding up shall apply to the winding up of such company, and may give such incidental or supplemental directions as may appear to the court to be necessary for the purposes of the application of such provision; and where the court makes any such order any provision of this Act specified in the order shall subject to any such directions, apply accordingly.

PART XVII

REPEAL

Repeal.

453. The Companies Ordinance (Chapter 145) is hereby repealed.