



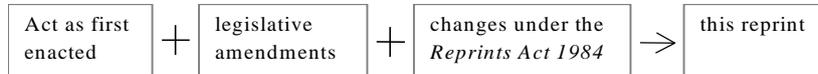
Western Australia

Companies (Co-operative) Act 1943

Reprint 4: The Act as at 7 August 2009

Guide for using this reprint

What the reprint includes



Endnotes, Compilation table, and Table of provisions that have not come into operation

1. Details about the original Act and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Validation, transitional, savings, or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the Act being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

Notes amongst text (italicised and within square brackets)

1. If the reprint includes a section that was inserted, or has been amended, since the Act being reprinted was passed, editorial notes at the foot of the section give some history of how the section came to be as it is. If the section replaced an earlier section, no history of the earlier section is given (the full history of the Act is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
 - removed (because it was repealed or deleted from the law); or
 - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

Reprint numbering and date

1. The reprint number (in the footer of each page of the document) shows how many times the Act has been reprinted. For example, numbering a reprint as “Reprint 3” would mean that the reprint was the 3rd reprint since the Act was passed. Reprint numbering was implemented as from 1 January 2003.
2. The information in the reprint is current on the date shown as the date as at which the Act is reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

Western Australia

Companies (Co-operative) Act 1943

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Defined Terms



Western Australia

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Companies (Co-operative) Act 1943

**An Act to consolidate and amend the law relating to companies, and
for other purposes.**

Part I — Preliminary

Division 1 — Interpretation

1. Short title and commencement

- (1) This Act may be cited as the *Companies (Co-operative) Act 1943*, and, subject to subsection (2), shall come into operation on a date to be fixed by proclamation¹.
- (2) The Governor may by any proclamation issued under subsection (1) declare that any sections, divisions, or Parts, which are specified in the proclamation, shall not come into operation until a date or until after the expiration of a period to be specified in the proclamation, and in any such case the proclamation shall take effect according to the tenor thereof.

[Section 1 amended by No. 31 of 1946 s. 2; No. 2 of 1954 s. 1(3); No. 82 of 1961 s. 382.]

[2. Deleted by No. 10 of 1998 s. 76.]

3. Terms used

In this Act and the Schedules hereto, and any rules made thereunder, the following terms have the meanings hereinafter respectively assigned to them, if not inconsistent with the context or subject matter: —

Articles means the 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 (as the case may be) in Table A or Table B in the Second Schedule.

Attorney, in relation to companies, includes agent, director, manager, and secretary, whether appointed by power of attorney or otherwise, or any person for the time being discharging any of such offices in this State.

Bankruptcy includes liquidation by arrangement of the affairs of a debtor under the provisions of the *Bankruptcy Act 1924*², and **bankrupt** has a corresponding meaning.

Books and papers and **books or papers** include accounts, deeds, writings, and documents.

Charge means —

- (a) a mortgage or charge for the purpose of securing any issue of debentures;
- (b) a mortgage or charge on uncalled share capital of the company;
- (c) a mortgage or charge created or evidenced by an instrument which, if executed by an individual, would require registration or would be registrable as a bill of sale;
- (d) a mortgage or charge on the book debts of a company;
- (e) a floating charge on the undertaking or property of the company;
- (f) a mortgage or charge on the calls made but not paid;
- (g) a mortgage or charge on goodwill, on a patent, on a trade mark, or on a copyright, or on a license under a copyright.

The term also includes an agreement to create a charge.

Company means a company formed and registered under this Act, or an existing company.

Contributory means every person liable to contribute to the assets of a company in the event of the same being wound up, and shall also, in all proceedings for determining the persons who are to be deemed contributories and in all proceedings prior to the final determination of such persons, include any person alleged to be a contributory.

Court means the Supreme Court or a judge thereof and includes the Master when exercising, in accordance with the Rules of Court, the jurisdiction of the Court.

Creditor means a person who, in the event of the winding-up of a company, would be entitled to prove under such winding-up.

Debenture includes debenture stock, bonds, and other securities of a company, whether constituting a charge on the assets of the company or not.

Deed of Settlement shall include any contract of co-partnership or other instrument constituting or regulating a company, and not being an Act of Parliament or Royal Charter or Letters Patent or the articles of association of a company.

Department means the department of the Public Service principally assisting in the administration of this Act.

Director includes any person occupying the position of director by whatever name called.

Document includes summons, notice, order and other legal process and registers.

Existing company means a company, not being a foreign company, registered under or subject to the *Companies Act 1893* (56 Vict., No. 8)³.

Foreign company means any joint stock company or corporation duly incorporated for trading or other business purposes according to the laws in force in the country, other State, or place in which it is incorporated, other than a company incorporated in Western Australia.

Liability in Part VII includes any compensation for work or labour done; any obligation or possibility of an obligation to pay money or money's worth pursuant to or on the breach of any express or implied covenant, contract, agreement, or undertaking, whether such breach does or does not occur or is or is not likely to occur or capable of occurring before the conclusion of the winding-up of a company; and generally includes any express or implied covenant, contract, agreement, engagement or undertaking to pay or capable of resulting in the payment of money or money's worth, whether such payment be, as respects amount, fixed or unliquidated, and payable in one sum or by instalments or periodical payments, as respects time,

present or future, certain or dependent on any one contingency, or 2 or more contingencies, or as to mode of valuation capable of being ascertained by fixed rules, or assessable only as matter of opinion.

Limited company means a company, the liability of the members of which is by the memorandum limited to the amount (if any) unpaid on the shares respectively held by them.

Liquidator includes official liquidator, provisional official liquidator, or provisional liquidator.

Local register means the register to be opened and kept in this State by a foreign company and provided for in Part XI.

Manager means principal executive officer of a company whether such principal executive officer be the managing director, or the secretary, or some other officer with some other designation.

Memorandum means the memorandum of association or deed of settlement of a company as originally framed or altered in pursuance of any enactment.

Mining purposes means the purpose of obtaining any metal or mineral by any mode whereby soil, earth, rock, or stone may be disturbed, or smelted, refined, crushed, or otherwise dealt with. This term shall not include quarrying operations for the sole purpose of obtaining stone for building, road making and similar industrial purposes.

No liability company means a company formed with no liability on the part of its members.

Officer means a manager or secretary of a company.

Principal register means the register of members of any foreign company kept at the principal office of such company outside this State.

Prospectus means any prospectus, notice, circular, advertisement or other invitation offering to the public for subscription or purchase any shares or debentures of a company.

Public company means a company limited by shares, not being a no liability company, and not being a proprietary company.

Registered auditor means a person duly registered as an auditor under section 402.

Registered liquidator means a person duly registered as a liquidator under section 402, and who, when required, has given security as provided for in this Act.

Registrar means the person for the time being designated as the Registrar under section 3A.

Registration office means the office for the registration of companies.

Representative means an executor or administrator, and includes —

- (a) the Official Trustee as established under the *Official Trustee Act 1921*⁴;
- (b) the Curator of Intestate Estates, in cases where the Court shall have authorised him to administer the estate of a deceased person; and
- (c) a devisee, and an heir at law, where a devisee or heir at law is liable as a contributory.

Scrip includes share certificate, and **share certificate** includes scrip.

Share means share in the share capital of the company and includes stock, except where a distinction between stock and shares is expressed or implied.

The repealed Acts means the Acts repealed by this Act, or any of them, as set forth in the First Schedule.

Unlimited company means a company formed on the principle of having no limit placed on the liability of its members.

[Section 3 amended by No. 32 of 1947 s. 3; No. 47 of 1949 s. 3; No. 10 of 1982 s. 28; No. 74 of 2003 s. 37; No. 28 of 2006 s. 64.]

Division 1A — Administration

[Heading inserted by No. 28 of 2006 s. 65.]

3A. Registrar

- (1) The Minister is required, by notice published in the *Gazette*, to designate a person who is an executive officer of the Department as the Registrar for the purposes of this Act.
- (2) The Registrar may be referred to by a title specified by the Minister by notice published in the *Gazette*.
- (3) In this section —
executive officer has the meaning given by section 3(1) of the *Public Sector Management Act 1994*.

[Section 3A inserted by No. 28 of 2006 s. 65.]

3B. Delegation by Registrar

- (1) The Registrar may delegate to any other person employed in the Department any power or duty of the Registrar under another provision of this Act.
- (2) The delegation must be in writing signed by the Registrar.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Registrar to perform a function through an officer or agent.

[Section 3B inserted by No. 28 of 2006 s. 65.]

3C. Information officially obtained to be confidential

- (1) A person who misuses information obtained by reason of any function that person has, or at any time had, in the administration of this Act commits an offence.

Penalty: \$20 000.

- (2) A person misuses information if it is, directly or indirectly, recorded, used, or disclosed to another person, other than —

- (a) in the course of duty;
- (b) under this Act;
- (c) for the purposes of the investigation of any suspected offence or the conduct of proceedings against any person for an offence;
- (d) in a manner that could not reasonably be expected to lead to the identification of any person to whom the information refers; or
- (e) with the consent of the person to whom the information relates, or each of them if there is more than one.

- (3) In this section —

information means information concerning the affairs of a person.

[Section 3C inserted by No. 28 of 2006 s. 65.]

3D. Protection from liability for wrongdoing

- (1) A person is not liable for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act.
- (2) The State is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (1).

- (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

[Section 3D inserted by No. 28 of 2006 s. 65.]

3E. Judicial notice

All courts, judges and persons acting judicially shall take judicial notice of the official signature of every person who is for the time being and every person who has at any time been the Registrar and of the fact that such person holds or has held such office.

[Section 3E inserted by No. 28 of 2006 s. 65.]

Division 2 — Repeal of Acts and transitional provisions

4. Repeal of Acts and savings

- (1) The Acts mentioned in the First Schedule are hereby repealed.

Provided that such repeal shall not affect —

- (a) the incorporation of any company registered before the commencement of this Act; or
- (b) Table A in the Second Schedule to the *Companies Act 1893*³, or any Part thereof (either as originally contained in that Schedule or as altered in pursuance of the provisions of that Act), so far as the same applies to any existing company; or
- (c) any nomination, appointment, affidavit, call, forfeiture, winding-up order, minute, assignment, registration, transfer, list, rule, regulation, or order made, or any application pending or any petition presented, or any license, certificate, security or notice given, or any summons issued, or any resolution passed, or any

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Division 2 Repeal of Acts and transitional provisions

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agreement, contract, conveyance, mortgage, power of attorney, compromise, or other arrangement, deed or other instrument validated, entered into, commenced or executed under the repealed Acts before the commencement of this Act.

- (2) The mention of particular matters in this section, or in any other section of this Act, shall not affect the general application of the *Interpretation Act 1918*⁵, to the repeals effected by this Act, except where the said Act is inconsistent with this Act.
- (3) The repeal effected by this section shall not affect any of the provisions of the *Mining Companies Act 1888*⁶, relating to the winding-up of companies already registered thereunder, except to the extent to which the same relate to the winding-up of no liability companies registered under the said Act and not under liquidation at the coming into operation of this Act.

5. Act not to apply to certain societies and companies

Subject to sections 6 and 11, and except as to Part VIII and the provisions therein contained or incorporated, this Act shall not apply to any ADI (authorised deposit-taking institution) as defined in section 5 of the *Banking Act 1959* of the Commonwealth or a corporation that is a friendly society within the meaning of section 16C of the *Life Insurance Act 1995* of the Commonwealth, nor to any company or co-partnership which carries on the business of life assurance, either alone or together with any other business, unless such company is already registered under the repealed Acts, or under any law repealed by the repealed Acts, nor to any company or co-partnership formed or to be formed for the purpose of carrying on the business of banking.

[Section 5 amended by No. 26 of 1999 s. 66(2).]

6. References in Acts to the Acts repealed by this Act to be read as references to this Act

Where any Act, not repealed by this Act, enacts that the repealed Acts or any of the provisions thereof, or that any Act repealed by the repealed Acts or any of the provisions thereof shall apply to life assurance companies or other companies, or requires or empowers anything to be done or any penalties to be recovered by reference to such repealed Act or other Acts repealed by the repealed Acts or provisions, such enactments shall be deemed to refer to this Act and the corresponding portions of this Act.

7. Substitution of provisions of this Act for provisions of repealed Acts

Where any repealed Acts or any provisions of such Acts are referred to in any document, that document shall be construed as referring to this Act or the corresponding provisions of this Act.

8. Saving of Acts

Nothing in this Act shall affect the provisions of —

- (a) the *Associations Incorporation Act 1895*⁷;
- (b) the *Trade Union Act 1902*⁸;
- (c) the *Life Assurance Companies Act 1889*; or
- (d) the Act 8 William IV., No. 1⁹ which relates to Banks and Banking Companies.

9. Saving of pending proceedings for winding-up

The provisions of this Act with respect to winding-up shall not apply to any company of which the winding-up commenced before the commencement¹ of this Act, but every such company shall be wound up in the same manner and with the same incidents as if this Act had not been passed; and for the purposes of the winding-up, the Act or Acts and regulations

under which the winding-up commenced shall be deemed to remain in full force.

10. Existing companies not being proprietary companies deemed to be public companies

Every existing company, not being a company incorporated by any special Act, charter or letters patent, or a no liability company, and not being a company which has determined to be a proprietary company within 6 months from the date of commencement of this Act, shall be deemed to be a public company within the meaning of this Act.

Division 3 — Prohibition of large partnerships

11. Prohibition of partnerships exceeding certain number

- (1) No company, association, or partnership consisting of more than 10 persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a company under this Act or is formed in pursuance of some other Act of Parliament or of letters patent.
- (2) No company, association or partnership consisting of more than 20 persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association, or partnership or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament or by letters patent or Royal Charter.

Division 3A — Relationship with the Corporations legislation

[Heading inserted by No. 10 of 2001 s. 41.]

11A. Co-operative companies excluded from Corporations legislation

- (1) The following matters are declared to be excluded matters for the purposes of section 5F of the *Corporations Act 2001* of the

Commonwealth in relation to the whole of the Corporations legislation to which Part 1.1A of that Act applies, other than the provisions specified in subsection (2) —

- (a) a co-operative company;
 - (b) any act or omission of any person, body or other entity in relation to a co-operative company.
- (2) The provisions referred to in subsection (1) are —
- (a) provisions that relate to any matter that the regulations provide is not to be excluded from the operation of the Corporations legislation;
 - (b) provisions that relate to the role of a co-operative company in the formation of a company;
 - (c) provisions that relate to substantial holdings, by or involving a co-operative company, in a company;
 - (d) provisions that confer or impose functions on a co-operative company as a member, or former member, of a corporation;
 - (e) provisions that relate to dealings by a co-operative company in securities of a body corporate, other than securities of the co-operative company itself;
 - (f) provisions that confer or impose functions on a co-operative company in its dealings with a corporation, not being dealings in securities of the co-operative company;
 - (g) provisions that relate to securities of a co-operative company, other than shares in, debentures of or deposits with a co-operative company;
 - (h) provisions relating to the futures industry;
 - (i) provisions relating to participants in the securities industry;
 - (j) provisions relating to the conduct of securities business;
 - (k) provisions relating to dealers' accounts and audit;

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Division 3A Relationship with the Corporations legislation

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- (l) provisions relating to money and scrip of dealers' clients; or
 - (m) provisions relating to registers of interests in securities.
- (3) The provisions specified in subsection (2) only apply to a co-operative company to the extent to which a co-operative company may engage in the activities covered by those provisions.
- (4) In this section —
- body corporate, company, corporation* and other expressions used in the *Corporations Act 2001* of the Commonwealth have the meaning given by that Act;
- co-operative company* means a company registered under Part VI of this Act.

[Section 11A inserted by No. 10 of 2001 s. 41.]

Part II — Incorporation of companies and matters incidental thereto

Division 1 — Memorandum of association

12. Mode of forming incorporated company

Any 5 or more persons or, where the company to be formed will be a proprietary company within the meaning of section 37, any 2 or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability, or, in the case of a company formed for mining purposes, with no liability, that is to say —

- (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, or a no liability company within the meaning of this Act (each of which companies, except where no liability companies are expressly excluded, in this Act included in the term *a company limited by shares*); or
- (b) a company not having any limit on the liability of its members (in this Act termed *an unlimited company*).

13. Memorandum of company limited by shares

In the case of a company limited by shares, not being a no liability company —

- (1) The memorandum shall state —
 - (a) the name of the company, with the word “Limited” as the last word in its name;
 - (b) the objects of the company;
 - (c) that the liability of its members is limited;

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Part II Incorporation of companies and matters incidental thereto

Division 1 Memorandum of association

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- (d) the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;
 - (e) the full names, addresses and occupations of the subscribers of the memorandum.
- (2) No subscriber of the memorandum may take less than one share.
 - (3) Each subscriber shall write opposite to his name the number of shares he takes and that he is 21 years of age or over.
 - (4) No person under the age of 21 years shall subscribe to a memorandum.

14. Memorandum of a no liability company

- (1) In the case of a no liability company —
 - (a) The memorandum shall state —
 - (i) the name of the company, with “No liability” as the last words in its name;
 - (ii) the objects of the company;
 - (iii) that the members take no liability;
 - (iv) the amount of the share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount;
 - (v) the full names, addresses and occupations of the subscribers of the memorandum.
 - (b) No subscriber of the memorandum may take less than one share.
 - (c) Each subscriber shall write opposite to his name the number of shares he takes and that he is 21 years of age or over.
- (2) No person under the age of 21 years shall subscribe to a memorandum.

- (3) The objects and powers of a no liability company, whether express or implied, shall be limited to mining purposes, and to treating, selling or otherwise disposing of ores, metals, minerals, and all products of mining, and to powers necessary for or incidental or conducive to carrying on such purposes, businesses, or operations.
- (4) No company shall be registered as a no liability company until it is proved to the Registrar by statutory declaration and such other evidence as he shall require that 5% of the nominal capital of the company has been paid up and lodged to the credit of a trustee for the company in a bank approved by the Registrar.

15. Memorandum of unlimited company

In the case of an unlimited company —

- (1) The memorandum shall state —
 - (a) the name of the company;
 - (b) the objects of the company;
 - (c) that the liability of the members is unlimited;
 - (d) the full names, addresses and occupations of the subscribers of the memorandum.
- (2) If the company has a share capital —
 - (a) the memorandum must also 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 may take less than one share;
 - (c) each subscriber shall write opposite to his name the number of shares he takes and that he is 21 years of age or over.
- (3) No person under the age of 21 years shall subscribe to a memorandum.

16. Signature etc. of memorandum

- (1) The memorandum shall —
 - (i) be printed or typewritten; and
 - (ii) be signed by each subscriber in the presence of at least one witness, not being a subscriber, who shall attest the signature.
- (2) The attorney of a subscriber duly authorised in that behalf by a written power of attorney duly executed by the subscriber and in force may sign the memorandum in the name of such subscriber.

Provided that before accepting the signature on the memorandum by an attorney as aforesaid the Registrar may require the power of attorney to be produced for his inspection and may require the production of evidence to his satisfaction that the power of attorney is still in force and operation.

17. Restriction on alteration of memorandum

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

18. Mode of alteration of objects of company

- (1) Subject to the provisions of this section, a company may by special resolution alter the provisions of its memorandum or deed of settlement with respect to the objects of the company, so far as may be required, for all or any of the purposes hereinafter specified, or alter the form of its constitution by substituting a memorandum and articles of association for a deed of settlement, either with or without any alteration as aforesaid with respect to the objects of the company.

- (2) The purposes for which the alteration of the memorandum or deed of settlement may be made with respect to the objects of the company are to enable it —
- (a) to carry on its business more economically or more efficiently; or
 - (b) to attain its main purpose 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 objects specified in the memorandum or deed of settlement; 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.
- (3) The alteration shall not take effect until and except in so far as it is confirmed on petition by the Court.
- (4) Before confirming the alteration the Court must be satisfied —
- (a) that the alteration is desired for all or some or one of the purposes in this section mentioned;
 - (b) that sufficient notice has been given to every holder of debentures of the company and to any persons or class of persons whose interests will in the opinion of the Court be affected by the alteration; and
 - (c) that with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in the manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged, or has determined or has been secured to the satisfaction of the Court.

Provided that the Court may, in the case of any person or class of persons, for special reasons dispense with the notice required by this section.

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Part II Incorporation of companies and matters incidental thereto

Division 1 Memorandum of association

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- (5) The Court may make an order confirming the alteration, either wholly or in part, and on such terms and conditions as it thinks fit, and may make such order as to costs as it thinks proper.
- (6) The Court shall, in exercising its discretion under this section, have regard to the rights and interests of the members of the company or to any class of them, as well as to the rights and interests of the creditors, 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 the Court 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 may be expended in any such purchase.

- (7)(a) An office copy of the order confirming any alteration under this section, together with a printed or typewritten copy of the memorandum or deed of settlement so altered, or together with a copy of the substituted memorandum and articles of association, as the case may be, shall be delivered by the company to the Registrar within 28 days from the date of the order.
- (b) The Registrar shall register the same, and shall certify under his hand the registration thereof.
- (c) The certificate of the Registrar shall be conclusive evidence that all the requirements of this Act, with respect to such alteration and the confirmation thereof, have been complied with, and that the alteration and confirmation are valid, and thenceforth the memorandum or deed of settlement so altered shall be the memorandum or deed of settlement of the company or, as the case may be, such substituted memorandum and articles of association shall apply to the company as if it were a company registered under Part II with such memorandum and articles, and the company's deed of settlement shall cease to apply to the company.

- (d) The Court may at any time extend the time for the filing of documents with the Registrar under this section for such period as the Court may think proper.
- (8) If a company makes default in filing with the Registrar any document required by this section to be filed with him, the company and every officer of the company who is in default shall be liable to a penalty not exceeding \$20 for every day during which such company and such officer is in default.

[Section 18 amended by No. 113 of 1965 s. 8(1).]

Division 2 — Articles of association

19. Registration of articles

- (1) There may, in the case of a company limited by shares, and there shall, in the case of an unlimited company, be registered with the memorandum articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.
- (2) In the case of a company limited by shares, not being a no liability company, the articles may adopt all or any of the regulations in Table A in the Second Schedule.
- (3) In the case of a no liability company the articles may adopt all or any of the regulations in Table B in the Second Schedule.
- (4) In the case of an unlimited company the articles, if the company has a share capital, must state the amount of share capital with which the company proposes to be registered.
- (5) In the case of an unlimited company, if the company has not a share capital, the articles must state the number of members with which the company proposes to be registered for the purpose of enabling the Registrar to determine the fees payable on registration.
- (6)(a) Where a company, not having a share capital has increased the number of its members beyond the registered number, it shall,

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within 28 days after the increase was resolved on or took place, give to the Registrar notice of the increase and the Registrar shall record the increase.

- (b) If default is made in complying with this subsection the company and every officer of the company who is in default shall be liable to a penalty not exceeding \$20 for every day during which the company or the officer aforesaid is in default.

[Section 19 amended by No. 113 of 1965 s. 8(1).]

20. Application of Table A and Table B

- (1) In the case of a company limited by shares, not being a no liability company, and registered after the commencement of this Act, if articles are not registered, or if articles are registered insofar as the articles do not exclude or modify the regulations in Table A in the Second Schedule, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.
- (2) In the case of a no liability company registered after the commencement of this Act, if articles are not registered, or if articles are registered, insofar as the articles do not exclude or modify the regulations in Table B in the Second Schedule, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

21. Form and signature of articles

- (1) Articles must —
- (a) be printed or typewritten;
 - (b) be divided into paragraphs and numbered consecutively;
 - (c) be signed by each subscriber of the memorandum of association in the presence of at least one witness who shall attest the signature.

- (2) The attorney of a subscriber duly authorised in that behalf by a written power of attorney duly executed by the subscriber and in force may sign the articles in the name of such subscriber.

Provided that before accepting the signature on the articles by an attorney as aforesaid the Registrar may require the power of attorney to be produced for his inspection and may require the production of evidence to his satisfaction that the power of attorney is still in force and operation.

22. Alteration of articles by special resolution

- (1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter, repeal or add to its articles.
- (2) Any alteration or addition so 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, repeal, or addition by special resolution.
- (3) At any meeting convened for passing a special resolution under this section, unless a poll be demanded by at least 5 members, a declaration of the chairman that the resolution has been carried shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the same. In computing the majority, where a poll is demanded, reference shall be had to the number of votes which each member is entitled by the articles.
- (4) Notice of any such meeting shall be deemed to be duly given, and the meeting to be duly held whenever such notice is given and such meeting is held in the manner prescribed by the articles.

Division 3 — Form of memorandum and articles

23. Statutory forms of memorandum and articles

The form of —

- (a) the memorandum of association of a company limited by shares;

- (b) the memorandum and articles of association of an unlimited company having a share capital,

shall be respectively in accordance with Forms A and B in the Thirteenth Schedule, or as near thereto as circumstances admit.

Division 4 — Registration

24. Registration

- (1) The memorandum and the articles (if any) shall be filed with the Registrar, and subject to this Act and on payment of the prescribed fees he shall retain and register them.
- (2) The Registrar shall not register any memorandum and articles (if any) where any of the signatories thereto are under the age of 21 years.

25. Effect of registration

- (1) On the registration of the memorandum and articles (if any) of a company, the Registrar shall certify under his hand that the company is incorporated as a limited company, a no liability company, a proprietary company, an unlimited company, as the case may be.
- (2) From the date of incorporation mentioned 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 functions of an incorporated company and having perpetual succession and a common seal, with power to hold lands, 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 mentioned in this Act.

[Section 25 amended by No. 28 of 2006 s. 66(2).]

26. Certificate to be gazetted and certificate to be conclusive evidence of incorporation

- (1)(a) After signing and sealing such certificate of incorporation, the Registrar shall insert a notice in the *Government Gazette* stating the issue of such certificate and the terms thereof.
- (b) A certificate of incorporation given by the Registrar, or a copy thereof certified as correct under the hand of the Registrar or the *Gazette* containing the notice mentioned in paragraph (a) shall be conclusive evidence that all the requirements of this Act, in respect of registration and of the matters precedent and incidental thereto, have been complied with, and that the association is a company authorised to be registered and duly registered under this Act.
- (2) The Registrar may, if he thinks fit, require a statutory declaration to be made by a legal practitioner engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company, and to be filed, stating that all or any of the said requirements have been complied with, and may accept such a declaration as sufficient evidence of compliance.

[Section 26 amended by No. 28 of 2006 s. 66(2).]

27. Registration of unlimited company as limited

- (1) Subject to the provisions of this section, any company registered as unlimited may register under this Act as limited, but the registration of an unlimited company as a limited company shall not affect any debts, liabilities, obligations or contracts incurred or entered into by, to, with, or on behalf of the company before the registration, and those debts, liabilities, obligations and contracts may be enforced in manner provided by Part X in the case of a company registered in pursuance of that Part.
- (2) On registration in pursuance of this section the Registrar shall close the former registration of the company and may dispense with the filing with him of copies of any documents, with copies

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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, and as if the provisions of the Acts under which the company was previously registered and regulated had been contained in different Acts from those under which the company is registered as a limited company.

Division 5 — Provisions with respect to names of companies

28. Name of company

- (1) No company shall be registered by a name which —
- (a) is identical with that by which —
 - (i) a company in existence is already registered under the law relating to companies; or
 - (ii) a society in existence is already registered or deemed to be registered under the *Co-operative and Provident Societies Act 1903*; or
 - (iii) a firm, individual or corporation is registered and is carrying on business under the *Business Names Act 1942*¹⁰; or
 - (iv) an association in existence is already incorporated under the *Associations Incorporation Act 1895*⁷; or
 - (v) a foreign company carrying on business in this State is registered as such under the repealed Acts or this Act,

or, in the opinion of the Registrar, so nearly resembles that name as to be calculated to deceive, except where the company, society, firm or association in existence is in the course of being dissolved, or the firm is about to cease to carry on business under that name, and the said

company, society, firm or association signifies its consent in such manner as the Registrar requires.

Provided that —

- (i) a company so consenting shall add to its name the words “in liquidation” within brackets and the said words shall be deemed to be part of the name of the last-mentioned company;
 - (ii) if the Registrar is satisfied that a company is being registered for the purpose of taking over any business which is carried on under a business name registered under the *Business Names Act 1942*¹⁰, and will be entitled as against the proprietor of that name to use that name he may register the company by that name;
 - (iii) nothing in this subsection shall prohibit the registration and publication of a prospectus of an intended company under a name identical with or resembling the name of a company in existence in any case where the last-mentioned company signifies its consent to the use of the name in such manner as the Registrar requires;
- (b) contains the words “building society” or “housing society”;
- (c) is identical with that of any friendly society that is a friendly society within the meaning of section 16C of the *Life Insurance Act 1995* of the Commonwealth, or so nearly resembles the same as in the opinion of the Registrar to be calculated to deceive, except where the society in existence is in the course of being dissolved and signifies its consent in such manner as the Registrar requires. Provided that a company formed in consequence of an arrangement entered into with a society in existence may, with the consent of the society (signified in such manner as the Registrar requires) to be registered by a name containing words or a combination

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- of letters which are or is part of the name of the society;
or
- (d) contains the words “saving” or “savings” or “savings bank” or “savings institution” or “savings department” or “savings section”; or
 - (e) contains the words “bank” or “banking company”, or “banking house” or “banking association” or “banking institution” or words of a like import, except in the case of a company which carries on the business of banking as its sole business;
 - (f) contains the words “proprietary”, “limited”, “no liability” or “unlimited” respectively where the company is not a “proprietary company”, “limited company”, “no liability company” or “unlimited company”;
 - (g) is likely, in the opinion of the Registrar, to mislead the members or the public as to the identity of the company or the nature of its business;
 - (h) in the case of a company which has issued or issues any invitation to the public to subscribe for any shares in or debentures of such company — contains the word “trust”; or
 - (i) is prohibited by law.
- (2) Except, with the consent of the Governor signified by order published in the *Government Gazette*, no company shall be registered by a name which —
- (i) includes the word “Royal”, or the word “King”, or the word “Queen”, or the word “Crown”, or the word “Empire”, or the word “Imperial”, or the word “Commonwealth”, or the word “State” or, in the opinion of the Registrar, suggests or is calculated to suggest the patronage of His Majesty or any member of the Royal Family or Government support or patronage; or

- (ii) contains the word “municipal” or “chartered” or the words “local government” or, in the opinion of the Registrar, suggests, or is calculated to suggest, connection with any local government or other local authority or with any society or body incorporated by Royal Charter; or
 - (iii) contains the word “Trustee.”
- (3)(a) Where a company has, prior to the commencement of this section, been registered under the repealed Acts by a name which includes therein any of the words (other than the word “State”) mentioned in subsection (2), nothing in this section shall prevent the continuance of the registration of such company by such name after the commencement of this section.
- (b) Where a company has prior to the commencement of this section been registered under the repealed Acts by a name which includes therein the word “State” the registration of such company shall cease and be cancelled by the Registrar after the expiration of 3 calendar months from the date of the commencement of this Act, unless in the meantime —
 - (i) the Governor shall, on the application of the company, by order published in the *Government Gazette*, consent to the continuance of the registration of the company by the name aforesaid; or
 - (ii) the company shall by special resolution and with the approval of the Registrar signified in writing have changed its name by the exclusion therefrom of the word “State” and the substitution therefor of another word or other words which are not prohibited by this section.
- (c) Where a company changes its name in accordance with the provisions of paragraph (b)(ii), it shall be deemed to have been authorised so to do by section 30(1), and thereafter section 30(3), (4), (5), and (6) shall, with such adaptations as may be necessary, apply and have effect in relation to the change of its name by the company as aforesaid.

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- (4) The consent of the Governor referred to in subsections (2) and (3) shall not be granted to a company, whether incorporated in this State or elsewhere, if, in the opinion of the Governor, the use of such name by such company would imply or be likely to convey the impression that such company is wholly or partly authorised or supported by or connected with His Majesty's Government in any part of His Majesty's Dominions.
- (5) For the purposes of this Act it shall be lawful to use —
- (a) the abbreviation “Co.” or “Coy” in lieu of the word “Company” contained in the name of a company; or
 - (b) the abbreviation “Pty” in lieu of the word “Proprietary” contained in the name of the company; or
 - (c) the abbreviation “Ltd.” in lieu of the word “Limited” contained in the name of a company; or
 - (d) the symbol “&” in lieu of the word “and” contained in the name of a company; or
 - (e) any of such words in lieu of the corresponding abbreviation or symbol contained in the name of a company.
- (6)(a) A legal practitioner engaged in the formation of a company, or a person named in the articles as a director, or the secretary of a company, may file with the Registrar a notice specifying the name by which it is proposed that the company shall be registered, and if the use of that name is not prohibited by this section, for a period of 28 days from the date of filing the notice such name or any name so nearly resembling (in the opinion of the Registrar) the same as to be calculated to deceive shall not be registered as the name of any company, firm, individual or association under the provisions of this Act or the *Business Names Act 1942*¹⁰, or the *Associations Incorporation Act 1895*⁷, except the said company in the course of formation.
- (b) The Registrar may on application in writing and on payment of the prescribed fee direct that the period in the last preceding paragraph mentioned be extended for a further period specified

in the direction of not more than 28 days from the date of the expiry of the first-mentioned period and the said period shall be extended accordingly.

- (c) Any person filing a copy of a prospectus in relation to an intended company may, on payment of the prescribed fee, apply to the Registrar for the reservation of the name appearing in the prospectus as the name of the intended company for 3 months from the date of filing the prospectus and for such period the name of the intended company or any name so nearly resembling (in the opinion of the Registrar) such name as to be calculated to deceive shall not be registered as the name of any company, society, firm, individual or association under the provisions of this Act, or the *Business Names Act 1942*¹⁰, or the *Associations Incorporation Act 1895*⁷, except the said company named in the prospectus.
- (d) This subsection shall not apply to companies within the provisions of Part XI.
- (7) In subsections (1) to (5) both inclusive the word *company* does not apply to a company which at the commencement of this Act has already been registered as a foreign company under the repealed Acts or to a company which at the commencement of this Act had not been registered as a foreign company under the repealed Acts but had been carrying on business in this State as a company incorporated elsewhere than in this State, but save and except as aforesaid the word “company” includes a company which upon application made after the commencement of this Act is registered under Part XI.

Provided that —

- (a) where in the opinion of the Governor (on being satisfied that it would be inequitable or unreasonable to require any company formed or incorporated outside Western Australia to which Part XI applies to change its name, style, title or designation before complying with the requirements of such Part) it is in the circumstances of

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the particular case expedient, the Governor may, notwithstanding anything in this section or section 30, authorise the Registrar to accept for filing the documents and particulars specified in section 329(1)(a), (b), (c), (d), (e) and (f); and

- (b) where a company formed or incorporated outside Western Australia to which Part XI applies has (after complying with the requirements of Part XI under its original name) changed, in the country of its incorporation, its name to a name which includes any word or words prohibited, either generally or in the circumstances of the particular case, by this Division, the Governor, if of opinion that it would be inequitable or unreasonable to refuse to allow the new name to be entered in the register in place of the former name, may authorise the Registrar to enter the new name in the register and the Registrar shall enter the new name in the register accordingly.
- (8) In respect of every authorisation by the Governor pursuant to either of the provisos to subsection (7) the prescribed fee shall be paid to the Registrar by the company concerned.

[Section 28 amended by No. 32 of 1947 s. 4; No. 47 of 1949 s. 4; No. 18 of 1982 s. 3; No. 14 of 1996 s. 4; No. 26 of 1999 s. 66(3); No. 12 of 2001 s. 46(2).]

29. Power to dispense with “Limited” in name of charitable and other companies

- (1) Where it is proved to the satisfaction of the Attorney General that an association formed or about to be formed as a limited company has been or is about to be formed for the purposes of recreation or amusement or for promoting commerce, art, science, religion, charity 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 Attorney General may by license direct that the

association 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.

- (2) A license by the Attorney General under this section may be granted on such conditions as the Attorney General thinks fit, and those conditions shall be binding on the association, and shall, if the Attorney General so direct, be inserted in the memorandum and articles or in one of those documents.
- (3) For every such license there shall be paid such fee as is prescribed.
- (4) The association shall, on registration, enjoy all the privileges of limited companies, and be subject to all their obligations except those of using the word “Limited” as any part of its name, and of publishing its name and of filing with the Registrar the annual return mentioned in sections 112 and 113.
- (4a) Notwithstanding anything contained in subsection (4), the Attorney General may on the written application of an association registered as a company under this section, exempt it from such of the provisions of this Act and for such period as he deems fit.
- (5) A license under this section may at any time be revoked by the Attorney General, and upon revocation the Registrar shall enter the word “Limited” at the end of the name of the association upon the register, and the association shall cease to enjoy the exemptions and privileges granted by this section.

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

[Section 29 amended by No. 73 of 1953 s. 2.]

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30. Power of companies to change name

- (1) Any company may by special resolution, and with the approval of the Registrar signified in writing, change its name.
- (2) If a company, through inadvertence or otherwise, is without the consent mentioned in section 28(1) registered by a name identical with that by which a company in existence is previously registered, or so nearly resembling it as to be calculated to deceive, the first-mentioned company shall, by special resolution, and with the sanction of the Registrar, change its name.
- (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 meet the circumstances of the case.
- (4) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings instituted by or against the company, and any legal proceedings which might have been continued or commenced by or against the company by its former name may be continued or commenced against it by its new name.
- (5) Any alteration so made shall, within 14 days from the date when a copy of the resolution relating to the alteration is filed with the Registrar, be advertised by the Registrar once in the *Government Gazette*, and by the company in one newspaper to be approved by the Registrar published in the State nearest to the registered office of the company.
- (6) A certificate or a copy thereof certified as correct under the hand of the Registrar, or an advertisement in the *Government Gazette* under this section shall be conclusive evidence of the alteration to which it relates.

[Section 30 amended by No. 28 of 2006 s. 66(2).]

**Division 6 — General provisions with respect to
memorandum and articles**

31. Effect of memorandum and articles

- (1) The memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member and contained covenants on the part of each member, his heirs, executors, and administrators, to observe all the provisions of the memorandum and of the articles subject to the provisions of this Act.
- (2) All money payable by any member to the company under the memorandum or articles shall be a specialty debt due from him to the company.

32. Alterations in memorandum or articles increasing liability to contribute to share capital not to bind existing members without consent

Notwithstanding anything in the memorandum or articles of a company, no member of the company shall, subject as hereinafter in this section provided, be bound by any alteration made in the memorandum or articles after the date on which he became a member if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made or in any way increases his liability as at that date to contribute to the share capital of or otherwise to pay money to the company: Provided that this section shall not apply in any case where the member agrees in writing to be bound by the particular alteration either before or after it is made.

33. Copies of memorandum and articles to be supplied

- (1) A company shall, on being so required by any member, send to him a copy of the memorandum and of the articles (if any), and a copy of any Act of Parliament which alters the memorandum,

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subject to payment in the case of a copy of the memorandum and of the articles, of 30 cents or such less sum as the company may prescribe, and in the case of a copy of an Act, of such sum, not exceeding the published price thereof as the company may require.

- (2) If a company makes default in complying with the requirements of this section, the company and every officer of the company who is in default shall be liable for each offence to a fine not exceeding \$10.

[Section 33 amended by No. 113 of 1965 s. 8(1).]

34. Issued copy of memorandum to embody alterations

- (1) Where any 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) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum which are not in accordance with the alteration, it shall be liable to a fine not exceeding \$2 for each copy so issued, and every officer of the company who is in default shall be liable to a like penalty.

[Section 34 amended by No. 113 of 1965 s. 8(1).]

35. Powers implied in memorandum

Subject to this Act and to any special restrictions or prohibitions in the memorandum or articles of any company, and without prejudice to any other powers included in its memorandum or implied by law, every company shall have all the powers set forth in the Third Schedule.

Division 7 — Membership of a company

36. Definition of member

- (1) The subscribers of 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.

Division 8 — Proprietary companies

37. Term used: proprietary company

- (1) For the purposes of this Act, the expression *proprietary company* means any company limited by shares, not being a no liability company, which —
 - (i) by its memorandum or articles —
 - (a) limits the number of its members (exclusive of persons who are in the employment of the company, and of persons who, having been formerly in the employment of the company, were, while in such employment and have continued after the determination of such employment to be members of the company) to 50; and
 - (b) prohibits any invitation to the public to subscribe for any shares, debentures, stock, or bonds of the company; and
 - (c) prohibits the company from receiving deposits, except from its members for fixed periods or payable at call, whether bearing or not bearing interest;

and

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- (ii) has received a certificate of incorporation in which the Registrar certifies that the company is a proprietary company.
- (2) The word “proprietary” shall form part of the name of a proprietary company, and shall be inserted immediately before the word “limited”.
- (3) A company limited by shares not being a no liability company may by special resolution alter —
 - (i) the name of the company by inserting the word “proprietary” immediately before the word “limited”; and
 - (ii) the provisions of its memorandum or articles so as to restrict, limit, and prohibit, as aforesaid.
- (4) Upon the application of a company and upon the filing of a statutory declaration by a director or manager of the company that the articles of association of the company restrict, limit, and prohibit as aforesaid, the Registrar may issue a certificate of incorporation altered so as to certify that the company is a proprietary company.
- (5) Where a company limited by shares (not being a no liability company) was registered under the repealed Acts and prior to the commencement of this Act had accepted deposits from persons other than members of the company, then, notwithstanding anything to the contrary contained in this section and although it has accepted deposits as aforesaid, such company may nevertheless exercise the power conferred by subsection (3) provided the company complies in all respects with the other requirements of this section (in particular with the provisions of subsection (1)(i)(c) in relation to its exercise of the said power, and in such case subsections (3) and (4) shall apply accordingly.

(6) A proprietary company may, subject to anything contained in the memorandum or articles, by passing a special resolution, determine —

- (i) that the word “proprietary” be omitted from its name; and
- (ii) that the company be a public company,

and by filing with the Registrar a copy thereof, and also such a statement in the form contained in the Fourth Schedule in lieu of prospectus as the company (if a public company) would have had to file before allotting any of its shares or debentures, together with such a statutory declaration as the company (if a public company) would have had to file before commencing business, turn itself into a public company; and thereupon the restrictions, limitations and prohibitions mentioned in subsection (1) and embodied in the memorandum or articles of association of such company, shall cease to apply to such company.

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

[Section 37 amended by No. 21 of 1951 s. 3.]

38. Court may determine whether a company certified as a proprietary company is a proprietary company

(1) The Court may, on the application of the Attorney General or of any member or creditor of any company certified by the Registrar to be a proprietary company, determine whether such company is a proprietary company, within the meaning of this Act, and if the Court determines that it is not a proprietary company it shall declare accordingly, and, order that the word “proprietary” be removed from its name; and thereupon the company shall be a public company under this Act, and subject to all the provisions and conditions herein contained relating to public companies.

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- (2) If, after the expiration of 6 months from the commencement of this Act, any company trades or carries on business under any name or title of which the word “proprietary” forms part, such company, unless it has received from the Registrar a certificate of incorporation certifying that the company is a proprietary company, and every officer of the company who is in default, shall be liable to a penalty not exceeding \$4 for every day upon which that name or title has been used.

[Section 38 amended by No. 113 of 1965 s. 8(1).]

39. Alterations to memorandum and articles of proprietary companies

- (1) Where any alteration has been made under section 37 in the memorandum or articles of a company, every copy of the memorandum or articles issued after the date of the alteration shall be in accordance with the alteration.
- (2) Where the memorandum or articles of a company includes the provisions which by section 37 are required to be included therein in order to constitute the company a proprietary company, and default is made in complying with any of those provisions the company shall thereupon cease to be entitled to the privileges and exemptions conferred on proprietary companies under the provisions of this Act, and this Act shall apply to the company as if it were a public company: Provided that the Court on being satisfied that the failure to comply or default in complying 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 terms and conditions as seem to the Court just and expedient, order that the company be relieved from such consequences as aforesaid.
- (3) If any company, being a proprietary company, alters its memorandum or articles in such manner that they no longer include the provisions which, under section 37, are required to

be included in the memorandum or articles of a company in order to constitute it a proprietary company for the purposes of this Act, the company shall, as on the date of the alteration, cease to be a proprietary company, and shall, within a period of 14 days after the said date, file with the Registrar such a statement in lieu of prospectus as the company, if a public company, would have had to file before allotting any of its shares or debentures, together with such a statutory declaration as the company, if a public company, would have had to file before commencing business.

- (4) If a company makes default in complying with any requirement of this section, the company, and every officer of the company who is in default, shall be liable to a fine not exceeding \$40.

[Section 39 amended by No. 113 of 1965 s. 8(1).]

**Division 9 — Reduction of number of members
below legal minimum**

**40. Effect of carrying on business with less than minimum
number of members**

If at any time the number of members of a company is reduced in the case of a proprietary company below 2, or in the case of any other company below 5, and it carries on business for more than 6 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 6 months and is cognisant of the fact that it is carrying on business with fewer than 2 members or 5 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 for the same without joinder in the action of any other member.

Division 10 — Contracts, etc.

41. Form of contracts

- (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 under seal 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 by 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 according to this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto.
- (3) A contract made on behalf of a company may be varied or discharged in the same manner in which it is authorised by this section to be made.

42. Bills of exchange and promissory notes

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

43. Execution of deeds abroad

- (1) A company may by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney to execute deeds on its behalf in any place not situate in the State.
- (2) A deed signed by such 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.

44. Power of company to have special seal for use abroad

- (1) A company whose objects require, or comprise the transaction of business outside the State may, if authorised by its articles, have for use in any territory, district, or place outside the State, 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 the territory, district, or place where 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 may, by writing under its common seal, authorise any person appointed for the purpose in any territory, district, or place outside the State to affix the same 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) mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.
- (5) The person affixing any such official seal shall, by writing under his hand certify on the deed or other document to which the seal is affixed, the date and place of affixing the same.

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Part II Incorporation of companies and matters incidental thereto

Division 10 Contracts, etc.

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45. Authentication of documents

A document or proceeding requiring authentication by a company may be signed by a director, manager, or other authorised officer of the company, and need not be under its common seal.

Part III — Share capital and debentures

Division 1 — Prospectus

46. Filing of prospectus

- (1) Every prospectus issued by or on behalf of a company, or in relation to any intended company, shall be dated; and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus.
- (2) A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing, shall be filed with the Registrar on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so filed.
- (3) The Registrar shall not accept any prospectus unless —
 - (a) it is dated and signed in the manner required by this section; and
 - (b) there are also lodged therewith for filing verified copies of all material contracts, matters in regard to which are required by paragraph (13) of Part A of section 47 to be stated in the prospectus.
- (3a) The Registrar shall not accept any prospectus —
 - (a) unless the consent in writing thereto of the Minister has been first obtained, if it appears to the Registrar that it is intended that any of the moneys that may be received in pursuance of the prospectus are to be applied for the same purpose as that specified in section 76(2) of the *Housing Societies Act 1976*; or
 - (b) if he is of opinion that the prospectus contains any statement or matter that is misleading in the form or context in which it is included.

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Part III Share capital and debentures

Division 1 Prospectus

s. 47

- (4) The copy of every material contract filed in accordance with subsection (3) may be inspected in the office of the Registrar by any person on payment of the prescribed fee and when the office is open for business.
- (5) Every prospectus shall state on the face of it that a copy has been filed as required by this section.
- (6) If default is made in complying with any of the provisions of this section the company and every person who is knowingly a party to the default shall, in the case of a continuing default, be liable to a penalty not exceeding \$10 for every day during which the default continues, and in case of any other default to a penalty not exceeding \$50.
- (7) The provisions of section 47(8) are incorporated in this section as though they were set out herein and expressly made applicable to the provisions of this section.

[Section 46 amended by No. 47 of 1949 s. 5; No. 113 of 1965 s. 8(1); No. 59 of 1976 s. 2; No. 12 of 2001 s. 51.]

47. Specific requirements as to prospectus

- (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, must state the matters specified in Part A of this section and set out the reports specified in Part B of this section, and Parts A and B shall have effect subject to the provisions contained in Part C of this section.
 - (1a) Where a prospectus is printed it shall be printed in letters of not less than 8 points face measurement unless where the prospectus is printed in letters of less than 8 points face measurement the Registrar, before the issuing, advertising, circulating or distributing of the prospectus in this State certifies in writing that the type and size of letters are legible and satisfactory.
Penalty: \$400.

- (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 this subsection shall not apply if it is shown that the form of application was issued either —
- (a) in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or
 - (b) in relation to shares or debentures which were not offered to the public.

If any person acts in contravention of the provisions of this subsection, he shall be liable to a fine not exceeding \$200.

- (4) A prospectus shall not contain the name of any person as a trustee for holders of debentures or as an auditor or a solicitor of the company or proposed company unless such person has prior to the issue of the prospectus consented in writing to act in the capacity proposed to be stated in the prospectus, and a verified copy of such consent has been filed with the Registrar.
- (5) Where any statement made by an expert or contained in what purports to be a copy of or extract from a report, memorandum or valuation by an expert is included or set forth in a prospectus, there shall also be included or set forth in the prospectus the date on which the statement, report, memorandum or valuation aforesaid was made, and whether or not the same was made or prepared by the expert for the purpose of the same being incorporated in the prospectus, and also particulars of the professional or other qualifications of such expert.

- (6) Where in a prospectus reference is made of any mining lease or other mining tenement within the provisions of any law of the State relating to mining which has been acquired or is the subject of an option to acquire the same, there shall also be set forth in the prospectus the particulars of a certificate, which shall be obtained from the Department of Mines¹¹, containing full details of the nature of such mining lease or other mining tenement and of the title thereto or the estate or interest therein.
- (7) 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 prospectus shall not incur any liability by reason of the non-compliance or contravention, if —
- (a) as regards any matter not disclosed, he proves that he was not cognisant 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 the 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 (15) of Part A of this section, 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.

- (8) 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 will or will not have the right to renounce in favour of other persons, or to the issue to existing members of a transferor company within the meaning of section 240 of a prospectus or form of application relating to shares in a transferee company within the meaning of

that section, but, subject as aforesaid, 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.

- (9) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.
- (10) Non-compliance with or contravention of any of the requirements of this section shall not affect the validity or operation of any contract entered into on the faith of the prospectus or be a ground for the rescission of any such contract, when 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 the Court, having regard to all the circumstances of the case, reasonably to be excused.

Part A — The following matters are required to be stated in a prospectus pursuant to this section: —

- (1) Except where the prospectus is published as a newspaper advertisement, the contents of the memorandum, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them respectively.
- (2) The number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company.
- (3) The number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors.
- (4) The names, descriptions, and addresses of the directors, solicitors, and secretary, or proposed directors, solicitors, and secretary.

- (5) Where shares are offered to the public for subscription particulars as to —
- (i) the minimum amount which, in the opinion of the directors must be raised by the issue of those shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters: —
 - (a) the purchase price of any property purchased, or to be purchased, which is to be defrayed in whole or in part out of the proceeds of the issue;
 - (b) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company;
 - (c) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters;
 - (d) working capital;and
 - (ii) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue, and the sources out of which those amounts are to be provided.
- (6) The amount payable on application and allotment on each share, and, in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the 2 preceding years, the amount actually allotted, and the amount, if any, paid on the shares so allotted.

- (7) The number and amount of shares and debentures which, within the 2 preceding years, have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.
- (8) The names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares, or debentures to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor.
- (9) The amount, if any, paid or payable as purchase money in cash, shares, or debentures, for any such property, as aforesaid, specifying the amount, if any, payable for goodwill.
- (10) The amount, if any, paid within the 2 preceding years, or payable, as commission (but not including commission to sub-underwriters) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of the company, or the rate of any such commission.
- (11) The amount or estimated amount of preliminary expenses.
- (12) The amount paid within the 2 preceding years or intended to be paid to any promoter, and the consideration for any such payment.
- (13) The dates of and parties to every material contract not being a contract entered into in the ordinary course of

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the business carried on or intended to be carried on by the company or a contract entered into more than 2 years before the date of issue of the prospectus, and a reasonable time and place at which any such material contract or a copy thereof may be inspected.

- (14) The names and addresses of the auditors, if any, of the company.
- (15) Full particulars of the nature and extent of the interest, if any, of every director and of every expert, whose report appears in whole or in part in the prospectus, in the promotion of, or in the property proposed to be acquired by the company or, where the interest of such a director or expert consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director or expert, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.
- (16) If the prospectus invites the public to subscribe for shares in the company and the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.
- (17) In the case of a company which has been carrying on business, or of a business which has been carried on for less than 3 years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.

Part B — The following reports are required to be stated in a prospectus pursuant to this section: —

- (1) A report by the auditors of the company with respect to the profits of the company in respect of each of the

3 financial years immediately preceding the issue of the prospectus, and with respect to the rates of the dividends, if any, paid by the company in respect of each class of shares in the company in respect of each of the 3 years, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years, and if no accounts have been made up in respect of any part of the period of 3 years ending on a date 3 months before the issue of the prospectus containing a statement of that fact.

- (2) If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made by public accountants, who shall be named in the prospectus, upon the profits or losses of the business in respect of each of the 3 financial years immediately preceding the issue of the prospectus.

Part C — The following provisions apply to Parts A and B of this section: —

- (1) The provisions of this section with respect to the memorandum and the qualification, remuneration and interest of directors, the names, descriptions and addresses of directors or proposed directors, and the amount or estimated amount of the preliminary expenses, shall not apply in the case of a prospectus issued more than 2 years after the date at which the company has in fact commenced business.
- (2) Every person shall, for the purposes of this section, be deemed to be a vendor who had entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where —
 - (a) the purchase money is not fully paid at the date of the issue of the prospectus;

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- (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus;
 - (c) the contract depends for its validity or fulfilment on the result of that issue.
- (3) Where any property to be acquired by the company is to be taken on lease, this section shall have effect as if the expression *vendor* included the lessor and the expression *purchase money* included the consideration for the lease, and the expression *sub-purchaser* included a sub-lessee.
- (4) For the purposes of paragraph (8) of Part A of this section, where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors.
- (5) If, in the case of a company which has been carrying on business, or of a business which has been carried on for less than 3 years, the accounts of the company or business have only been made up in respect of 2 years or one year, Part B of this section shall have effect as if references to 2 years or one year, as the case may be, were substituted for references to 3 years.
- (6) The expression *financial year* in Part B of this section means the year in respect of which the accounts of the company or of the business, as the case may be, are made up, and where, by reason of any alteration of the date on which the financial year of the company or business terminates, the accounts of the company or business have been made up for a period greater or less than a year, that greater or less period shall for the purpose of the said Part be deemed to be a financial year.

[Section 47 amended by No. 73 of 1953 s. 3; No. 113 of 1965 s. 8(1).]

48. Power to issue abridged advertisement

Notwithstanding anything in the 2 last preceding sections, where a prospectus complying with those sections has been issued it shall not be necessary in an advertisement of that prospectus in a public newspaper to insert the particulars or matters required by those sections, except those with respect to the date, the fact that a copy has been duly filed, the names, descriptions, and addresses of the directors or proposed directors, and the number of shares subscribed for by them respectively, and with respect to the minimum subscription on which the directors may proceed to allotment: Provided that the advertisement —

- (i) states that the advertisement is an abridgment of a full prospectus and states where copies of the full prospectus and forms of application for shares may be obtained; and
- (ii) states that applications for shares will be received only on one of the forms of application referred to, and (as the case may be) either indorsed upon or annexed to but detachable from a full prospectus; and
- (iii) does not contain anything to which the said requirements apply, and which is not in the prospectus, or is inconsistent with the prospectus.

[Section 48 amended by No. 47 of 1949 s. 6.]

49. Restriction on alteration of terms mentioned in prospectus

A company having a share capital shall not previously to the statutory meeting 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. This section shall not apply to a proprietary company.

50. Liability for statements in prospectus

- (1) Where a prospectus invites persons to subscribe for shares in or debentures of a company —
- (a) every person who is a director of the company at the time of the issue of the prospectus;
 - (b) every person who has authorised 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 authorised the issue of the prospectus,

shall, subject to section 47(10), 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 therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith unless it is proved —

- (i) 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
- (ii) 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
- (iii) that after the issue of the prospectus and before allotment thereunder he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal and of the reason therefor;

- (iv) that —
- (a) 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
 - (b) 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:
Provided that a person shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making the statement, report or valuation was competent to make it; and
 - (c) as regards every untrue statement, purporting to be a statement made by an official person, or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document.
- (2) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus and has not authorised or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof, shall be liable to indemnify the person named as aforesaid 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 in defending himself against any legal proceedings brought against him in respect thereof.

- (3) Every person who, by reason of his being a director or named as a director, or as having agreed to become a director, or of his having authorised the issue of the prospectus, or of his being a promoter, 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.
- (4) For the purposes of this section —
the expression *promoter* means a promoter 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 who acted solely in a professional capacity for persons engaged in procuring the formation of the company:
the expression *expert* includes engineer, valuer, accountant, geologist, and any other person whose profession gives authority to a statement made by him.
- (5) A person or association of persons (whether corporate or otherwise) carrying on the business of a banker, or an auditor, or a solicitor or a broker, shall not be deemed to have authorised the issue of a prospectus or to have been a party to the preparation of a prospectus merely because such person, association of persons, auditor, solicitor, or broker, has consented to his or its name appearing in such prospectus, and his or its name appears in such prospectus.

51. Documents containing offers of shares or debentures for sale deemed to be 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 all enactments and rules of law as to the contents of prospectuses and to liability in respect of statements in and omissions 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 misstatements 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 6 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) Section 46 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 section 47 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 or to be 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 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 2 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 authorised in writing.

52. Application moneys

- (1) Where any shares or debentures have been offered to the public for subscription, all application and other moneys paid by any applicant on account of shares or debentures prior to the allotment thereof shall, until the allotment of such shares or debentures, be held by the company, or, in the case of an intended company, by the persons named in the prospectus as provisional directors and the promoters upon trust for the applicant: Provided that nothing contained in this section shall place any obligation or duty upon any bank or third person with whom any such moneys may have been deposited to inquire into or see to the proper application of such moneys so long as such bank or third person acts in good faith.
- (2) If default is made in complying with any of the provisions of this section, in the case of a company, every officer of the company in default, and, in the case of an intended company, every person named in the prospectus as a proposed director and every promoter who knowingly and wilfully authorises or permits the default shall, in addition to the liability imposed by the next following section, be guilty of an offence and liable to a penalty not exceeding \$200.

[Section 52 amended by No. 113 of 1965 s. 8(1).]

Division 2 — Allotment

53. **Restriction as to allotment**

- (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)(i) of Part A of section 47, less the amounts mentioned in subparagraph (ii) of the said paragraph, or, if no amount is so stated, then the whole amount of the share capital so offered for subscription has been subscribed, and the sum payable on application for the amount so stated or for the whole amount offered for subscription has been paid to and received by the company.
- (2) The amount so stated in the prospectus and the whole amount aforesaid 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 upon application on each share shall not be less than 10% of the nominal amount of the share.
- (4) If the conditions aforesaid have not been complied with on the expiration of 4 months after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and if any such money is not so repaid within 5 months after the issue of the prospectus the directors of the company, or, in the case of an intended company, the persons named in the prospectus as the proposed directors and the promoters shall be jointly and severally liable to repay that money, with interest at the rate of 5% per annum from the expiration of the period of 5 months: Provided that a director, a person named in the prospectus as a proposed director or a promoter, 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 section 47(8) are incorporated in this section as though they were set out herein and expressly made applicable to the provisions of this section.

[Section 53 amended by No. 47 of 1949 s. 7.]

54. Prohibition of allotment in certain cases unless statement in lieu of prospectus filed

- (1) A company having a share capital which does not issue a prospectus on or with reference to its formation, or which has issued a prospectus but has not proceeded to allot upon applications received in consequence of the prospectus, any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless at least 3 days before the first allotment of either shares or debentures there has been filed with the Registrar a statement in the form contained in the Fifth Schedule in lieu of prospectus signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing in a form containing the particulars set out in the Fifth Schedule.
- (2) This section shall not apply to a proprietary company.
- (3) If a company acts in contravention of this section the company and every director of the company who knowingly authorises or permits the contravention shall be liable to a fine not exceeding \$100.
- (4) The provisions of section 47(8) are incorporated in this section as though they were set out herein and expressly made applicable to the provisions of this section.

[Section 54 amended by No. 47 of 1949 s. 8; No. 113 of 1965 s. 8(1).]

55. Effect of irregular allotment

- (1) An allotment made by a company to an applicant in contravention of the last 2 preceding sections shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company, or, if the company is not required to hold a statutory meeting or the allotment is made after the holding of the statutory meeting within 3 months after the date of allotment and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.
- (2) If any director of a company knowingly contravenes, or permits or authorises the contravention of, any of the provisions of sections 53 and 54 he shall be liable to compensate the company and the allottee respectively for any loss, damage, or costs which the company or the allottee may have sustained or incurred thereby:

Provided that proceedings to recover any such loss, damages, or costs shall not be commenced after the expiration of 2 years from the date of the allotment.

56. Return as to allotments

- (1) Whenever a company limited by shares makes any allotment of its shares the company shall within 28 days thereafter file with the Registrar —
 - (a) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptions of the allottees, and the amount (if any) paid or deemed to be 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, or where such

contract is not reduced to writing, and the issue of the shares is made pursuant to a provision in the memorandum or articles, a statement to that effect identifying the particular provision and giving particulars of the consideration in respect of which the allotment was made 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.

The provisions of paragraph (a) shall not apply to a co-operative company.

- (2) If default is made in complying with the requirements of this section every director, manager, or other officer of the company who is knowingly a party to the default shall be liable to a penalty not exceeding \$40 for every day during which the default continues:

Provided that, in case of default in filing with the Registrar within 28 days after the allotment, any document required to be filed by this section, the company or any person interested may apply to the Court for relief, and the Court, if satisfied that the omission to file 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 filing of the document for such period as the Court may think proper.

- (3) Where shares in any company were issued prior to the commencement of this Act as fully or partly paid up for a consideration other than cash, but no provision relating thereto was contained in the memorandum or articles and no contract was filed as provided by section 26 of the *Companies Act 1893*³, hereby repealed then if the shares —
- (a) were allotted and taken in good faith prior to the commencement of this Act; or
 - (b) were allotted and taken in good faith and for a substantial consideration; or

- (c) after the allotment thereof were acquired by any person *bona fide* without notice of the omission aforesaid,

the allottee or holder of such shares shall not be liable to pay to the company in respect of such shares any sum other than the difference between the nominal amount of the shares and the amounts paid up in cash or treated or deemed to have been so paid up thereon.

[Section 56 amended by No. 32 of 1947 s. 5; No. 17 of 1953 s. 2; No. 113 of 1965 s. 8(1).]

Division 3 — Commissions and discounts

57. Commissions

- (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 authorised by the articles;
 - (b) the commission paid or agreed to be paid does not exceed 10% of the price at which the shares are issued, or the amount or rate authorised by the articles, whichever is less;
 - (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 filed before the payment of the

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commission, with the Registrar, 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 the manner aforesaid.
- (2) Save as aforesaid, 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 for 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 the money be paid out of the nominal purchase money or contract price or otherwise. This subsection shall not apply to a no liability company.
- (3) Nothing in this section shall affect the power of any company to pay such reasonable brokerage as it has, before the commencement of this Act, 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 this section.
- (5) Unless otherwise provided by the articles or by a resolution of the company in general meeting, no commission shall be paid until after the shares in respect whereof such commission is

payable, have been allotted and the allotment moneys payable in respect thereof have been received by the company.

- (6) If default is made in complying with the provisions of this section relating to the filing with the Registrar of the statement in the prescribed form, the company and every officer of the company who is in default shall be liable to a fine not exceeding \$20.

[Section 57 amended by No. 113 of 1965 s. 8(1).]

58. Statement in balance sheet as to commissions and discounts

- (1) Where a company has paid any sums by way of commission and/or brokerage in respect of any shares or debentures, or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed, or so much thereof as has not been written off, shall be stated in every balance sheet of the company until the whole amount thereof has been written off.
- (2) If default is made in complying with this section the company and every officer of the company who is in default shall be liable to a fine not exceeding \$40.

[Section 58 amended by No. 113 of 1965 s. 8(1).]

59. Prohibition of provision of financial assistance by company in certain cases

- (1) It shall not be lawful for a company, other than a co-operative company registered under the provisions of the repealed Acts or those of Part VI, in any circumstances or for any purpose to give whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise any financial assistance to any director of the company.
- (2) Subject as provided in this subsection, 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 other dealing made or to be made by any person of or in any shares in the company: Provided that nothing in this subsection 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 to any person not being a director of the company;
 - (b) the provision by a company in accordance with any scheme for the time being in force, of money for the purchase by trustees of fully paid shares in the company to be held by or for the benefit of employees not being directors of 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 fully paid shares in the company to be held by themselves by way of beneficial ownership.
- (3) The aggregate amount of any outstanding loans made under the authority of provisos (b) and (c) to subsection (2) shall be shown as a separate item in the balance sheet.
 - (4) If a company acts in contravention of the provisions of this section, the company and every director and every officer of the company who is in default shall be liable to a fine not exceeding \$100.

[Section 59 amended by No. 47 of 1949 s. 9; No. 113 of 1965 s. 8(1).]

Division 4 — Issue of redeemable preference shares and shares at a discount

60. Power to issue redeemable preference shares

- (1) Subject to the provisions of this section, a company limited by shares may, if so authorised by its articles, issue preference

shares which are, or at the option of the company are to be liable to be redeemed.

- (2) 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 a fresh issue of shares made for the purpose of the redemption.
- (3) No such shares shall be redeemed unless they are fully paid.
- (4) Where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall, out of the 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 amount applied in redeeming the shares, 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.
- (5) Where any such shares are redeemed out of the proceeds of a fresh issue, the premium (if any) payable on redemption must have been provided for out of the profits of the company before the shares are redeemed.
- (6)(a) There shall be included in every balance sheet of a company which has issued redeemable preference shares a statement specifying what part of the issued capital of the company consists of such shares and the date on or before which those shares are, or are to be liable, to be redeemed.
- (b) If a company fails to comply with the provisions of this subsection, the company and every officer of the company who is in default shall be liable to a fine not exceeding \$100.
- (7) Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles of the company.

- (8) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it may issue shares up to the nominal amount of the shares redeemed or to be redeemed 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 fees payable on an increase of capital, be deemed to be increased by the issue of shares in pursuance 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 relates to fees payable on an increase of capital, be deemed to have been issued in pursuance of this subsection unless the old shares are redeemed within one month after the issue of the new shares.
- (9) Where new shares have been issued in pursuance of the last foregoing subsection, the capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company, up to an amount equal to the nominal amount of the shares so issued in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

[Section 60 amended by No. 113 of 1965 s. 8(1).]

61. Power to issue shares at a discount

- (1) Subject as hereinafter provided, a company may issue at a discount shares in the company of a class already issued: Provided that —
- (a) the issue of the shares at a discount must be authorised by special resolution passed in general meeting of the company and must be sanctioned by the Court:
 - (b) the special resolution must specify the maximum rate of discount at which the shares are to be issued:
 - (c) not less than one year must at the date of the issue have elapsed since the date on which the company was entitled to commence business:

- (d) the shares to be issued at a discount must be issued within 28 days after the date on which the issue is sanctioned by the Court or within such extended time as the Court may allow:
 - (e) the provisions of paragraphs (a) to (d) inclusive of this proviso shall not apply to a no liability company.
- (2) Where a company has passed a special resolution authorising the issue of shares at a discount, it may apply to the Court for an order sanctioning the issue, and on any such application 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 on such terms and conditions as it thinks fit.
- (3)(a) Every prospectus relating to the issue of the shares and every balance sheet issued by the company subsequently to the issue of the shares must contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the making or issue of the document in question.
- (b) If a company makes default in complying with the requirements of this subsection, the company and every officer of the company who is in default shall be liable to a fine not exceeding \$100.

[Section 61 amended by No. 113 of 1965 s. 8(1).]

Division 5 — Miscellaneous provisions as to capital

62. Power of company to arrange for different amounts being paid on shares

A company, if so authorised by its articles or by special resolution, may do any one or more of the following things, namely: —

- (i) 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:

- (ii) Accept from any member who assents thereto 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:
- (iii) Pay dividend in proportion to the amount paid up on each share where a larger amount is paid upon some shares than on others.

63. Reserve liability of company

- (1) A company may, by its articles or by special resolution, determine that any portion of its share capital which has not been already called up shall not be capable of being called up except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.
- (2) Such resolution shall, within 28 days from the date of passing be advertised in the *Gazette* and filed with the Registrar, who shall note the same on the memorandum; the note of the resolution shall be deemed to be an alteration of the memorandum within the meaning of section 34.

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

- (1) A company limited by shares, if so authorised by its articles, may alter the conditions of its memorandum as follows; that is to say, it may —
 - (i) increase its share capital by new shares of such amount as it thinks expedient:
 - (ii) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares:
 - (iii) convert all or any of its paid-up shares into stock, and reconvert that stock into paid-up shares of any denomination:

- (iv) subdivide its shares or any of them into shares of smaller amount than is fixed by the memorandum, so, however, that in the subdivision the proportion between the amount paid and the amount (if any) unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived:
 - (v) 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 this section shall be exercised by the company in general meeting.
- (3) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

65. Notice to Registrar of consolidation of share capital, conversion of shares into stocks etc.

- (1) If a 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 of its 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 section 71,

it shall within 28 days after so doing give notice thereof to the Registrar specifying, as the case may be, the shares consolidated, divided, converted, redeemed, or cancelled, or the stock reconverted.

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- (2) If a company makes default in complying with this section, the company and every officer of the company who is in default, shall be liable to a fine not exceeding \$100.

[Section 65 amended by No. 113 of 1965 s. 8(1).]

66. Notice of increase of share capital

- (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 file with the Registrar, within 28 days after the passing of the resolution authorising the increase, notice of the increase of capital and the Registrar shall record the increase, and a copy of such notice shall be inserted in the *Gazette* by the company.
- (2) The notice to be given as aforesaid shall include such particulars as are 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 there shall be forwarded to the Registrar, together with the notice, a printed or typewritten copy of the resolution authorising the increase.
- (3) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding \$100.

[Section 66 amended by No. 113 of 1965 s. 8(1).]

67. Power of unlimited company to provide for reserved share capital on re-registration

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

- (i) 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 except in the

event and for the purposes of the company being wound up:

- (ii) Provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

68. Power of company to pay interest out of capital in certain cases

- (1) Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, 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 in this section mentioned, and may charge the same to capital as part of the cost of construction of the work or building or the provision of plant:

Provided that —

- (a) no such payment shall be made unless the same is authorised by the articles or by special resolution:
- (b) no such payment, whether authorised by the articles or by special resolution, shall be made without the previous approval of the Court:
- (c) before sanctioning any such payment the Court may, at the expense of the company, appoint a person to inquire and report to it 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 such period shall in no case extend beyond the close of the half year during which the works or buildings have been actually completed or the plant provided:

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- (e) the rate of interest shall in no case exceed 5% per annum, or such lower rate as may for the time being be prescribed:
 - (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:
 - (g) the accounts of the company shall show the share capital on which and the rate at which interest has been paid out of capital during the period to which the accounts relate.
- (2) If default is made in complying with proviso (g) to subsection (1), the company and every officer of the company who is in default, shall be liable to a fine not exceeding \$40.

[Section 68 amended by No. 113 of 1965 s. 8(1).]

69. Limited company may have director with unlimited liability

- (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 the 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 will be unlimited; and the promoters, directors and managers 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) If any director, manager, or proposer makes default in adding such a statement, or if any promoter, director, or manager, makes default in giving such a notice, he shall be liable to a penalty not exceeding \$100, 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.

[Section 69 amended by No. 113 of 1965 s. 8(1).]

70. Special resolution of company making liability of directors unlimited

- (1) A company, if so authorised 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 the provisions thereof shall be as valid as if they had been originally contained in the memorandum.
- (3) The resolution shall be deemed to be an alteration of the memorandum within the meaning of section 34.

Division 6 — Reduction of capital

71. Special resolution for reduction of share capital

- (1) Subject to confirmation by the Court, a company having a share capital, if so authorised by its articles, may by special resolution reduce its share capital in any way, and in particular (without prejudice to the generality of the foregoing power), may —
 - (i) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or
 - (ii) 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
 - (iii) 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, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

- (2) A special resolution under this section is in this Act called a resolution for reducing share capital.
- (3)(a) Such resolution and the intention of the company to apply for an order of the Court confirming same shall be published in a daily newspaper circulating in Perth twice at intervals of one week between such publications within 7 days of the date of passing such resolution.
- (b) Any creditor or shareholder may appear before the Court on the hearing of such application.

[Section 71 amended by No. 21 of 1951 s. 4.]

72. Application to Court for confirming order

- (1) Where a company has passed a resolution for reducing share capital, it may apply by petition to the Court for an order confirming the reduction.
- (2) A resolution for reducing share capital shall be void after the expiration of 2 months from the date of the passing thereof unless an application is made to the Court under subsection (1) within that period.

73. Objections by creditors and settlement of list of objecting creditors

- (1) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case, if the Court so directs, the following provisions shall have effect, subject nevertheless, to the next following subsection: —
 - (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 not entered on the 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 entered on the list whose debt or claim is not discharged or 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; that is to say: —
 - (i) If the company admits the full amount of his debt or claim, or though not admitting it is willing to provide for it, then the full amount of the debt or claim:
 - (ii) If the company does not admit or is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court.
- (2) 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 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 subsection (1) shall not apply as regards any class or any classes of creditors.

74. Order confirming reduction

- (1) The Court, if satisfied that the consent of every creditor of the company who under this Act is entitled to object 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 the order, add to its name as the last words thereof the words “and reduced”; and
 - (b) make an order requiring the company to publish as the Court directs the reasons for 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.

75. Registration of order and minute of reduction

- (1) The Registrar on production to him of an order of the Court confirming the reduction of the share capital of a company, and the filing with 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 up on each such share, shall register the order and minute.
- (2) On the registration of the order and minute, and not before, 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 certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of capital have been complied with, and that the share capital of the company is such as is stated in the minute.

76. Minute to form part of memorandum

- (1) The minute, when registered, shall be deemed to be substituted for the corresponding part of the memorandum of the company, and shall be valid and alterable as if it had been originally contained therein.
- (2) The substitution of any such minute as aforesaid shall be deemed to be an alteration of the memorandum within the meaning of section 34.

77. Liability of members in respect of reduced shares

- (1) If the capital of a company is reduced 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 their nature and effect 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

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 in any manner provided by this Act 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 rights of the contributories among themselves.

Division 7 — Variation of rights of shareholders

78. Rights of holders of special classes of shares

- (1) If the memorandum or articles of any company, the share capital of which is divided into different classes of shares, provide for authorising 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 15% 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 apply to the Court to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Court.
- (2) An application under this section must be made within 14 days after 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 shareholders entitled to make the application by such one or more of their number as they appoint in writing for the purpose.

- (3) On any such application the Court, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested 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 such application shall be final.
- (5) The company shall, within 28 days after the making of an order by the Court on any such application, forward a copy of the order to the Registrar and, if default is made in complying with this provision the company and every officer of the company who is in default shall be liable to a fine not exceeding \$40.
- (6) The expression *variation* in this section includes abrogation and the expression *varied* shall be construed accordingly.

[Section 78 amended by No. 113 of 1965 s. 8(1).]

79. Provisions for modification, alteration, or abandonment of preferential or cumulative rights in relation to certain classes of shares

- (1) Where the capital of any company limited by shares is by the memorandum of association of the company divided into different classes of shares, one or more of which classes of shares entitle the holders of shares of the class or classes to a preferential right to a dividend at a specified rate (whether of a cumulative character or not), or to a preferential right in a winding-up of the company to payment of arrears of a preferential dividend (whether declared or earned or not) up to the commencement of the winding-up, or to a preferential right to the return of capital in a winding-up, such company may at any time, or from time to time by special resolution of the company (consented to or confirmed by a special resolution or

special resolutions of a separate meeting or separate meetings of the holders of the shares of the classes affected by such resolutions), so far modify or alter the provisions of the memorandum of association of the company as to effect a modification or alteration or an abandonment of all or any of such preferential or cumulative rights, either generally or for such limited period of time as may be specified in the special resolution.

- (2) **Special resolution**, when applied to meetings of holders of a class of shares, means a resolution passed at a general meeting of the holders of shares of that class (of which at least 28 clear days' notice in writing has been given in the same manner as is provided by the articles of association of the company in the case of general meetings of the company, specifying the intention to propose such resolution) and at which such resolution is passed by a majority of not less than three-fourths of the votes of such members of the class for the time being as may be present in person or by proxy.
- (3) At any meeting of a class held under the provisions of this section, each member of the class present in person or by proxy at the meeting shall be entitled to one vote for each share of that class held by such member.
- (4) No such resolution of the company shall come into operation or have effect until an order confirming the modification, alteration, or abandonment sought to be effected shall have been made by the Court and registered by the Registrar.
- (5) Such order shall be applied for by the company on petition, and the Court may in any case require the company to publish in such manner as the Court shall think fit a notice of the petition, and a copy of the special resolution, with a view to giving holders of shares of any class or classes an opportunity to attend before the Court and object to the proposed modification, alteration, or abandonment.

- (6) On the hearing of the petition the Court may make an order confirming the modification, alteration, or abandonment, on such terms and subject to such conditions as the Court may think fit.
- (7) Nothing in this section contained or implied shall be deemed to impair or prejudicially affect any lawful power, authority, or provision now or hereafter conferred in any memorandum of association or otherwise lawfully vested in any company whereby the rights of classes of shares may be altered, modified, or abandoned without recourse to the provisions of this section.

80. Bonus debentures and shares

Notwithstanding any provision in the memorandum of association of any company for payment amongst shareholders of a portion of the profits of the business of the company *pro rata* to the business done by each shareholder with the company, any such company may, in lieu of payment to its shareholders on a cash basis, issue to them bonus debentures or bonus shares for the amount of the profits any shareholder is entitled to receive; and the issue of any bonus debenture or bonus share to any shareholder for any such amount before the passing of this Act is hereby declared valid and binding on any company that may have issued the same, and on any shareholder of such company who may have received the same:

Provided that —

- (i) such bonus debentures, or bonus shares, shall not or do not carry any liability for further payments or contributions on the part of such shareholders;
- (ii) no debentures or shares shall be issued under this section in excess of the portion of profits available for the time being for distribution as aforesaid, and no such bonus shares shall be issued in excess of the authorised capital of the company for the time being;
- (iii) any shareholder who has before the passing of this Act made application in writing for dividends in cash instead

of bonus shares, shall receive the amount of such dividend due to such shareholder in cash.

Division 8 — Transfer of shares and debentures, evidence of title, etc.

81. Nature of shares

- (1) The shares or other interest of any member in a company shall be personal estate, transferable in manner provided by the articles of the company, and shall not be of the nature of real estate.
- (2) Each share in a company having a share capital shall be distinguished by its appropriate number but if at any time all the issued shares in a company or all the issued shares therein of a particular class are fully paid up and rank *pari passu* for all purposes, none of those shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks *pari passu* for all purposes with all shares of the same class for the time being issued and fully paid up.

[Section 81 amended by No. 2 of 1954 s. 2.]

82. Transfer of shares or debentures not to be registered, except on production of instrument of transfer

Notwithstanding anything in its articles, it shall not be lawful for a 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 to any shares in or debentures of the company has been transmitted by operation of law.

83. Transfer by personal representative

A transfer of the share or other interest of a deceased member of a company made by his representative shall, although the

representative is not himself a member, be as valid as if he had been a member at the time of the execution of the instrument of transfer.

84. Registration of transfer at request of transferor

On the application of the transferor of any share or 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.

85. Notice of refusal to register transfer

- (1) If a company refuses to register a transfer of any shares or debentures, the company shall, within 28 days after the date on which the transfer was lodged with the company, send to the transferee notice of the refusal.
- (2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding \$40.

[Section 85 amended by No. 113 of 1965 s. 8(1).]

86. Bringing in certificates to company for transfer

- (1) On being requested in writing so to do by the transferor of a share in a company, the company shall by writing require the person having the possession, custody, or control of the certificate for any such share and of the transfer thereof, or either of them, to bring the same into the office of the company within a period named in the requisition, not less than 14 days from the date thereof, to have the share certificate cancelled or rectified and the transfer thereof registered or otherwise dealt with as the case may require.
- (2) If any person refuses or neglects to comply with any such requisition as aforesaid, the said transferor may apply to the Court to issue a summons for such person to appear before the

Court and show cause why the documents mentioned in the requisition should not be delivered up or produced for the purpose mentioned in the requisition; and upon appearance before the Court of any person so summoned the Court may examine such person upon oath and receive other evidence, or if he do not appear, then receive evidence in his absence, and, whether he does or does not appear, order him to deliver up such documents to the company upon such terms or conditions as to the Court shall seem fit, and the cost of the summons and proceedings thereon shall be in the discretion of the Court.

- (3) Lists of share certificates called in as aforesaid and not brought in, shall be exhibited in the company's office, and shall be advertised in the *Gazette* and in such newspapers, and at such time or times, as the company thinks fit.

87. Duties of company with respect to issue of certificates

- (1) Every company (including a no liability company) shall, within 28 days after the allotment of any of its shares, debentures, or debenture stock and within 2 months after the date on which a transfer of any such shares, debentures, or debenture stock is lodged with the company complete and have ready for delivery the certificates of all shares, debentures, and certificates of all debenture stock allotted or transferred unless the conditions of issue of the shares, debentures, or debenture stock otherwise provide. In this section *transfer* means a valid transfer and does not include a transfer which the company is entitled to refuse to register and does not register.
- (2) If default is made in complying with the requirements of subsection (1), the company, and every officer of the company who is in default, shall be liable to a fine not exceeding \$100.
- (3) If 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 14 days after the service of the notice, the Court may, on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the

company and any officer of the company to make good the default within such time as 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 by any officer of the company responsible for the default.

- (4)(a) All share certificates and all debenture certificates issued by or delivered out of the office of a company shall bear indorsed thereon in clear printing or writing the following: —
- (i) the name of the company and the authority under which it is constituted;
 - (ii) the amount of the authorised capital with full particulars of number and class of shares into which the capital is divided, and in case of shares carrying special rights or privileges a reference thereto;
 - (iii) the address of the registered office of the company at the date of issue or delivery;
 - (iv) in the case of a certificate of shares a statement showing the amount paid up or deemed to be paid up on the shares comprised in the particular certificate as appears by the records of the company and where the amount paid up or deemed to have been paid up is in excess of such statement then an indorsement stating the number and amount of the last call paid up or credited as paid up on the shares at the time of issue or delivery.
- (b) Where a company has a branch register within the meaning of section 110 all share certificates entered in the branch register shall also be indorsed with a statement showing that the certificate is entered in the branch register and the address for the time being of the office where the branch register is kept.
- (c) If default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a fine not exceeding \$4.

[Section 87 amended by No. 113 of 1965 s. 8(1).]

88. Certificate of shares or stock

A certificate under the common seal of the company specifying any shares or stock held by any member shall be *prima facie* evidence of the title of the member to the shares or stock therein specified.

89. Evidence of grant of probate

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

Division 9 — Special provisions as to debentures

90. Right of debenture holders to inspect the register of debenture holders and to have copies of trust deed

- (1) Every register of holders of debentures of a company shall, except when duly closed, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that at least 2 hours in each day are appointed for inspection: Provided that where a company has restricted the hours during which the register of holders of debentures is open for inspection for any period less than the hours when the registered office of the company is open to the public, such restriction shall have no effect until notice thereof has been filed with the Registrar.
- (2) Every registered holder of debentures and every holder of shares in a company may require a copy of the register or any part thereof on payment of 5 cents for every 100 words required to be copied.

- (3) For the purposes of this section, a register shall be deemed to be duly closed if closed in accordance with 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 28 days in any year, as may be therein specified.
- (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 10 cents, or such less sum as may be prescribed by the company, or, where the trust deed has not been printed, on payment of 5 cents for every 100 words required to be copied.
- (5) If inspection is refused, or a copy is refused or not forwarded, the company and every officer thereof who is in default shall be liable on conviction to a fine not exceeding \$100.
- (6) Where a company is in default as aforesaid, the Court may by order compel an immediate inspection of the register or direct that the copies required shall be sent to the person requiring them.

[Section 90 amended by No. 113 of 1965 s. 8(1).]

91. Perpetual debentures

A condition contained in any debentures, or in any deed for securing any debentures, whether issued or executed before or after the passing of this Act, shall not be invalid by reason only that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.

92. Power to re-issue redeemed debentures in certain cases

- (1) Where either before or after the commencement of this Act a company has redeemed any debentures previously issued —
- (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 re-issue the debentures, either by re-issuing the same debentures or by issuing other debentures in their place.

- (2) On a re-issue 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 power to re-issue debentures which have been redeemed, particulars with respect to the debentures which can be so re-issued shall be included in every balance sheet of the company.
- (4) Where a company has, either before or after the commencement of this Act, deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

93. Specific performance of contract

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.

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

- (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 or where possession of any property of a company is taken by any mortgagee or grantee of a bill of sale under the powers in relation thereto contained in the mortgage or bill of sale then, if the company is not at the time in course of being wound up, the debts referred to in section 271(1)(a) and (b), as debts which in case of winding-up of a company have priority over all other debts shall be paid forthwith 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 to the debentures or mortgage or bill of sale as the case may be.
- (2) The periods of time mentioned in section 271 shall be reckoned from the date of the appointment of the receiver or of possession being taken, whichever is later.
- (3) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

**Division 10 — Provisions as to company's
register of charges and as to copies of
instruments creating charges**

95. Duty of company to keep copies of instruments

Every company shall cause a copy of every instrument creating a charge on any property of the company 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.

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Part III Share capital and debentures

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96. Company's register of charges

- (1) Every company shall keep at the registered office of the company a register of charges, and shall enter therein all charges affecting property of the company, whether a charge within the meaning of this Act or not, giving in each case a short description of the property charged, the amount of the charge, the rate of interest payable, and (except in the case of securities to bearer) the names of the persons entitled thereto.
- (2) If default is made in complying with this section the company and every officer thereof in default shall be liable to a penalty not exceeding \$40.

[Section 96 amended by No. 113 of 1965 s. 8(1).]

97. Right to inspect copies of instruments creating charges and company's register of charges

- (1) The copies of instruments kept at the registered office of the company pursuant to this Part, and the register of charges so kept, pursuant to this Part, shall be open during business hours to the inspection of any creditor or member of the company without fee, and the register of charges shall also be open to the inspection of any other person on payment of such fee, not exceeding 10 cents for each inspection, as the directors fix.
- (2) Any member or other person may require a copy of any of the aforesaid instruments or register, or of any part thereof, on payment of 5 cents or such less sum as the directors may fix for every 100 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 10 days, commencing on the day next after the day on which the requirement is received by the company.
- (3) If any inspection required under this section is refused or neglected, or if any copy required under this section is not sent within the proper period, the company, and every officer of the

company, who is in default, shall be liable in respect of each offence to a fine not exceeding \$4.

- (4) In the case of any such refusal or default the Court may by order compel an immediate inspection of the instrument or register, or direct that the copies required shall be sent to the persons requiring them, and make any further order which to the Court seems proper.

[Section 97 amended by No. 113 of 1965 s. 8(1).]

98. Application of Part III to charges created and property subject to charge acquired by company incorporated outside this State

The provisions of this Part shall extend to charges on property in this State which are created, and to charges on property in this State which is acquired after the commencement of this Act by a company (whether a company within the meaning of this Act or not) incorporated outside this State which is required to be registered under Part XI.

Part IV — Management and administration

Division 1 — Registered office, secretary of company, etc.

99. Registered office of company

- (1) Every company shall, as from the day on which it begins to carry on business, or as from the 14th day after its incorporation, whichever is earlier, have a registered office in the State, to be approved of by the Registrar.
- (2) All communications and notices to the company may be addressed to the company at its registered office.
- (3) The registered office of a company shall be accessible to the public for not less than 4 hours between the hours of 8.00 a.m. and 10.00 p.m. each day on at least 2 days in each week.
- (4) Notice of the situation of such registered office, the days and hours during which it is accessible to the public, and of any change therein shall be filed with the Registrar within 14 days after the date fixed by subsection (1), or after the change, as the case may be, who shall, subject to the same being approved by him in the case of a change of the registered office, record the same and notify the company thereof, and shall, within 14 days of the notification by the Registrar of the recording thereof be advertised by the company in the *Government Gazette* and in one daily newspaper published in Perth or in any part of the State in which such office is situated.
- (5) The inclusion in the annual return of a company of a statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by subsection (4).
- (6) Until such notice is given, the company shall not be deemed to have complied with the provisions of this Act with respect to having a registered office.

- (7) If a company fails to comply with any requirement of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding \$100.

[Section 99 amended by No. 113 of 1965 s. 8(1).]

100. Secretary to be appointed

- (1) The directors of every company shall appoint a secretary, who shall be present at the registered office of the company by himself or his agent or his clerk on every day at the hours during which the registered office is to be accessible to the public.
- (2) If the directors fail to appoint a secretary as required by this section the company shall be liable to a fine not exceeding \$100, and in addition to a daily penalty not exceeding \$10 for every day during which the default continues.
- (3) If the secretary of the company fails without lawful excuse to be present at the registered office of the company as required by this section he shall be liable to a penalty not exceeding \$2 for every day on which such failure to be present occurs.

[Section 100 amended by No. 113 of 1965 s. 8(1).]

101. Publication of name of company

- (1) Every company —
- (a) shall paint or affix, and keep painted or affixed, its name on the outside of its registered office and every place in which its business is carried on, in a conspicuous position in letters easily legible;
 - (b) shall have its name in legible characters on its seal;
 - (c) shall have its name mentioned 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, indorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of

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parcels, invoices, receipts, and letters of credit of the company.

- (2) If default is made in complying with subsection (1)(a) or (b), the company and every officer in default shall be liable to a fine not exceeding \$40.
- (3) If a director, manager, or officer of a company, or any person on its behalf —
- (a) uses or authorises the use of any seal purporting to be a seal of the company wherein its name does not appear as aforesaid; or
 - (b) issues, or authorises, or signs, or authorises to be signed, on behalf of the company any bill of exchange, promissory note, indorsement, cheque, or order for money or goods wherein its name is not mentioned in manner aforesaid; or
 - (c) issues, or authorises the issue of any business letter of the company or any notice or other official publication of the company or any bill of parcels, invoice, receipt, or letter of credit of the company wherein its name is not mentioned in manner aforesaid,

he shall be liable to a fine not exceeding \$40 and shall further be personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods or the amount thereof unless it is duly paid by the company.

- (4) If any company director, manager or officer of a company suffers, permits or authorises the insertion in any publication whatsoever of any particulars relating to the company wherein its name is not mentioned in manner aforesaid the company and every officer of the company in default shall be liable to a fine not exceeding \$40.

[Section 101 amended by No. 47 of 1949 s. 10; No. 113 of 1965 s. 8(1).]

Division 2 — Restrictions on commencement of business

102. Restriction 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 out of his own moneys 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 filed with the Registrar a statutory declaration by the manager or one of the directors in the prescribed form that the aforesaid conditions have been complied with.
- (2) Where a company having a share capital has not issued a prospectus or which has issued a prospectus but has not proceeded to allot upon applications received in consequence of the prospectus, any of the shares offered to the public for subscription, 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; and
 - (b) every director of the company has paid to the company out of his own moneys, 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

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- (c) there has been delivered to the Registrar for registration a statutory declaration by the manager, or one of the directors in the prescribed form that paragraph (b) has been complied with.
- (3) The Registrar shall, on the filing of the statutory declaration, 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 requirements of subsection (1) or of subsection (2), as the case may be, have been complied with, and that certificate shall be conclusive evidence of that fact in favour of any person dealing with the company.
- (4) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.
- (5) 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) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding \$40 for every day during which the contravention continues.
- (7) This section shall not apply to a proprietary company, or to a company registered prior to the commencement of this Act.

[Section 102 amended by No. 47 of 1949 s. 11; No. 113 of 1965 s. 8(1).]

Division 3 — Register of members

103. Register of members

(1) Subject to the provisions of section 105A, every company shall keep at its registered office in one or more books a register of its members, and enter therein the following particulars: —

- (a) The names and addresses and the occupations (if any) of the members of the company, and, in the case of a company having a share capital, a statement —
 - (i) of the shares held by each member (with distinguishing numbers); and
 - (ii) where the share capital comprises shares of different classes or kinds or having special rights or subject to special restrictions or disabilities of, the classes or kinds of shares and the respective number thereof held by each member; and
 - (iii) of the amount paid or agreed to be considered as paid on the shares of each member:

Provided that, in the case of a no liability company the provisions of this subparagraph shall be deemed to have been complied with if there is entered in the register a statement of the amount paid up, or deemed to have been paid up, on the shares of each member at the date of allotment of such shares, and there is entered on the first sheet of the register a summary of all calls made by the company showing the shares in respect of which each call was made, the number of each call, and the respective dates when each call was made and was payable and the shares in respect of which such call was paid.

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

(c) The date at 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 of stock held by each member instead of the amount of shares, and the particulars relating to shares specified in paragraph (a).

- (2) A specimen copy of every type of share certificate issued by the company after the commencement of this Act, shall be affixed in the register before any certificate of that type is issued or delivered out by the company.
- (3) If default is made in complying with this section the company and every officer of the company who is in default shall be liable to a fine not exceeding \$100 and in addition a daily penalty not exceeding \$10 for every day during which the default continues.

[Section 103 amended by No. 39 of 1959 s. 2; No. 113 of 1965 s. 8(1).]

104. Index of members of company

- (1) Every company having more than 50 members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index of the names of the members and shall, within 14 days after the date on which any alteration is made in the register of the members make any necessary alteration in the index.
- (2) The index (which may be in the form of a card index) shall, in respect of each member, contain a sufficient indication to enable the account of that member in the register to be readily found.
- (3) If a company fails to comply with this section, the company and every officer who is in default shall be liable to a fine not exceeding \$40.

[Section 104 amended by No. 113 of 1965 s. 8(1).]

105. Inspection of register

- (1) Subject to the provisions of section 105A, the register of members commencing from the date of the registration of the company, and the index of the names of the members shall be kept at the registered office of the company, and, except when closed under the provisions of this Act, shall (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than 4 hours in each day be allowed for inspection) be open for at least 4 hours, between the hours of 8 a.m. and 10 p.m., each day for at least 2 days each week, to the inspection of any member gratis, and to the inspection of any other person on payment of 10 cents or such less sum as the directors may fix for each inspection:

Provided that, where a company has restricted the hours during which the register of members is open for inspection for any period less than the hours when the registered office of the company is open to the public, such restriction shall have no effect until notice thereof has been filed with the Registrar.

- (2) Any member or other person may require a copy of the register or of any part thereof, or of the annual return required by this Act or any part thereof, on payment of 5 cents or such less sum as the directors may fix for every 100 words or fractional part thereof required to be copied. The company shall cause any copy so required by any person to be despatched to that person within a period of 14 days commencing on the day next after the day on which the requirement is received by the company.
- (3) If any inspection required under this section is refused or if any copy required under this section is not despatched within the proper period, the company, and every officer of the company who is in default, shall be liable in respect of each offence to a fine not exceeding \$10, and further to a daily penalty not exceeding \$4 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, and make any further order which to the Court seems proper.

[Section 105 amended by No. 39 of 1959 s. 3; No. 113 of 1965 s. 8(1).]

105A. Register may be kept away from registered office

- (1) Notwithstanding the provisions of sections 103(1) and 105(1) —
- (a) where the work of making up the register of members and index, if any, is done at another office of the company, it may be kept at that other office; or
 - (b) where the company arranges with some other person to make up the register on its behalf it may be kept at the office of that other person at which the work is done,

but the register of members and index, if any, shall not be kept at a place outside the State, and shall be open to inspection at that office as provided in section 105.

- (2) Every company shall forthwith send notice to the Registrar of any place other than the registered office where the register and index, if any, are kept and of the days and hours during which it is accessible to the public and of every change therein.
- (3) If default is made in complying with this section the company, and every officer who is in default, is liable to a fine not exceeding \$100, and in addition to a daily penalty not exceeding \$10 for every day during which the default continues.

[Section 105A inserted by No. 39 of 1959 s. 4; No. 113 of 1965 s. 8(1).]

106. Power to close register

Any company may, on giving not less than 14 clear days' notice by advertisement in a newspaper published in Perth or in the locality in which the registered office of the company is situate,

close the register of members for any time or times not exceeding in the whole 56 days in each year.

Provided that the register shall not be closed at any one period for more than 14 consecutive days.

[Section 106 amended by No. 47 of 1949 s. 12.]

107. Power to rectify register

- (1) If —
- (i) the name of any person is without sufficient cause entered in or omitted from the register of members of a company; or
 - (ii) 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 apply to the Court for rectification of the register.

- (2) The Court may either refuse the application or may order rectification of the register and payment by the company or any other party to the proceedings of any damages sustained by any party aggrieved.
- (3) On any application under this section the Court may decide any question relating to the title of any person who is a party to the proceeding 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 file an annual return with the Registrar, the Court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be filed with the Registrar.

108. Entry of trusts and trustees

- (1) Save as hereinafter mentioned in this section, no notice of any trust, expressed, implied, or constructive, shall be entered on the register, or be receivable by the Registrar.
- (2) Any trustee, executor, or administrator of the estate of any deceased person who was registered as the holder of a share in any company may become registered as the holder of that share as such trustee, executor, or administrator; and the trustee, executor, or administrator shall in respect of that share be subject to the same liabilities, and no more, as he would have been subject to if the share had remained registered in the name of the deceased person.
- (3) Any trustee, executor, or administrator of the estate of any deceased person who was equitably entitled to a share in any company may, with the consent of the company and of the registered holder of the share, or on the order of the Court become registered as the holder of the share as such trustee, executor, or administrator; and such trustee, executor, or administrator shall in respect of that share be subject to the same liabilities, and no more, as he would have been subject to if the share had been registered in the name of the deceased person.
- (4) Notwithstanding the registration of any person as the holder of any share as trustee, executor, or administrator of any deceased person pursuant to subsections (2) or (3), the company may treat such person as being absolutely entitled to the share registered in his name and shall be under no obligation or duty towards any other person.
- (5) A company shall not be bound to see to the execution of any trust whether expressed, implied or constructive to which any shares of the company may be subject.

109. Register to be evidence

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

Division 4 — Branch register

110. Company may keep branch register

- (1) A company may, if so authorised by its articles, cause to be kept in any country, State, or colony, a branch register of members (in this Act called a branch register).
- (2) The company shall file with the Registrar notice of the situation of the office where any branch register is kept, and of any change in its situation, and if it is discontinued of its discontinuance, and any such notice shall be given within 14 days of the opening of the office or of the change or discontinuance, as the case may be.
- (3) If default is made in complying with subsection (2), the company and every officer of the company who is in default shall be liable to a fine not exceeding \$40 and in addition to a daily penalty not exceeding \$10 for every day during which the default continues.

[Section 110 amended by No. 113 of 1965 s. 8(1).]

111. Provisions as to branch register

- (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 and may be closed in the same manner in which the principal register is by this Act required to be kept, or permitted to be closed, except that the advertisement before closing the register shall be inserted in some newspaper circulating in the district wherein the branch register is kept.
- (3) The company shall transmit to its registered office 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 entered up 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.

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- (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) The company may discontinue to keep any branch register, and thereupon all entries in that register shall be transferred to some other branch register kept by the company in the same country, state, or colony, or to the principal register.
- (6) Shares registered in a branch register may be transferred to any other branch register of the company in accordance with the regulations provided therefor.
- (7) 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.
- (8) If default is made in complying with subsection (3), the company and every officer of the company who is in default shall be liable to a fine not exceeding \$40 and in addition to a daily penalty not exceeding \$10 for every day during which the default continues.

[Section 111 amended by No. 113 of 1965 s. 8(1).]

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112. Annual return

- (1) Every company having a share capital shall subject to the provisions of subsection (2a), within 28 days after 31 March in each year, file with the Registrar a return containing the following information —
 - (i) The names, addresses and occupations of all persons who on 31 March preceding the return, were members of the company and of all persons who have ceased to be members since the date of the last return, or, in the case of a first return, since the incorporation of the company;

- (ii) The number of shares held by each of the members at the date of the return specifying the types or kinds of shares;
- (iii) If the names of the members are not furnished in alphabetical order, an index sufficient to enable the name of any person to be readily found;
- (iv) The address of the registered office of the company;
- (v) A summary distinguishing between the shares issued for cash and shares issued as fully or partly paid up otherwise than in cash;
- (vi) The amount of the share capital of the company, the number of shares into which it is divided, and, where the shares are divided into different classes or kinds having special rights or subject to special restrictions or disabilities, the classes or kinds of shares;
- (vii) The number of shares issued and subscribed for from the commencement of the company up to the date of the return;
- (viii) The amount called upon each share;
- (ix) The total amount of calls received, inclusive of application and allotment moneys;
- (x) The total amount of calls unpaid;
- (xi) The total amount of the sums, if any, paid by way of commission in respect of any shares or debentures;
- (xii) 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 when the return is made;
- (xiii) 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;
- (xiv) The total number of shares forfeited;

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- (xv) All the particulars with respect to the persons who at the date of the return are directors of the company which are by this Act required to be contained in the register of the directors of the company;
- (xvi) The total amount of the indebtedness of the company in respect of mortgages and charges affecting the property of the company;
- (xvii) The name of every auditor of the company for the time being;
- (xviii) The date of holding the last annual meeting;
- (xix) Where a company has issued debentures, particulars of which are not included under paragraph (xvi), a list of the names, addresses, and occupations of all persons who on the date on which the return is made were the holders of such debentures, particulars of the number and value of debentures redeemed since the date of the last return, and similar particulars in relation thereto as must by paragraphs (v), (vi), (vii), (viii), (ix), (x) and (xiv), be included with regard to shares;
- (xx) Except where a company is a proprietary company a copy of the last balance sheet shall accompany and form part of the return. The copy shall be certified by a director or the manager of the company to be a true copy, and shall be accompanied by a copy of the report of the auditors thereon certified in the same way as the balance sheet, and if the balance sheet is in a foreign language there shall be annexed to it a translation thereof in English certified in the prescribed manner to be a correct translation: Provided that if the said last balance sheet did not comply with the requirements of the law in force at the date of the audit with respect to form of balance sheet, the copy shall be corrected and added to so as to make it comply with the requirements, and the fact that the copy has been so amended shall be stated thereon.

- (2) The return shall be in the form of Form A in the Sixth Schedule and shall be contained in a separate book or folder and shall be signed by a director or manager and the company when presenting the same shall pay the fee prescribed in respect thereof.
- (2a) The return may, in any year, if the return for either of the 2 immediately preceding years has given as at the date of that return the full particulars required by paragraphs (i) and (ii) of subsection (1), give only such of the particulars required by those paragraphs as relate to persons ceasing to be or becoming members since the date of the last return, and to shares transferred since that date, or to changes as compared with that date in the amount of stock held by a member.
- (3) A proprietary company shall send with the annual return required by this section a certificate signed by a director or the manager 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, or issue of a certificate that the company is a proprietary company, as the case may be, issued any invitation to the public to subscribe for any shares, debenture, stock or bonds of the company, and, where the annual return discloses the fact that the number of members of the company exceeds 50, also a certificate so signed that the excess consists wholly of persons who, under section 37(1)(a), are not to be included in reckoning the number of 50.
- (4) If a company fails in any respect to comply with this section the company and every officer of the company who is in default shall be guilty of an offence.
Penalty: \$40 and in addition a daily penalty of \$10 for every day during which the default continues.
- (5) This section shall not apply to a no liability company or to any public company as regards any year if the Registrar had not

prior to 31 March of that year issued to that company a statement that the company was entitled to commence business.

- (6) The Registrar may, on the application of any company, fix some day other than 31 March as the day from which the time within which that company must file a return under this section is to be computed; and when a day has been so fixed, this section shall be construed as regards the particular company as though the day so fixed were substituted for 31 March wherever that day is mentioned in this section.

[Section 112 amended by No. 21 of 1951 s. 5; No. 113 of 1965 s. 8(1).]

113. Annual return to be made by a company not having share capital

- (1) Every company not having a share capital shall, within 28 days after 31 March in each year, file with the Registrar a return containing the following information —
- (i) The names, addresses and occupations of all persons who, on 31 March preceding the return, were members of the company and of all persons who have ceased to be members since the date of the last return, or, in the case of a first return, since the incorporation of the company; Provided that where a company has compiled such a list of members as at a date within 3 months prior to 31 March in that year the company may, with the consent of the Registrar, in lieu of a list made up to 31 March, file that list, with the addition thereto of particulars of all persons who have become members of the company between the date of that list and 31 March next following, and in such case the list to be filed by the company for the following year shall commence from the date of the list so filed;
 - (ii) The dates when such persons who have ceased to be members since the date of the last return or

incorporation, as the case may be, ceased to be members;

- (iii) If the names of the members are not furnished in alphabetical order an index sufficient to enable the name of any person to be readily found;
- (iv) The address of the registered office of the company;
- (v) All the particulars with respect to the persons who at the date of the return are directors of the company which are by this Act required to be contained in the register of the directors of the company;
- (vi) The total amount of the indebtedness of the company in respect of mortgages and charges affecting the property of the company;
- (vii) The name of every auditor of the company for the time being;
- (viii) The date of holding the last annual meeting;
- (ix) If the company has issued debentures which are not included in the particulars supplied under paragraph (vi), the return shall include such particulars of debentures as a company having a share capital must include in a return pursuant to section 112;
- (x) A copy of the last balance sheet must accompany and form part of the return. The copy shall be certified by a director or manager of the company to be a true copy, and shall be accompanied by a copy of the report of the auditors thereon, certified in the same way as the balance sheet, and if the balance sheet is in a foreign language there shall be annexed to it a translation in English certified in the prescribed manner to be a correct translation:

Provided that if the last balance sheet did not comply with the requirements of the law in force at the date of the audit with respect to form of balance sheet the copy shall be corrected and added to so as to comply with the

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requirements, and the fact that the copy has been so amended shall be stated thereon.

- (2) The return shall be in the form set forth in the Seventh Schedule and shall be contained in a separate book or folder and shall be signed by a director or manager and the company when presenting the same shall pay the fee prescribed in respect thereof.
- (3) If a company not having a share capital fails in any respect to comply with this section, the company and every officer of the company who is in default shall be guilty of an offence.
Penalty: \$40, and in addition a daily penalty of \$10 for every day during which the default continues.
- (4) The Registrar may on the application of any company fix a day other than 31 March as the day from which the time within which that company must file a return under this action is to be computed, and when such a day has been so fixed, this section shall be construed as regards the particular company as if the day so fixed were substituted for 31 March wherever that day is mentioned in this section.

[Section 113 amended by No. 113 of 1965 s. 8(1).]

Division 6 — Meetings and proceedings

114. Annual general meeting

- (1) A general meeting of every company shall be held once at the least in every year, and not more than 15 months after the holding of the last preceding general meeting.

Provided that —

- (a) Where a company incorporated in this State has the majority in numbers of its members resident in this State the general meeting referred to in subsection (1) shall be held at a place within this State.

- (b) Where a company incorporated in this State has the majority in number of its members resident in places not within this State and for that reason may ordinarily hold its general meetings at a place or places not within this State, the company shall once at least in every year hold a general meeting at a place within this State if and when requested so to do by such number of members of the company who are resident in this State being in any event not less than 10 members and being a majority of the members resident in this State.
 - (c) Any request under paragraph (b) of this proviso shall be in writing signed by the members making the request and shall be addressed to the chairman of the directors of the company, and may be sent by registered post or be left at the registered office of the company in this State.
- (2) If default is made in holding a meeting of the company in accordance with the provisions of this section the company and every officer who is in default shall be liable to a fine not exceeding \$40.
 - (3) If default is made as aforesaid the Court may, on the application of any member of the company, call or direct the calling of a general meeting of the company.

[Section 114 amended by No. 113 of 1965 s. 8(1).]

115. First statutory meeting of company

- (1) Every company limited by shares and registered after the commencement of this Act shall, within a period of not less than one month nor more than 4 months from the date at which the company is entitled to commence business, or in case of a company to which section 102 does not apply, from the date of incorporation of the company, hold a general meeting of the members of the company, which shall be called the statutory meeting.

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- (2) The directors shall, at least 14 days before the day on which the meeting is held, forward a report (in this Act called *the statutory report*) to every member of the company and to every other person entitled under this Act to receive it.
- (3) The statutory report shall be certified by not less than 2 directors of the company, or where there are less than 2 directors by the sole director or manager, 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 aforesaid;
 - (c) an abstract of the receipts of the company and of the payments made thereout up to a date within 14 days from 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 and 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 by this section required, to be filed with the Registrar 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) The provisions of this section as to the forwarding and filing of the statutory report shall not apply in the case of a proprietary company, but such statutory report shall be included in the minute-book of the company required to be kept pursuant to the provisions of this Act.
- (10) In the event of any default in complying with the provisions of this section the company and every officer of the company who is in default shall be liable to a fine not exceeding \$40.

[Section 115 amended by No. 113 of 1965 s. 8(1).]

116. Convening extraordinary general meeting on requisition

- (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 must state the objects of the meeting and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.
- (3) If the directors do not within 28 days from the date of the deposit of the requisition proceed duly to convene a meeting, to be held not more than 28 nor less than 14 days from the date of convening the same, 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 3 months from the date of the deposit.
- (4) Any meeting convened under 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 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 section 119.

117. Provisions as to meetings

- (1) The following provisions shall have effect, insofar as the articles of the company do not make other provisions in that behalf: —
- (a) A meeting of a company, other than a meeting for the passing of a special resolution may be called by 14 days' notice in writing;
 - (b) Notice of the meeting of a company shall be served on every member of the company and the auditor for the time being in the manner in which notices are required to be served by Table A or, in the case of a no liability company, Table B in the Second Schedule, and for the purpose of this provision, a reference to either table means that table as for the time being in force;
 - (c) 2 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 5% in number of the members of the company may call a meeting;
 - (d) In the case of a proprietary company, 2 members, and, in the case of any other company, 3 members personally present shall be a quorum;
 - (e) Any member elected by the members present at a meeting may be chairman thereof;
 - (f) In the case of a company having a share capital, every member shall have one vote in respect of each share or each \$20 of stock held by him, and in any other case every member shall have one vote.
- (2) If 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 manner prescribed by the articles or this Act, the Court, 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 may 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 directions as it thinks expedient. 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.

- (3) The auditor for the time being of a public company may attend, and as such auditor, take part in all the business transacted at the meeting, but may not, as such auditor, vote.

[Section 117 amended by No. 113 of 1965 s. 8(1).]

118. Representation of companies at meetings of other companies of which they are members

- (1) A corporation, whether a company within the meaning of this Act or not, may —
- (a) if it is a member of a company, by resolution of its directors or other governing body, authorise 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) if it is a creditor (including a holder of debentures) of a company, by resolution of its directors or other governing body, authorise 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 of 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 authorised as aforesaid shall be entitled to exercise the same powers 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.

119. Definition of special resolution

- (1) Save and except where otherwise in this Act especially provided, a resolution shall be a special resolution when it has been passed by a majority of not less than three-fourths of such members as being entitled so to do vote in person or, where proxies are allowed by proxy and at a general meeting of which not less than 14 days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given; Provided that, if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than 14 days' notice has been given.
- (2) At any meeting at which 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.
- (3) At any meeting at which a special resolution is submitted to be passed a poll shall be taken to be effectively demanded, if demanded —
 - (a) by such number of members for the time being entitled under the articles to vote at the meeting as may be specified in the articles, so, however, that it shall not in any case be necessary for more than 5 members to make the demand; or
 - (b) if no provision is made by the articles with respect to the right to demand the poll —
 - (i) by any 3 members so entitled; or
 - (ii) by one member or 2 members so entitled if that member holds or those 2 members together hold

not less than 15% of the paid-up share capital of the company.

- (4) When a poll is demanded in accordance with this section in computing the majority on the poll reference shall be had to the number of votes to which each member is entitled by this Act or the articles of the company.
- (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 this Act or the articles.

120. Effect of special resolutions in certain cases

Anything by this Act authorised to be done by a special resolution, may be so done, notwithstanding anything to the contrary contained in the memorandum or articles of any company now registered or hereafter to be registered.

121. Registration and copies of special resolutions

- (1) A copy of every resolution or agreement to which this section applies certified by the chairman of the meeting to be a true copy thereof shall, within 28 days after the passing or making thereof, be filed with the Registrar, who shall record the same.
- (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 copy of every such resolution or agreement shall be forwarded to any member at his request gratis or to any other person, on payment of 10 cents or such less sum as the directors fix.
- (4) This section shall apply to —
 - (a) special resolutions which alter the capital or the memorandum or articles of a company;

- (b) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;
 - (c) resolutions or agreements which have been agreed to by all the members of some class of shareholder, 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;
 - (d) resolutions for voluntary winding-up within the meaning of this Act.
- (5) If a company fails to comply with subsection (1), the company and every officer of the company who is in default shall be liable to a fine of \$4 for every day during which the default continues.
- (6) If a company fails to comply with subsection (2) or subsection (3), the company and every officer of the company who is in default shall be liable to a fine not exceeding \$2 for each copy in respect of which default is made.
- (7) For the purposes of the last 2 foregoing subsections a liquidator of the company shall be deemed to be an officer of the company.

[Section 121 amended by No. 47 of 1949 s. 13; No. 113 of 1965 s. 8(1).]

122. Resolutions passed at adjourned meetings

Where, after the commencement of this Act, 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;
- (d) 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.

123. Minutes of proceedings of meetings and directors

- (1) Every company shall cause minutes of all proceedings of general meetings and where there are directors of all proceedings at meetings of its directors to be forthwith entered in bound books kept for that purpose.
- (2) Any such minute, if purporting to be signed as correct 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) Until the contrary is proved, every general meeting of the company, or meeting of directors in respect of the proceedings whereof minutes have been so made, 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 shall be deemed to be valid.
- (4)(a) Every minute of a resolution fixing the rate or amount of remuneration of any director shall contain the names of every director respectively voting for and against the resolution and state how each such director voted; and, if the case so requires, shall contain the names of every person mentioned in section 152(2)(b) who votes in favour of the resolution.
- (b) If any person whose duty or part of whose duty it is to enter such minute in the book kept for that purpose fails or neglects to enter therein the particulars required by paragraph (a) such person shall be liable in respect of each such offence to a penalty not exceeding \$100.

[Section 123 amended by No. 113 of 1965 s. 8(1).]

124. Inspection of minute books

- (1) The books containing the minutes of proceedings of any general meeting of a company shall be kept at the registered office of the company, and 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 3 hours in each day be allowed for inspection) be open to the inspection of any member without charge: Provided that, where a company has restricted the hours during which the minute books are open for inspection for any period less than the hours when the registered office of the company is open to the public, such restriction shall have no effect until notice thereof has been filed with the Registrar.
- (2) Any member shall be entitled to be furnished within 14 days after he has made a request in that behalf to the company with a copy of any such minutes as aforesaid at a charge not exceeding 10 cents for every 100 words.
- (3) If any inspection required by this section is refused or if any copy required under this section is not sent within the proper time the company and every officer of the company, in default shall be liable for each offence to a fine not exceeding \$4 and in addition to a daily penalty not exceeding \$2 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 books in respect of all proceedings of general meetings or direct that the copies required shall be sent to the persons requiring them.

[Section 124 amended by No. 113 of 1965 s. 8(1).]

Division 7 — Accounts

125. Accounts

- (1) Every company shall cause to be kept proper accounts in which shall be kept full, true, and complete accounts of the affairs and transactions of the company.
- (2) The accounts shall be kept at the registered office of the company or at such other place as the directors may think fit, and at all times shall be open to inspection by any director of the company.
- (3) If any director —
 - (a) fails to take all reasonable steps to secure compliance by the company with the requirements of this section; or
 - (b) has by his own wilful act been the cause of any default by the company under this section,

he shall, in respect of each offence, be liable to a fine not exceeding \$200.

- (4) The Court may in any particular case order that the accounts of a company be open to inspection by an accountant acting for a director, but only upon an undertaking in writing being given to the court that information acquired by such accountant during his inspection shall not be disclosed by him save to such director.

[Section 125 amended by No. 113 of 1965 s. 8(1).]

126. Profit and loss account and balance sheet

- (1) The directors of every company shall at some date not later than 18 months after the incorporation of the company and subsequently once at least in every year lay before the company in 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 6 months, or, in the case of a company carrying on business or having interests outside Australia, by more than 9 months: Provided that if for any special reason he thinks fit so to do, the Registrar may, in the case of any company, extend the period of 18 months aforesaid, and in the case of any company and with respect to any year extend the periods, of 6 and 9 months aforesaid.

- (2) Every profit and loss account of a company, not being a banking company, shall show the balance of profit and loss for the period which it covers and shall in particular show separately: —
- (a) the net balance of profit and loss on the company's trading;
 - (b)(i) income from general investments;
 - (ii) income from investments in subsidiary companies;
 - (c) amount (if any) charged for depreciation or amortisation on (i) investments, (ii) goodwill, and (iii) fixed assets;
 - (d) the amount transferred to the account from reserves or from provisions;
 - (e) directors' fees.
- (3) The directors shall cause to be made out in every 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 the case may be, is made up, and there shall be attached to every such balance sheet a report by the directors with respect to the state of the company's affairs including information as to whether or not the results of the year's operations (as disclosed in the profit and loss account or the income and expenditure account) have in the opinion of the directors been materially affected by items of an abnormal character, 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 the reserve fund, general reserve, or any

reserve account shown specifically on the balance sheet, or to any reserve fund, general reserve, or reserve account to be shown specifically on a subsequent balance sheet.

- (4) If any person being a director of a company fails to take all reasonable steps to comply with the provisions of this section he shall, in respect of each offence, be liable to a fine not exceeding \$200.

[Section 126 amended by No. 47 of 1949 s. 14; No. 113 of 1965 s. 8(1).]

127. Form of balance sheet

- (1) Every balance sheet of a company shall contain a summary of the authorised share capital and of the issued share capital of the company, its liabilities and its assets, together with such particulars as are necessary to disclose the general nature of the liabilities and the assets of the company and to distinguish between the amounts respectively of the fixed assets and of the floating assets, and shall state how the values of the fixed assets have been arrived at.
- (2) The balance sheet may, in the case of a banking company to which this section applies, and shall, in the case of any other company, be in one of the Forms B or C in the Sixth Schedule or to the like effect and comply with the directions (if any) at the foot of the form.
- (3) There shall be stated under separate headings in the balance sheet, so far as they are not written off —
- (a) the preliminary expenses of the company; and
 - (b) any expenses incurred in connection with any issue of share capital or debentures; and
 - (c) If it is shown as a separate item in or is otherwise ascertainable from the books of the company, or from any contract for the sale or purchase of any property to be acquired by the company, or from any documents in the possession of the company relating to the duty under

the *Duties Act 2008* payable in respect of any such contract or the conveyance of any such property, the amount of the goodwill and of any patents and trade marks as so shown or ascertained.

- (4) Where any liability of the company is secured otherwise than by operation of law on any assets of the company, the balance sheet shall include a statement that that liability is so secured, but it shall not be necessary to specify in the balance sheet the assets on which the liability is secured.
- (5) The provisions of this section are in addition to other provisions of this Act requiring other matters to be stated in balance sheets.

[Section 127 amended by No. 12 of 2008 Sch. 1 cl. 3(1).]

128. Shares in subsidiary companies

Where any of the assets of a company consist of shares in, or amounts owing (whether on account of any loan or otherwise) from a subsidiary company or subsidiary companies, the aggregate amount of those assets, distinguishing shares and indebtedness, shall be set out in the balance sheet of the first-mentioned company separately from all its other assets, and where a company is indebted (whether on account of any loan or otherwise) to a subsidiary company or subsidiary companies, the aggregate amount of that indebtedness shall be set out in the balance sheet of that company separately from all its other liabilities.

129. Particulars as to subsidiary companies

- (1) Where a company (in this subsection referred to as *the holding company*) holds shares either directly or through a nominee in a subsidiary company or in 2 or more subsidiary companies: —
 - (a) there shall be annexed to the profit and loss account of the holding company required by section 126 —
 - (i) a separate profit and loss account for each subsidiary company drawn up in the manner

hereinbefore prescribed for a profit and loss account; or

- (ii) a consolidated profit and loss account of the holding company and of its subsidiary companies drawn up as nearly as may be in the manner hereinbefore prescribed for such an account and eliminating all inter-company transactions — and in addition a statement showing the total losses (if any) of the subsidiary company or companies;

and

- (b) there shall be annexed to the balance sheet of the holding company required by section 126 —
 - (i) a balance sheet of each subsidiary company drawn up in the manner hereinbefore prescribed for a balance sheet; or
 - (ii) a consolidated balance sheet of the holding company and of its subsidiary companies drawn up as nearly as may be in the manner hereinbefore prescribed for a balance sheet and eliminating all inter-company transactions.

Provided that, in the case of a subsidiary company incorporated outside of this State whether it has or has not established a place of business in this State, it shall be sufficient compliance with the provisions of this subsection if the separate profit and loss account or the separate balance sheet (as the case requires) of such subsidiary company is in such form and contains such particulars and includes such documents (if any) as the company is required to make out and lay before the company in general meeting by the law for the time being applicable to such company in the country or State where it is incorporated; and the provisions of this subsection in regard to the drawing up of consolidated profit and loss accounts or of consolidated balance sheets (so far as such accounts and balance sheets deal with profit and loss accounts or balance sheets of such subsidiary

company) shall with such adaptations as are necessary be read and construed and have effect accordingly.

- (2) If in the case of a subsidiary company which is required to comply with this division the auditor's report on the balance sheet of the company does not state without qualification that the auditors have obtained all the information and explanations they have required and that the balance sheet is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them and as shown by the books of the company the separate balance sheet of the subsidiary company or the consolidated balance sheet of the holding company (as the case may be) shall contain particulars of the manner in which the report is qualified.

130. Meaning of subsidiary company

- (1) Where the assets of a company consists directly or indirectly in whole or in part of shares in another company (whether that other company is a company within the meaning of this Part or not) held directly or through a nominee or through another company (whether a company within the meaning of this Part or not) the majority of whose shares the holding company holds directly or indirectly, and —
- (a) the amount of the shares so held is at the time when the accounts of the holding company are made up more than 50% of the issued share capital of any such other company or such as to entitle the company to more than 50% of the voting power in such other company; or
 - (b) the company has power (not being power vested in it by virtue only of the provisions of a security or by virtue of shares issued to it for the purpose in pursuance of those provisions) directly or indirectly to nominate or appoint the majority of the directors of such other company,

every such other company shall be deemed to be a *subsidiary company* within the meaning of this Part and the expression

subsidiary company in this Part means a company in the case of which the conditions of this section are satisfied.

- (2) Where a company, the ordinary business of which includes the lending of money, holds shares in another company as security only, no account shall for the purpose of determining under this subsection whether that other company is a subsidiary company be taken of the shares so held.

131. Loans to officers and employees and payments to directors

- (1) The accounts which in pursuance of this Act are to be laid before every company in general meeting shall contain particulars showing —
- (a) the total amount of any loans which during the period to which the accounts relate have been made lawfully either by the company or by any other person under a guarantee from or on a security provided by the company to any officer or employee not being a director of the company, including any such loans which were repaid during the period;
 - (b) the total amount of any loans made in manner aforesaid to any officer or employee not being a director of the company at any time before the period aforesaid and outstanding at the expiration thereof;
 - (c) the total of the amount paid to the directors as remuneration for their services, inclusive of all fees, percentages, or other emoluments, paid to or receivable by them by or from the company or by or from any subsidiary company; and
 - (d) the amount of any debts owing to the company or to any subsidiary company by any director of the company which debts are outstanding at the end of the period to which the accounts relate and which have been due and payable for at least 12 months.

- (2) The provisions of subsection (1) shall not apply —
- (i) in the case of a company the ordinary business of which includes the lending of money to a loan made by the company in the ordinary course of its business; or
 - (ii) to a loan made by the company to any officer or employee of the company if the loan does not exceed \$3 000 and is certified by the directors of the company to have been made in accordance with any practice adopted or about to be adopted by the company with respect to loans to its employees.
- (3) If in the case of any such accounts as aforesaid 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 on the balance sheet of the company, so far as they are reasonably able to do so, a statement giving the required particulars.
- (4) In this section *emoluments* includes fees, percentages and other payments made or consideration given directly or indirectly to a director as such and the money value of any allowances or perquisites belonging to his office.

[Section 131 amended by No. 113 of 1965 s. 8(1).]

132. Reserve fund

- (1) No balance sheet, summary, advertisement, statement of assets and liabilities, or other document whatsoever published, issued or circulated by or on behalf of a company shall contain any direct or indirect representation that the company has any reserve fund, unless —
- (a) that reserve fund is actually existing; and
 - (b) the said representation is accompanied by a statement showing whether or not such reserve fund is used in the business, and, if any portion thereof is otherwise invested, showing the manner in which, and the securities upon which the same is invested.

- (2) Any director, manager, or auditor who, alone or in conjunction with any person, knowingly or wilfully signs, publishes, issues, or circulates, or causes to be signed, published, issued, or circulated any balance sheet, summary, advertisement, statement of assets and liabilities, or other document which contravenes subsection (1) shall be guilty of a crime punishable on indictment in the Supreme Court, and in addition to any civil responsibility shall on conviction be liable to be imprisoned for any term not exceeding 2 years; and any director or manager who through culpable negligence alone or in conjunction with any other person, signs, publishes, issues, or circulates or causes to be signed, published, issued, or circulated any balance sheet, summary, advertisement, statement of assets and liabilities, or other document which contravenes the said subsection shall, in addition to any civil responsibility, be guilty of an offence and shall on conviction be liable to a penalty not exceeding \$200.

[Section 132 amended by No. 113 of 1965 s. 8(1); No. 70 of 2004 s. 82.]

133. Signing of balance sheet

- (1) Every balance sheet and profit and loss account or income and expenditure account of a company shall be accompanied by a certificate signed on behalf of the Board by 2 of the directors of the company or, if there is only one director resident in the State, by that director stating that in their or his opinion the balance sheet is drawn up so as to exhibit a true and correct view of the state of the company's affairs, and that in their or his opinion the profit and loss account or the income and expenditure account (as the case may be) is drawn up, so as to exhibit a true and correct view of the results of the business of the company for the year, and the auditor's report shall be attached to the balance sheet, and the report shall be laid before the company in general meeting and shall be open to inspection by any member.
- (2) Every company which issues, publishes, or circulates any copy of a balance sheet or of a profit and loss account or of an income

and expenditure account which has not been certified and signed as required by this section or (in the case of a balance sheet) which has not a full and true copy of the auditor's report attached thereto, and every director, manager, or other officer of the company who is knowingly a party to the default shall on conviction be liable to a penalty not exceeding \$40.

- (3) The auditors of every company, before making a report pursuant to this section, shall require, and the directors and manager of the company shall, without unnecessary delay, supply to the auditors, a balance sheet giving the details and showing amongst other things the amount of deduction (if any) for debts considered to be bad or doubtful.

[Section 133 amended by No. 113 of 1965 s. 8(1).]

134. Publication of balance sheet

- (1) In every case of a company not being a proprietary company —
- (a) a copy of every balance sheet including every document required by law to be annexed thereto, which is to be laid before the company in general meeting, together with a copy of the auditors' report, shall not less than 14 days before the date of the meeting, be sent to all persons entitled to receive notices of general meetings of the company;
 - (b) any member of a company whether he is or is not entitled to have sent to him copies of the company's balance sheets and any holder of debentures of a company, 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 law to be annexed thereto, together with a copy of the report of the company's auditors on the balance sheet.
- (2) If the company makes default in complying with subsection (1)(a), the company and every officer of the company who is in default, shall be liable to a fine not

exceeding \$40 and in addition to a daily fine not exceeding \$10 for every day during which the default continues.

- (3) If, where any person makes a demand for a document with which he is by virtue of subsection (1)(b) entitled to be furnished, the company fails to comply with the demand within 14 days after the making thereof, the company, and every officer of the company who is in default, shall be liable to a fine not exceeding \$40 and in addition to a daily fine not exceeding \$10 for every day during which the default continues, unless it is proved that that person has already made a demand for and been furnished with a copy of the document.

[Section 134 amended by No. 113 of 1965 s. 8(1).]

135. Proprietary companies to furnish copies of balance sheets

- (1) In the case of a company being a proprietary company, any member shall be entitled to be furnished, within 14 days after he has made a request in that behalf to the company, with a copy of the balance sheet, the auditors' report, and every other document required by law to be annexed to the balance sheet, at a charge not exceeding 5 cents for every 100 words.
- (2) If default is made in furnishing such a copy to any member who demands it and tenders to the company the amount of the proper charge therefor, the company and every officer of the company who is in default shall be liable to a fine not exceeding \$40.

[Section 135 amended by No. 113 of 1965 s. 8(1).]

136. Certain companies to publish statement periodically

- (1) Every company, being an insurance company under the *Joint Stock Companies Ordinance 1858*⁶, or under the repealed Acts or this Act shall, on the first Monday in February and the first Monday in August in every year during which it carries on business, make a statement in the form set out in the Eighth Schedule or as near thereto as circumstances admit. Such statement shall be verified by a statutory declaration by the

manager or other authorised officer of the company, and be filed with the Registrar within 28 days from the date thereof.

- (2) A copy of the statement shall be put up 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 a sum not exceeding 5 cents.
- (4) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence.

Penalty: \$40 and in addition a daily penalty of \$10 for every day during which the offence continues.

- (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.

[Section 136 amended by No. 113 of 1965 s. 8(1).]

Division 8 — Audit

137. Appointment and remuneration of auditors

- (1) Subject to subsection (7) every company shall at the statutory meeting held in accordance with section 115 and at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.
- (2) If an appointment of auditors is not made at an annual general meeting the Governor may, on the application of any member of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid to him by the company for his services.
- (3) A person other than a retiring auditor shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of

auditor has been given by a shareholder to the company not less than 14 days before the annual general meeting; and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to the shareholders, either by advertisement or in any other mode allowed by the articles not less than 7 days before the annual general meeting:

Provided that if, after notice of the intention to nominate an auditor has been so given, an annual general meeting is called for a date 14 days or less after the notice has been given, the notice, though not given within the time required by this subsection, shall be deemed to have been properly given for the purposes thereof, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this subsection, be sent or given at the same time as the notice of the annual general meeting.

- (4) Subject as hereinafter provided, the first auditors of the company may be appointed by the directors at any time before the statutory meeting held in accordance with section 115, and auditors so appointed shall hold office until that meeting:

Provided that —

- (a) the company may at a general meeting of which notice has been served on the auditors in the same manner as on members of the company, remove any such auditors and appoint in their place any other persons being 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 7 days before the date of the meeting; and
- (b) if the directors fail to exercise their powers under this subsection, the company in general meeting may appoint the first auditors, and thereupon the said powers of the directors shall cease.
- (5) 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 shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting held in accordance with section 115 or to fill any casual vacancy, may be fixed by the directors and that the remuneration of an auditor appointed by the Governor may be fixed by the Governor.
- (7) Notwithstanding anything to the contrary contained in this section, it shall not be necessary for a proprietary company to appoint an auditor, if and when the majority in number of the members of the company and irrespective of their shareholding voting in person or by proxy at the statutory meeting or at an annual general meeting of the company carry a resolution directing that the company shall not appoint an auditor or auditors; and when such a resolution is carried and whilst such resolution remains unrescinded by a subsequent resolution similarly carried, the provisions of this section shall not apply.
- (8) A partnership registered under the provisions of the *Business Names Act 1942*¹⁰, may be appointed auditors under the business name so registered, if every partner resident in Australia is registered as an auditor under this Act.

[Section 137 amended by No. 47 of 1949 s. 15.]

138. Disqualification for appointment as auditor

- (1) In this section —
company for the purposes of subsection (2)(a), (b) and (d) includes the company's subsidiary or holding company, and a subsidiary of its holding company;
holding company has the same meaning as in section 129;
officer or servant of the company does not include an auditor of the company.
- (2) Subject to the provisions of the next succeeding subsection, no person shall be qualified for appointment, or act, as auditor of a company while —
- (a) a director or officer or servant of the company;

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- (b) a partner or employee of an officer or director or servant of the company, or the employer of an officer or director of the company;
- (c) a body corporate;
- (d) indebted to the company in a sum exceeding \$400.

Penalty: \$100.

- (3) The provisions of the last preceding subsection shall not apply to any person referred to in paragraphs (a) and (b) of that subsection where —
 - (a) the company is a proprietary company; and
 - (b) the person has been appointed auditor of the proprietary company by a special resolution.

[Section 138 amended by No. 21 of 1951 s. 6; No. 113 of 1965 s. 8(1).]

139. Powers and duties of auditors

- (1) The auditors shall make a report to the members on the accounts examined by them, and on every balance sheet and profit and loss account or income and expenditure account laid before the company in general meeting during their tenure of office, and the report shall state —
 - (a) whether or not they have obtained all the information and explanations they have required; and
 - (b) whether, in their opinion, the balance sheet referred to in the report is properly drawn up, and exhibits a true and correct view of the state of the company's affairs and the profit and loss account is properly drawn up so as to exhibit a true and correct view of the results of the business of the company for the year, or the income and expenditure account is properly drawn up so as to exhibit a true and correct view of the income and expenditure of the company for the year according to the best of their information and the explanations given to them and as shown by the books of the company; and

- (c) whether in their opinion the register of members and other records which the company is by law or by its articles required to keep, have been properly kept; and
 - (d) whether in their opinion the amount set down for depreciation and/or for bad and doubtful debts is, having regard to the nature of the business, sufficient.
- (2) Every auditor of a company shall have a right of access at all times to every minute book of the company, directors or managers, and all other books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors.
- (3) The auditors of a company are entitled to attend a general meeting of the company and to receive all notices of and other communications relating to a general meeting which a member of the company is entitled to receive and are entitled to be heard at a general meeting which they attend on any part of the business of the meeting which concerns them as auditors.
- (4) A majority of members personally present at any general meeting of the company may request the attendance of the company's auditor at the meeting for the purpose of making any explanation in respect of his report or the company's accounts which the members desire, and for that purpose may adjourn the meeting to any time and place.
- (5) Every auditor of a company shall use reasonable diligence with the view of ascertaining that the books of the company have been properly kept and record correctly the affairs and transactions of the company, and that the assets and securities of the company do in fact exist and are in proper custody or under proper control.
- (6) Every auditor of a company who neglects to discharge the duties above in this section more particularly set out shall, apart from any liability which by any rule of law attaches to the discharge

of the duties of his office, be liable to a penalty of not exceeding \$200.

[Section 139 amended by No. 73 of 1953 s. 4; No. 113 of 1965 s. 8(1).]

Division 9 — Inspection

140. Investigation of affairs of company by inspectors

- (1) The Court may appoint one or more competent inspectors to investigate the affairs of any company, and to report thereon, in such manner as the Court may direct —
 - (i) in the case of a banking company having a share capital, on the application of members holding not less than one-third of the shares issued;
 - (ii) in the case of any other company having a share capital, on the application of members holding not less than one-tenth of the shares issued;
 - (iii) 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 Court may require for the purpose of showing that the applicants have good reasons for, and are not actuated by malicious motives in, requiring the investigation; and the Court may, before appointing an inspector, require the applicants to give security to an amount not exceeding \$200 for payment of the costs of the inquiry.
- (3) It shall be the duty of all officers and agents of the company to produce to the inspectors all books and documents in their custody or power.
- (4)(a) An inspector may by summons under his hand in the Form C set out in the Thirteenth Schedule, require any officer or agent of the company to appear before him for examination and such summons may require the production of all books and

documents in the custody or power of any officer or agent of the company;

- (b) Any officer or agent of the company summoned under this subsection shall be paid or tendered the same amount as such person would have been entitled to had he been summoned as a witness to the Supreme Court;
- (c) Any officer or agent of the company who after receiving such summons fails to attend at the time and place mentioned therein shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding \$40;
- (d) Every summons to attend issued by an inspector under this subsection shall have the same force and effect as a subpoena issued to a witness out of the Supreme Court; and when the officer or agent of a company, who has been so summoned and to whom the payment or tender mentioned in paragraph (b) has been made, fails to attend before the inspector in obedience to such summons, the inspector may by warrant under his hand order that such officer or agent be apprehended and brought before him on a day and at a time to be specified in the warrant; and every such warrant shall be executed in the same manner and by the same persons as if it were a warrant issued by a Judge of the Supreme Court for the apprehension of a witness who had disobeyed a subpoena issued out of such court. The exercise of the power conferred by this paragraph shall not in any way affect the liability of the officer or agent against whom such power exercised, to prosecution for an offence under paragraph (c).
- (5) An inspector may examine on oath the officers and agents of the company in relation to its business, and may administer an oath accordingly.
- (6) If any officer or agent of the company refuses to produce to the inspectors any book or document which it is his duty under 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, 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 the Court.

- (7) On the conclusion of the investigation the inspectors shall report their opinion to the Court, and a copy of the report shall be forwarded by the Court to the registered office of the company, and a further copy shall at the request of the applicants for the investigation be delivered to them.
- (8) Except where the Court is satisfied that it is expedient or desirable to appoint some person other than a registered auditor, no person other than a registered auditor shall be appointed an inspector under this section.
- (9) The Court shall treat any application under this section as urgent.

[Section 140 amended by No. 113 of 1965 s. 8(1).]

141. Proceedings on report by inspectors

- (1) If from the report it appears to the Court that any person has been guilty of any offence in relation to the company for which he is criminally liable and that the case is one in which the prosecution might be undertaken by the Attorney General, the Court shall refer the matter to him.
- (2) If, where any matter is referred to the Attorney General under this section, he considers that the case is one in which a prosecution ought to be substituted, he shall institute proceedings accordingly, and it shall be the duty of all officers and agents of the company (other than the accused in the proceedings), to give to him all assistance in connection with the prosecution which they are reasonably able to give.

- (3) The expenses of and incidental to an investigation under the last preceding section (in this section referred to as *the expenses*) shall be defrayed by the company unless the Court thinks proper to order that they shall either be paid by the applicants or in part by the company and in part by the applicants.
- (4) In addition to the provisions contained in the last preceding subsection the Court may in any case order that the expenses or any part thereof shall be paid, either direct or by way of refund to the company or the applicants, by any director, manager, or other officer of the company.
- (5) If the company or any person fails to pay the whole or any part of the sum which it or he is liable to pay under subsections (3) or (4) the applicants shall make good the deficiency, but with a right to recover same as a debt from the company or person liable therefor.

[Section 141 amended by No. 84 of 2004 s. 82.]

142. Power of company to appoint inspectors

- (1) A company may by special resolution appoint inspectors to investigate its affairs.
- (2) Inspectors so appointed shall have the same powers and duties as inspectors appointed by the Court, except that instead of reporting to the Court they shall report in such manner and to such persons as the company in general meeting may direct.
- (3) If any officer or agent of the company refuses to produce to the inspectors any book or document which it is his duty under 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, he shall be liable to be proceeded against in the same manner as if the inspectors had been inspectors appointed by the Court.
- (4) For the purposes of this and the 2 preceding sections —
 - (a) the expression *officers* includes former officers; and

- (b) the expression *agents* in relation to a company shall be deemed to include the bankers of the company and any persons employed by the company as auditors, whether those persons are or are not officers of the company.

143. Power of Governor to appoint inspector

- (1) The Governor, on the recommendation of the Attorney General, may appoint the Auditor General, the Registrar, or any other competent person as an inspector to investigate the affairs of any company. The Attorney General shall not make any such recommendation unless he has first received a written report from the Commissioner of Police or the Registrar and the information contained in that report is such that he has reasonable cause to suspect that —
 - (a) the company is not carrying on business in good faith in the interests of shareholders; or
 - (b) that the directors, managers, or officers of the company have been guilty of fraudulent or negligent conduct which has caused or is likely to cause serious loss to the company or the shareholders; or
 - (c) that the company is endeavouring to raise capital from the public by unlawful or dishonest means.
- (2) In relation to any investigation under this section —
 - (a) the inspector so appointed shall have the same powers and duties as an inspector appointed by the Court, except that instead of reporting to the Court, he shall report to the Governor; and
 - (b) officers and agents of the company shall have the same duties and liabilities as if the inspector had been appointed by the Court.
- (3) If any officer or agent of the company refuses to attend before the inspector or to produce to the inspector any book or document which it is his duty under this section so to produce, or refuses to answer any question which is put to him by the

inspector with respect to the affairs of the company he shall be liable to be proceeded against in the same manner as if the inspector had been appointed by the Court.

- (4) For the purposes of this section —
- (a) the expression *officers* includes former officers; and
 - (b) the expression *agents* in relation to a company shall be deemed to include the bankers of the company and any persons employed by the company as auditors, whether those persons are or are not officers of the company.

144. Report of inspectors to be evidence

- (1) A copy of the report of any inspectors appointed under this Act, authenticated by the signatures of such inspectors or 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 inspectors in relation to any matter contained in the report.
- (2) Within 28 days after the receipt by it of a report of any inspector appointed under this Act the company shall cause a copy of the report, authenticated by the seal of the company to be filed with the Registrar.
- (3) If default is made in complying with this section the company and every officer of the company who is in default shall be liable to a fine not exceeding \$40 and in addition to a daily penalty not exceeding \$10 for every day during which the default continues.

[Section 144 amended by No. 113 of 1965 s. 8(1).]

Division 10 — Directors and managers

145. Number of directors

- (1) Every company not being a proprietary company shall have at least 2 directors: Provided that —
- (a) this requirement shall not apply to any company existing at the commencement of this Act ¹ until 28 days after

such commencement, nor to any company registered after such commencement until 28 days after registration; and

- (b) where a casual vacancy occurs whereby the number of directors is reduced below 2 this section shall be complied with if the casual vacancy is filled within 28 days after it occurred.
- (2) If any company fails to comply with this section it shall be liable to a fine not exceeding \$100 and in addition to a daily fine not exceeding \$10 for every day during which the default continues.
- (3) Failure to comply with this section shall not invalidate any act of or transaction entered into, by, or on behalf of a company.

[Section 145 amended by No. 113 of 1965 s. 8(1).]

146. Restrictions on appointment or advertisement of director

- (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 any prospectus issued by or on behalf of the company, or as proposed director of an intended company in any prospectus issued in relation to that intended company, or in any statement in lieu of prospectus filed by or on behalf of a company, unless before the registration of the articles or the publication of the prospectus, or the filing of the statement in lieu of prospectus, as the case may be, he has, by himself or by his agent authorised in writing —
 - (a) signed and filed with the Registrar a 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 or agreed to pay for his qualification shares, if any; or

- (iii) signed and filed with the Registrar an undertaking in writing to take from the company and pay for his qualification shares, if any; or
 - (iv) made and forwarded to the Registrar a statutory declaration to the effect that a number of shares, not less than his qualification, if any, are registered in his name, and are held by him in his own right; or
 - (v) in the case of a company formed or intended to be formed by way of reconstruction of another company or group of companies, made and forwarded to the Registrar a statutory declaration that he was a shareholder in such other company or in one or more of the companies of the said group, and that as such shareholder he will be entitled to receive and have registered in his name a number of shares not less than his qualification by virtue of the terms of an agreement relating to the said reconstruction.
- (2) Where a person has signed and filed such an undertaking, 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 applicant shall file with the Registrar a list of the persons who have consented to be directors of the company, and if this list contains the name of any person who has not so consented the applicant shall be liable to a fine not exceeding \$40.

[Section 146 amended by No. 113 of 1965 s. 8(1).]

147. Qualification of director

- (1) Without prejudice to the restrictions imposed by the last foregoing section, 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 28 days after his appointment, or such shorter time as may be fixed by the articles.

- (2) The office of director of a company shall be vacated if the director does not within 28 days from the date of his appointment, or within such shorter time as may be fixed by the articles of the company, obtain his qualification, or if after the expiration of such period or shorter time he ceases at any time to hold his qualification.
- (3) A person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his qualification.
- (4) If after the expiration of the said period or shorter time any unqualified person acts as a director of the company, he shall be liable to a fine not exceeding \$4 for every day between the expiration of the said period or shorter time or the day on which he ceased to be qualified, as the case may be, and the last day on which it is proved that he acted as a director.

[Section 147 amended by No. 84 of 1947 s. 3; No. 113 of 1965 s. 8(1).]

148. Provisions as to undischarged bankrupts acting as directors

- (1) If any person, being an undischarged bankrupt, acts as director of, or directly or indirectly takes part in or is concerned in the management of, any company including an unregistered company and a company incorporated outside this State, which is required to be registered under Part XI, except with the leave of the Court by which he was adjudged bankrupt, he shall be guilty of a crime and be liable to imprisonment for one year.

Provided that a person shall not be guilty of an offence under this section by reason that he, being an undischarged bankrupt, has acted as director of, or taken part or been concerned in the management of, a company, if he was at the passing of this Act 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 the passing of this Act and the bankruptcy was prior to the passing of this Act.

- (2) The leave of the Court for the purposes of this section shall not be given unless notice of intention to apply therefor has been served on the Official Receiver and the Official Receiver may, if he is of opinion that it is contrary to the public interest that any such application should be granted, attend on the hearing of and oppose the granting of the application.
- (3) In this section the expression *Official Receiver* means the Official Receiver in Bankruptcy.

[Section 148 amended by No. 51 of 1992 s. 16(1); No. 70 of 2004 s. 82.]

149. Validity of acts of directors

The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

150. Register of directors

- (1) Every company shall keep at its registered office a register of its directors or managers containing with respect to each of them the following particulars, that is to say: —
 - (a) in the case of an individual, his present Christian name and surname, any former Christian name or surname, his usual residential address, his nationality and, if that nationality is not the nationality of origin, his nationality of origin, and his business occupation, if any, or, if he has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships; and
 - (b) in the case of a corporation, its corporate name and registered or principal office.
- (2) The company, if its first directors are not appointed by the articles, shall within a period of 28 days from the appointment

of the first directors of the company send to the Registrar a return in the prescribed form containing the particulars specified in the said register.

Provided that where the return relates to the appointment of a director not resident in the Commonwealth of Australia, the period within which the return is to be sent shall be 3 months from the date of the appointment.

- (3) The register of directors 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 3 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 10 cents, or such less sum as the directors fix for each inspection.
- (4) If any default is made in compliance with this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding \$40 and in addition to a daily fine not exceeding \$10 for every day during which the default continues.
- (5) In the case of refusal of inspection the Court may by order compel an immediate inspection of the register.
- (6) In this section the expression *director* includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

[Section 150 amended by No. 32 of 1947 s. 6; No. 47 of 1949 s. 17; No. 17 of 1953 s. 3; No. 113 of 1965 s. 8(1).]

151. Remuneration of directors

- (1) The remuneration and emoluments of directors to be paid for their services in whatsoever capacity and under whatsoever designation they may serve and be entitled to such remuneration and emoluments shall from time to time be determined by the company in general meeting and shall not in any circumstances

be fixed by any provision contained in the memorandum or articles of the company.

- (2) Where the memorandum or articles of a company formed and registered under this Act contains any provision fixing any remuneration or emolument of a director contrary to subsection (1), such provision shall be absolutely null and void.
- (3) Where the memorandum or articles of a company formed and registered under any of the repealed Acts prior to the commencement of this Act and subsisting at the commencement of this Act contains any provision fixing any remuneration or emolument of a director contrary to the effect and intention of subsection (1), such provision shall, notwithstanding any contract or agreement between the company and the director to the contrary, remain in operation and have effect until the date of the next ensuing annual general meeting of the company after the commencement of this Act and no longer, and as from the date of such next ensuing annual general meeting of the company subsection (1) shall apply in relation to the fixation of the remuneration and emoluments of the directors of such company, and, in relation to such last-mentioned fixation of the remuneration and emoluments of a director, the provisions of section 152 shall apply.

152. Shareholders may appeal against rate or amount of remuneration fixed for a director

- (1) When the rate or amount of remuneration of any director has been fixed or determined by a resolution carried at any ordinary general meeting or extraordinary general meeting of shareholders, whether held before or after the passing of this Act by means of votes given by or on behalf of the director concerned, then any 2 or more shareholders holding at least 10% of the paid up capital who are of the opinion that the rate or amount of the remuneration so fixed or determined is improper or unreasonable or unconscionable and detrimental to the best interests of the company and the shareholders, may appeal to the Court against the rate or amount of remuneration so fixed on

such grounds aforesaid, and on such appeal the Court may affirm or vary the rate or amount of remuneration appealed against.

- (2) For the purposes of this section: —
- (a) the remuneration of a director shall be deemed to include any salary, commission, payment, or reward (howsoever fixed or determined) receivable by him from the company for services rendered or performed by him as a manager or managing director, or in any capacity whatsoever; and
 - (b) a vote shall be deemed to be given on behalf of a director if it is given in respect of or by virtue of any shares held in trust for or on account of the director, or held by such director, or by the wife, husband, de facto partner, or any child of such director, or which have been directly or indirectly acquired by the holder from such director gratuitously or for a nominal consideration.
- (3) Appeals may be brought and conducted under this section within the time and in manner provided by Rules of Court, and subject to any contrary provision in the rules, shall be heard and determined in chambers, and the costs thereof and incidental thereto shall be in the discretion of the Court.
- (4)(a) In the hearing and determination of every appeal under this section, the Court may act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms, and shall not be bound by any rules of evidence but may inform its mind on the matter in such a way as it thinks just.
- (b) In determining the appeal the Court shall not be restricted to the specific allegations made in the course of such appeal.
- (5) The Court shall, before the hearing of any such appeal, require the appellant to give security to an amount not exceeding \$100 for payment of the costs of the appeal, if the appellant is adjudged to pay same on the hearing.

- (6) This section shall have effect notwithstanding the terms of any agreement heretofore or hereafter made.

[Section 152 amended by No. 113 of 1965 s. 8(1); No. 28 of 2003 s. 19.]

153. Statement as to remuneration of directors to be furnished to shareholders

- (1) Any member of a company may, on a demand in that behalf in writing to the company, its directors or manager, require to be furnished to him within 28 days from the receipt of the demand, a statement, certified as correct, or with such qualifications as may be necessary, by the auditors of the company, showing as respects each of the last 3 preceding years in respect of which the accounts of the company have been made up the aggregate amount received in that year by way of remuneration or other emoluments by, persons being directors of the company whether as such directors or otherwise in connection with the management of the affairs of the company, and there shall, in respect of any such director who is by virtue of the nomination, whether direct or indirect of the company a director of any other company, be included in the aggregate amount any remuneration or other emoluments received by him for his own use whether as a director of, or otherwise in connection with the management of the affairs of that other company:

Provided always that —

- (a) a demand for a statement under this section shall be of no effect if the company within 28 days after the date on which the demand is made resolve that the statement shall not be furnished: Provided that no director or any person mentioned in section 152(2)(b) shall as a shareholder vote, and if he do vote, his vote shall not be counted on any resolution of the company made under this paragraph; and
- (b) nothing in this subsection shall be deemed to impose or be construed as imposing any obligation upon the

directors of one company to furnish a certified statement as aforesaid concerning the remuneration paid to any of such directors as a director of another company, not being a subsidiary company to such first-mentioned company.

- (2) In computing for the purpose of this section the amount of any remuneration or emoluments received by any director, the amount actually received by him shall, if the company has paid on his behalf any sum by way of income tax in respect of the remuneration or emoluments, be increased by the amount of the sum so paid.
- (3) If any director or manager fails to comply with the requirements of this section, he shall be liable to a fine not exceeding \$40.
- (4) In this section the expression *emoluments* includes fees, percentages, and other payments made or consideration given directly or indirectly to a director as such and the money value of any allowances or perquisites belonging to his office.
- (5) This section shall apply to a managing director and his emoluments; and the emoluments shall include all fees, percentages, and other payments made or considerations given directly or indirectly to the managing director as such, and the money value of any allowance or perquisites belonging to his office.
- (6) A resolution under paragraph (a) of the proviso to subsection (1) resolving that a statement shall not be furnished shall be of no effect unless the meeting at which the resolution was carried was called by 14 days' notice in writing given to each shareholder.

[Section 153 amended by No. 113 of 1965 s. 8(1).]

154. Disclosure by directors of interest in contracts

- (1) Subject to the provisions of this section, it shall be the duty of any director of a company who is in any way, whether directly

or indirectly, interested in a contract or proposed contract with the company, to declare the nature of his interest at a meeting of the directors of the company and cause such declaration to be minuted.

- (2) In the case of a proposed contract, the declaration required by this section 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 if the director was not at the date of that 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, the declaration shall be made at the first meeting of the directors held after the director becomes so interested: Provided that if the director so interested does not attend such meeting he shall cause the declaration to be made in writing to the manager prior to or during the meeting.
- (3) For the purposes of this section, a general notice given to the directors of a company by any 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 sufficient declaration of interest in relation to any contract so made.
- (3a) Where a director, for the purpose of declaring his interest in contracts with the company as required by this section, gives such a general notice as is specified in the last preceding subsection, that notice shall be of no effect unless either it is given at a meeting of the directors, or he takes reasonable steps to secure that it is brought up and read at the next meeting of the directors after it is given.
- (4) Any director who knowingly fails to comply with the foregoing provisions of this section shall be liable to a fine not exceeding \$100.

- (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.
- (6)(a) A director of a company who is in any way, whether directly or indirectly, interested personally in a contract or proposed contract with the company shall not be qualified to vote and shall not vote either personally or by proxy upon any resolution relating to such contract or proposed contract.
- (b) If any director shall in any respect contravene the provisions of paragraph (a), he shall be liable to a fine not exceeding \$400 or to imprisonment for a period not exceeding one year, and also shall be disqualified for a period of 5 years from continuing to act as a director of the company or from being appointed as a director of the company.
- (c) This subsection shall not apply to a director of a proprietary company, or of a co-operative company registered under the repealed Acts, or under Part VI or to a director of a public company if and so long as the articles of association of such company expressly provide that this subsection shall not apply in the case of that company.

[Section 154 amended by No. 32 of 1947 s. 7; No. 47 of 1949 s. 18; No. 113 of 1965 s. 8(1).]

155. Provisions as to payments received by directors for loss of office or on retirement

- (1) It is hereby declared that it is not lawful in connection with the transfer of the whole or any part of the undertaking or property of a company for any payment to be made to any director of the company by way of compensation for loss of office or as consideration for or in connection with his retirement from office.
- (2) Where any payment which is hereby declared to be illegal is made to a director of the company the amount received shall be deemed to have been received by him in trust for the company.

156. Provision as to assignment of office by directors

If in the case of any company provision is made by the articles or by any agreement entered into between any person and the company for empowering a director or manager of the company to assign his office as such to another person, any assignment of office made in pursuance of the provision shall, notwithstanding anything to the contrary contained in the provision, be of no effect unless and until it is approved by a special resolution of the company.

Division 11 — Avoidance of provisions in articles or contracts relieving officers from liability

157. Provisions as to liability of officers and auditors

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 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 at the date of the commencement of this Act, this section shall have effect only on the expiration of a period of 3 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 under section 412 in which relief is granted to him by the Court.

Division 12 — Arrangements and reconstructions

158. Power to compromise with creditors and members

- (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the Court may, on the application 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.
- (2) If 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) The Court may alter or vary such compromise or arrangement and may impose such conditions in the carrying out thereof as it shall think just.
- (4) An order made under subsection (2) shall have no effect until an office copy of the order has been filed with the Registrar 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.

- (5) If a company makes default in complying with subsection (4) the company and every officer of the company or liquidator who is in default shall be liable to a fine not exceeding \$2 for each copy in respect of which default is made.
- (6) In this section the expression *company* means a company liable to be wound up under this Act, and the expression *arrangement* includes a reorganisation 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.

[Section 158 amended by No. 113 of 1965 s. 8(1).]

159. Provisions for facilitating reconstruction and amalgamation of companies

- (1) Where an application is made to the Court under the last foregoing section 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 amalgamation of any 2 or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (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;

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- (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 direct, 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 this section provides for the transfer of property or liabilities, that property shall by virtue of the order be transferred to and vest in, and those liabilities shall by virtue of the order be transferred to and become the liabilities of, the transferee company, and in the case of any property, if 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 this section, every company in relation to which the order is made shall cause an office copy thereof to be filed with the Registrar within 14 days after the making of the order, and if default is made in complying with this subsection, the company, and every officer of the company who is in default, shall be liable to a fine not exceeding \$100 and in addition a daily fine not exceeding \$10 for every day during which the default continues.
- (4) In this section the expression **property** includes property rights and powers of every description, and the expression **liabilities** includes duties.

[Section 159 amended by No. 113 of 1965 s. 8(1).]

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

- (1) Where a scheme or contract involving the 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 4 months after the making of the offer in that behalf by the transferee company been approved by the holders of not less than four-fifths in value of the shares affected, the transferee company may, at any time within 2 months after the expiration of the said 4 months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and where 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 on which under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee company: Provided that, where any such scheme or contract has been so approved at any time before the commencement of this Act the Court may by order, on an application made to it by the transferee company within 2 months after the commencement of this Act, authorise notice to be given under this section at any time within 14 days after the making of the order, and this section shall apply accordingly, except that the terms on which the shares of the dissenting shareholder are to be acquired shall be such terms as the Court may by the order direct instead of the terms provided by the scheme or contract.
- (2) Where a notice has been given by the transferee company under this section and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of 28 days from the date on which the notice has been given, or, if an application to the Court by the dissenting shareholder is then pending, after that

application has been disposed of, transmit a copy of the notice to the transferor company and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.

- (3) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.
- (4) 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.

Division 13 — Arbitrations

161. Arbitration between companies and others

- (1) A company may, by writing under its common seal, agree to refer and may refer to arbitration, in accordance with the *Arbitration Act 1895*¹², any existing or future difference between itself and any other company or person.
- (2) The parties to the arbitration may delegate to the person or persons to whom the reference is made power to settle any forms, order anything to be done, or determine any matter capable of being lawfully determined by the parties to the reference themselves, or the directors or other managing body of any company party to the reference.
- (3) All the provisions of the *Arbitration Act 1895*¹², shall apply to arbitrations between companies and persons in pursuance of this Act.

Part V — No liability companies

162. Application of this Part

This Part shall only apply to no liability companies registered under this Act, or under the *Companies Act 1893*³.

163. Returns to be made by no liability companies

- (1) Every company shall within 28 days after 31 March in each year, file with the Registrar a return containing the following information: —
 - (i) The address of the registered office of the company;
 - (ii) A summary of the shares issued distinguishing between the shares issued for cash and the shares issued fully or partly paid up other than for cash;
 - (iii) The amount of the share capital, the number of shares into which it is divided, and where the shares are divided into different classes or kinds, having special rights or subject to special restrictions or disabilities, the classes or kinds of shares;
 - (iv) The number of shares taken up from the commencement of the company until the date of the return;
 - (v)
 - (a) the amount called up on each share and the numbers of each such call;
 - (b) the date when each call made since the date of the last return or, in the case of a first return, since incorporation, was payable;
 - (c) the dates since the last return or incorporation when shares forfeited under section 164 were offered for sale, and the place of offer;
 - (d) the number of shares sold at each sale of forfeited shares made since the last return or incorporation;
 - (e) the number of shares unsold at each offer for sale of forfeited shares made since the last return or incorporation;

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- (f) particulars of all sales or dealings with shares under section 167 since the date of the last return or incorporation;
- (vi) The total of the sums (if any) paid by way of commission in respect of any shares or debentures;
- (vii) All the particulars with respect to the persons who at the date of the return are directors of the company which are by this Act required to be contained on the register of the directors of the company;
- (viii) The total amount of the indebtedness of the company in respect of mortgages and charges affecting the property of the company;
- (ix) The name of every auditor of the company for the time being;
- (x) Where a company has issued debentures, particulars of which are not included under paragraph (viii), a list of names, addresses and occupations of all persons who on the date on which the return is made were the holders of such debentures, particulars of the number and value of debentures redeemed since the date of the last return, and similar particulars in relation thereto as must by paragraphs (ii), (iii), (iv) and paragraph (v)(a), (b) and (c), be included with regard to shares;
- (xi) A copy of the last balance sheet must accompany and form part of the return. The copy shall be certified by a director or manager of the company to be a true copy and shall be accompanied by a copy of the report of the auditors thereon, certified in the same way as the balance sheet: Provided that if the last balance sheet did not comply with the requirements of the law in force at the date of the audit with respect to form of balance sheet, the copy shall be corrected and added to so as to comply with the requirements, and the fact that the copy has been so amended shall be stated thereon.

- (2) The return shall be contained in a separate book or folder, and shall be signed by a director or manager.
- (3) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine of \$10 and in addition to a daily fine of \$2 for every day during which the default continues.
- (4) The Registrar may, on the application of any company, fix a day, other than 31 March, as the day from which the time within which that company must file a return under this section, is to be computed; and when a day has been so fixed, this section shall be construed as regards the particular company as though the day so fixed were substituted for 31 March wherever that day is mentioned in this section.

[Section 163 amended by No. 32 of 1947 s. 8; No. 113 of 1965 s. 8(1).]

164. Calls and forfeiture for non-payment

- (1) The calls upon shares in every company shall be made payable on a day not less than 14 days from the day on which the call shall be made. When a call has been made, notice of the day when it will be payable, and of the place for payment thereof, shall be published in the *Gazette*, and in a daily newspaper published in Perth, and in case the registered office shall be in any place other than Perth, in one or more newspapers circulating in the locality wherein the registered office of the company shall be situated.
- (2) When a call shall have been made as provided in the last preceding subsection, no subsequent call shall be made until 14 days from the day when the call so made is payable.
- (3) Any share in a company upon which a call remains unpaid for 28 days after the day upon which such call is payable, may be absolutely forfeited by a resolution of the directors and after 3 months shall be forfeited.

165. Forfeited shares to be sold by auction

- (a) Within 6 months from the date of forfeiture every forfeited share shall be offered for sale by the company by public auction.
- (b) Notice of any offer for sale as aforesaid shall, not less than 14 nor more than 28 days before the day appointed for the sale, be advertised in the *Gazette*, and in one daily newspaper published in Perth, and in case the company shall have a registered office in any place other than Perth, then in one such newspaper, and in one newspaper circulating in the locality wherein the registered office of the company is situated.
- (c) Where any forfeited share is offered for sale under the provisions of this section, no reserve shall be placed thereon exceeding the amount of unpaid calls and the expenses incurred in respect of the forfeiture of the share.
- (d) The proceeds of such sale shall be applied in payment of the expenses of the sale, any expenses necessarily incurred in respect of the forfeiture, and in payment of the call due, and the balance (if any) shall be paid to the member whose share shall have been so sold on his delivering up to the company the share certificate representing such forfeited share.
- (e) Until the net proceeds of the sale of any forfeited share are claimed by the person owning the share immediately prior to forfeiture such proceeds shall be paid by the company into a separate banking account, and if not claimed within 3 months after the sale may be deposited in a banking account carrying interest or invested as trust funds may be invested under Part III of the *Trustees Act 1962*, and such proceeds or the investment representing the same, less any necessary expenses, shall be held by the company as trustee for such person.
- (f) If such proceeds or investment are not claimed within 3 years from the date of forfeiture, or in case the company be wound up before the expiration of that period (except for the purposes of reconstruction) within 9 months after the date of the commencement of the winding-up, such proceeds, or the

investments representing the same, and accrued interest (if any), shall become the property of the company, free from any claim by any person claiming as or under the owner of the share.

- (g) This section shall apply in relation to all forfeited shares offered for sale after the commencement of this Act.

[Section 165 amended by No. 32 of 1947 s. 9; No. 1 of 1997 s. 18.]

166. Redemption of forfeited shares

Notwithstanding anything in this Part contained, the owner at law or in equity of a forfeited share shall be entitled at any time before the day fixed for offering the share for sale and at any time on that day not later than 2 hours before the time fixed for the sale, to redeem the share by payment to the secretary of all calls due thereon and of all expenses incurred by the company in respect of the forfeiture, and he shall thereupon be entitled to the share as if the forfeiture had not been incurred.

167. Forfeited shares which are not sold to become the absolute property of the company

If, upon the offer for sale of any forfeited share, as provided in section 165, there shall be no bid for the purchase of such share or no bid sufficient to cover the call or calls then unpaid upon such share and the expenses of and attending the forfeiture and attempted sale, such share shall become the absolute property of the company and may be sold at such price or be dealt with in such manner as the directors may think advisable for the benefit of the company.

Provided that any such sale or dealing shall not for the purposes of any provision of this Act, be deemed an issue of shares in the capital of the company.

168. Minute of forfeiture to be conclusive evidence

A minute in the books of a company signed by the chairman of directors for the time being that any shares were offered for sale by public auction, and that there was no sufficient bid to pay the arrears of calls then due thereon, and the expenses of and attending the forfeiture and attempted sale, shall be conclusive evidence that such shares became the absolute property of the company on the day when they were offered for sale, and that the previous owners of such shares have forfeited all claim to or in respect of the same.

169. Power to issue new scrip

Whenever any forfeited shares shall have been sold at public auction, or shall have become the property of the company, the directors may issue new share certificates in respect of such shares, which shall bear upon the face thereof the words “issued in lieu of forfeited share-scrip”.

170. Shareholder not liable for calls or contributions

The acceptance of a share in a company, whether by original allotment or by transfer, shall not be deemed a contract on the part of the person accepting the same to pay any calls in liquidation or otherwise in respect thereof, or any contribution to the debts and liabilities of such company, and such person shall not be liable to be sued for any such calls or contributions; but he shall not be entitled to a dividend upon any share upon which a call shall be due and unpaid.

171. Liability of directors of company for wages

- (1) Every person to whom wages are owing by a company and who has been unable to recover same from the company shall be entitled to recover such wages in respect of a period not exceeding 4 weeks from the directors for the time being of the company who shall be personally jointly and severally liable therefor.

- (2) Any director who has paid any wages under subsection (1) shall be entitled to recover the amount paid by him from the company.
- (3) Where a director has paid any sum for wages under subsection (1) he shall be entitled to recover contribution, as in cases of contract from any other person who, if sued separately, would have been liable to make the same payment.

Part VI — Co-operative companies

171A. Terms used

In this Part, unless the contrary intention appears —
externally-administered non-cooperative means a non-cooperative —

- (a) that is being wound up;
- (b) in respect of property of which a receiver, or a receiver and manager, has been appointed (whether or not by a court) and is acting;
- (c) that is being dissolved or terminated;
- (d) that is under administration;
- (e) that is under official management;
- (f) that has executed a deed of company arrangement that has not yet terminated; or
- (g) that has entered into a compromise or arrangement with a person the administration of which has not been concluded;

new body means a body corporate referred to in section 176A(1);

non-cooperative means a company, society or association that is not registered as a company under this Part.

[Section 171A inserted by No. 56 of 1994 s. 4.]

171B. Non-cooperative may apply for registration

- (1) Subject to section 173, a non-cooperative may apply to the Registrar to be registered as a co-operative company under this Part.

- (2) The Registrar shall grant an application under subsection (1) if —
- (a) the Registrar is satisfied that neither section 171C nor 171D prohibits the applicant from being registered under this Part; and
 - (b) the application is made in accordance with section 171E.
- [Section 171B inserted by No. 56 of 1994 s. 4]*

171C. Certain non-cooperatives not to be registered

A non-cooperative shall not be registered under this Part if —

- (a) it is an externally-administered non-cooperative; or
- (b) an application has been made to a court (in Australia or elsewhere) —
 - (i) to wind up, dissolve or terminate the non-cooperative; or
 - (ii) for the approval of a compromise or arrangement between the non-cooperative and a person,which has not been dealt with.

[Section 171C inserted by No. 56 of 1994 s. 4]

171D. Prerequisites of registration

A non-cooperative shall not be registered under this Part unless —

- (a) under the law under which it exists, it may apply to become a different body;
- (b) it has complied with any requirements of that law in relation to applying to become a different body; and
- (c) if that law does not require its members, or a specified proportion of them, to consent to the application, the application has been consented to by at least 75% of those of its members who, being entitled to do so, vote in person or, if allowed, by proxy, at a meeting of which

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at least 21 days notice is given specifying the intention to apply to become a different body.

[Section 171D inserted by No. 56 of 1994 s. 4.]

171E. Form and content of application

An application by a non-cooperative under section 171B shall be in writing in the prescribed form and shall be accompanied by —

- (a) a certified copy of a current certificate as to its existence or incorporation, or a document of similar effect;
- (b) evidence acceptable to the Registrar that neither section 171C nor 171D prohibits the applicant from being registered under this Part;
- (c) a certified printed copy of its constitution, if applicable;
- (d) a statement specifying, if applicable —
 - (i) its nominal share capital and the number and class into which the share capital is divided;
 - (ii) the number of shares taken up and the amount paid on each; and
 - (iii) the full name, or the surname together with at least one given name and any other initials, and the address, of each shareholder and the number and class of shares held by each shareholder;
- (e) in relation to each existing charge on its property, a copy of the instrument creating the charge that would be required to be kept at its registered office under section 95 if it were a co-operative company; and
- (f) any information that is, or documents that are, prescribed or that the Registrar requires by written notice given to the non-cooperative.

[Section 171E inserted by No. 56 of 1994 s. 4.]

171F. Registration of applicant as a co-operative company

When the Registrar grants an application under section 171B, the Registrar is to register the applicant as a co-operative company by registering the application, and is to allot to the co-operative company a registration number distinct from the registration number of each co-operative company already registered under this Part.

[Section 171F inserted by No. 56 of 1994 s. 4.]

172. Prohibition of trading as co-operative except by registered companies etc.

- (1) No person and no company or association (whether incorporated or not) other than —
- (a) a society registered under the *Housing Societies Act 1976*; or
 - (aa) a body corporate that has a consent under section 66 of the *Banking Act 1959* of the Commonwealth to assume or use the restricted expression “credit union” or “credit society” or any other word or expression (whether or not in English) that is of like import to “credit union” or “credit society”; or
 - (b) a society, already at the commencement of this Act registered under the *Co-operative and Provident Societies Act 1903*; or
 - (c) a company registered under the *Companies Act 1893*³, as amended by the *Companies Act Amendment Act 1929*; or
 - (d) a company registered under this Part; or
 - (e) a partnership or firm consisting only of 2 or more companies registered under the repealed Acts,

shall, after the commencement of this Act, trade or carry on business under any name or title of which the word “Co-operative” or any other word importing a similar meaning

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is part, or in any manner represent that the trade or business is co-operative.

- (2) Any person and any company or association who or which contravenes this section, and any director, manager, or other officer of a company or association who knowingly or wilfully authorises or permits such contravention shall be guilty of an offence, and be liable on conviction to a penalty not exceeding \$10 for every day during which the offence continues.

[Section 172 amended by No. 113 of 1965 s. 8(1); No. 47 of 1979 s. 8; No. 26 of 1999 s. 66(4); No. 12 of 2001 s. 51.]

173. Memorandum and articles of association of co-operative companies

- (1) A company, society, or association applying for registration as a company under this Part and having in its name or title the word “Co-operative” or any other word importing a similar meaning shall contain in its memorandum and articles of association the provisions —
- (a) that the rate of dividend on the shares of the company shall not in respect to any year exceed an amount which is 5% per annum in excess of the Commonwealth Bank rate of interest for the time being on fixed deposits for 2 years;
 - (b) that all surplus profits in any year in which a dividend for such year shall be declared, after setting aside to the credit of any reserve fund as may from time to time be authorised by the memorandum or articles of association of the company, shall be distributed by way of bonus either in cash or bonus shares or debentures, in proportion to the business done by shareholders with the company or to profits earned by the company on such shareholders’ business. Provided that the company may at any time elect to treat the amount of the accretion to the reserve fund in any year as being surplus profits for

- such year available for distribution by way of bonus under this paragraph;
- (c) that every shareholder qualified to vote shall have an equal voting power irrespective of the number of shares held by him; and
 - (d) such other provisions as may be prescribed.
- (2) No company, society or association shall be registered under this Part unless the consent in writing thereto of the Minister has been first obtained.

[Section 173 amended by No. 113 of 1965 s. 5 and 8(1); No. 59 of 1976 s. 3.]

174. Power of co-operative company to purchase shares

A co-operative company, whether registered as a company under the repealed Acts or under this Act, may at any time after the commencement of this Act, if authorised by its memorandum or articles, purchase out of its reserve funds any shares of a member of the company, but the shares so purchased and not sold or disposed of shall not at any time exceed 10% of the paid-up capital of the company. Provided that such shares shall not be deemed to be cancelled nor to be a reduction of capital, but may be sold or disposed of by the company in accordance with the provisions of its articles.

[Section 174 amended by No. 17 of 1953 s. 4; No. 18 of 1991 s. 3.]

175. Distribution of reserve funds and assets of co-operative company, and payment for shares on voluntary winding-up

- (1) In the liquidation of a company registered under the *Companies Act 1893*³, as amended by the *Companies Act Amendment Act 1929*, or of a company registered under this Part, no shareholder shall receive in the liquidation any amount exceeding the capital paid up in respect of the shares held by him with the dividends (if any) due and any other moneys to

which he may then be entitled under the memorandum or articles of association of the company as then in operation. As to any surplus funds in the hands of the liquidator after paying all debts and expenses of the winding-up and after paying to the shareholders the full amounts to which they are respectively entitled under the foregoing provisions of this subsection, the liquidator shall treat and apply such surplus funds as if they were surplus profits available for distribution under section 173(b) but payable only to the shareholders who have done business with the company during the 5 last completed financial years and the broken period prior to liquidation and in proportion to the business done by such shareholders with the company or at the election of the liquidator in proportion to the profits earned by the company on such shareholders' business.

- (2) A co-operative company of the kind mentioned in subsection (1) shall not be wound up voluntarily if its net assets are in excess of its subscribed capital except with the consent of not less than three-fourths of the shareholders, or with the sanction of a Judge of the Supreme Court.

[Section 175 amended by No. 17 of 1953 s. 5.]

176. Certain co-operative societies not to be registered after the commencement of this Act

- (1) After the commencement of this Act, no society, other than a consumers' society, shall be registered as a co-operative society under the *Co-operative and Provident Societies Act 1903*; but a consumers' society may apply for registration as a co-operative society under the said Act or as a company under this Part.
- (2) For the purposes of this section a consumers' society means a society constituted primarily for the benefit of consumers as distinct from a society constituted primarily for the benefit of producers, and which the Governor may by notice published in the *Government Gazette* declare to be a consumers' society within the meaning of this section.

176A. Co-operative company may apply to become a new body

- (1) A co-operative company may, if approved by special resolution, apply to become —
 - (a) a company under the *Corporations Act 2001* of the Commonwealth;
 - (b) an incorporated association under the *Associations Incorporation Act 1987*;
 - (c) a society under the *Housing Societies Act 1976*;
 - [(d) *deleted*]
 - (e) a body corporate under a law that is a law of a place outside the State and that is prescribed for the purposes of this section.
- (2) Before making an application under subsection (1), a co-operative company shall, by special resolution, determine the name it will have when it becomes a new body.
- (3) The name referred to in subsection (2) need not be the same as the co-operative company's name and shall not include the word "co-operative" or any other word importing a similar meaning.
- (4) The Registrar may, by order in writing, exempt a co-operative company from complying with all or any specified provisions of this section in relation to any matter to which this section applies, and any such exemption may be granted unconditionally or subject to conditions.

[Section 176A inserted by No. 56 of 1994 s. 5; amended by No. 26 of 1999 s. 66(5); No. 10 of 2001 s. 42; No. 12 of 2001 s. 46(3).]

176B. New body ceases to be registered as co-operative company

If and when a co-operative company becomes a new body, it ceases to be a co-operative company under this Part and the Registrar is to remove its name from the register.

[Section 176B inserted by No. 56 of 1994 s. 5.]

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176C. New body not to impose greater liability etc.

- (1) Any memorandum or articles of association or rules adopted by a co-operative company for the purposes of becoming a new body shall not —
 - (a) impose on the members of the co-operative company, when it becomes the new body, any greater or different liability to contribute to the assets of the new body than the liability to which they are subject as members of the co-operative company immediately before it becomes the new body; or
 - (b) deprive any member of the co-operative company, when it becomes the new body, of any preferential rights with respect to dividend or capital to which the member is entitled as a member of the co-operative company immediately before it becomes the new body.
- (2) Every person who is a member of a co-operative company immediately before it becomes a new body shall, when it becomes the new body, be a member of the new body.
- (3) If a co-operative company becomes a new body that has a share capital, every member of the co-operative company who holds shares in the co-operative company immediately before it becomes the new body shall, when it becomes the new body, hold shares in the capital of the new body equal in number and nominal value to the shares held by the member as a member of the co-operative company.

[Section 176C inserted by No. 56 of 1994 s. 5.]

176D. Effect of certificate that new body exists

If a co-operative company becomes a new body, a certificate issued under the law applicable to the new body certifying that the new body exists is conclusive evidence that all the requirements of sections 176A, 176B and 176C have been complied with.

[Section 176D inserted by No. 56 of 1994 s. 5.]

176E. New body corporate deemed to be a continuation of the co-operative company

When a co-operative company is registered as a new body, the body corporate constituted by the new body shall be deemed to be the same entity as the body corporate constituted by the co-operative company.

[Section 176E inserted by No. 56 of 1994 s. 5.]

Part VII — Winding-up of companies

Division 1 — (a) Preliminary

177. Application of this Part

This Part shall not apply to a limited company registered under the *Mining Companies Act 1888*⁶, but shall apply to all other companies registered under the said Act or the repealed Acts, or this Act, if not inconsistent with the context or subject matter.

178. Modes of winding-up

- (1) The winding-up of a company may be either —
 - (a) by the court; or
 - (b) voluntarily; or
 - (c) subject to the supervision of the Court.
- (2) The provisions of this Act with respect to winding-up apply, unless the contrary appears, to the winding-up of a company in any of those modes.

(b) Liability of members as contributories

179. Liability of members as contributories

- (1) In the event of a company being wound-up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities, and the costs, charges and expenses of the winding-up and for the adjustment of the rights of the contributories among themselves, subject to the provisions of subsection (2) and the qualifications following, that is to say: —
 - (a) A past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding-up;
 - (b) A past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;

- (c) A past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this 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) 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;
 - (f) A sum due to any member of a company in his character of a member by way of dividends, profits, or otherwise, shall not be deemed to be a debt of the company payable to that member in a case of competition between himself and any other creditor not a member of the company; but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.
- (2) In the winding-up of a limited company any director or manager, whether past or present, whose liability is under the provisions of this 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 if he has ceased to hold office for a year or upwards before the commencement of the winding-up;

- (b) a past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;
 - (c) subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the Court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company and the costs, charges and expenses of the winding-up.
- (3) Nothing contained in this Part shall have the effect of rendering a member of a no liability company liable for the payment of any calls.

180. Nature of liability of contributory

The liability of any person to contribute to the assets of a company, in the event of the same being wound up, shall be deemed to create a specialty debt accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made, as hereinafter mentioned, for enforcing such liability.

181. Contributions in case of death of member

- (1) Where any contributory dies, either before or after he has been placed on the list of contributories hereinafter mentioned, his representatives shall be liable, in due course of administration, to contribute to the assets of the company in discharge of the liability of such deceased contributory, and shall be deemed to be a contributory accordingly.
- (2) If the representative makes default in paying any money ordered to be paid by him, proceedings may be taken for administering the estate of the deceased contributory, and of compelling payment thereof of the money due.

182. Contributions in case of bankruptcy of member

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

- (i) his trustee in bankruptcy shall represent him for all the purposes of the winding-up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt or otherwise to allow to be paid out of his assets in due course of law any money due from the bankrupt in respect of his liability to contribute to the assets of the company; and
- (ii) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

[183. Deleted by No. 28 of 2003 s. 117(2).]

(c) Liquidators

184. Registered liquidators to be appointed except in special cases

- (1) No person other than a registered liquidator shall be appointed liquidator of a company whether being wound up by or under the supervision of the court or voluntarily, except —
 - (a) in the case of a members' voluntary winding-up for the purpose of reconstruction, the company may in general meeting appoint some person other than a registered liquidator to be the liquidator, and determine what, if any, security shall be given by such liquidator; and
 - (b) where the Court is satisfied that it is expedient or desirable, the Court may appoint or approve of the appointment of some person other than a registered liquidator to act as liquidator, either alone or in conjunction with a registered liquidator, upon giving security in such amount and in such manner as the Court may prescribe.

- (2) Any application for approval of the Court to appoint a liquidator other than a registered liquidator may be made on the application of the company or any member contributory or creditor or representative of any such persons or class, provided that the Court may direct that notice of such application be given to any persons or class and in such manner as it may see fit.
- (3)(a) None of the following persons shall, except by the express leave of the Court, be qualified for appointment or act as liquidator of a company —
- (i) a person who at the time of or within 2 years next preceding the commencement of the winding-up (other than a members' voluntary winding-up) of the company is or was a director, officer or employee of the company, or is or was a partner of or in the employment of an officer, director or employee of the company;
 - (ii) [*Section 5 of Act No. 73 of 1953¹ substituted subparagraph (i) for subparagraphs (i) and (ii) of paragraph (a).*]
 - (iii) a body corporate;
 - (iv) a person who is or becomes indebted to the company in an amount exceeding \$500.
- (b) Any person disqualified by paragraph (a) who acts as liquidator of a company shall be liable to a fine not exceeding \$100.
- (c) Nothing in this section shall disqualify a body corporate from acting as liquidator as aforesaid provided such body corporate has, by statute, been empowered so to act.

[Section 184 amended by No. 73 of 1953 s. 5; No. 113 of 1965 s. 8(1).]

Division 2 — Winding-up by Court

(a) Winding-up by Court

185. Circumstances under which company may be wound up under order of Court

- (1) A company may be wound up by the Court if —
- (i) the company has by special resolution resolved that the company be wound up by the Court;
 - (ii) default is made in filing the statutory report or in holding the statutory meeting;
 - (iii) the company does not commence its business within a year from its incorporation or suspends its business for a whole year;
 - (iv) the number of members is reduced in the case of a proprietary company below 2, or in the case of any other company below 5;
 - (v) the company is unable to pay its debts;
 - (vi) the court is of opinion that it is just and equitable that the company should be wound up.
- (2) Without limiting the generality of subsection (1)(vi), the Court may, if it is satisfied that directors have acted in the affairs of the company in their own interests rather than in the interests of the members as a whole, or in any other manner whatsoever which in the opinion of the Court is unfair or unjust to other members, order the company to be wound up.

186. Company, when deemed unable to pay its debts

A company shall be deemed to be unable to pay its debts —

- (i) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding \$50 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 28 days thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor; or

- (ii) if execution or other process issued on a judgment decree or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
- (iii) if it is proved to the satisfaction of the Court that the company is unable to pay its debts, and in determining whether a company is unable to pay its debts the Court shall take into account the contingent and prospective liabilities of the company.

[Section 186 amended by No. 113 of 1965 s. 8(1).]

(b) Petition for winding-up and effect thereof

187. Provisions as to applications for winding-up

- (1) An application to the Court for the winding-up of a company shall be by petition presented, subject to the provisions of this section, either by the company or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties together or separately: Provided that —
 - (a) a contributory shall not be entitled to present a petition for winding-up a company unless either —
 - (i) the number of members is reduced in the case of a proprietary company below 2, or in case of any other company below 5; or
 - (ii) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him and registered in his name for at least 6 months during the 18 months before the commencement of the winding-up, or have

devolved on him through the death of a former holder;

- (b) a petition for winding-up a company on the ground of default in filing the statutory report, or in holding the statutory meeting, shall not be presented by any person except a member, nor before the expiration of 14 days after the last day on which the meeting ought to have been held; and
 - (c) the Court shall not give a hearing to a petition for winding-up a company by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable, and until a *prima facie* case for winding-up has been established to the satisfaction of the Court.
- (2) Where a company is being wound up voluntarily or subject to supervision a petition may be presented by the liquidator as well as by any other person authorised in that behalf under the other provisions of this section, but the Court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding-up or winding-up subject to a 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 spouse or de facto partner of a contributory is himself or herself a contributory, and a share has, during the whole or any part of the 6 months mentioned in proviso (a)(ii) to subsection (1), been held by or registered in the name of the spouse or de facto partner, or by or in the name of a trustee for the person or the person's spouse or de facto partner, the share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the person.

[Section 187 amended by No. 28 of 2003 s. 20.]

188. Powers of Court on hearing

- (1) On hearing the petition the Court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally or make any interim order or any other order that it thinks fit, but the Court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets.
- (2) Where the petition is presented on the ground of default in filing the statutory report or in holding the statutory meeting the Court may —
 - (a) instead of making a winding-up order direct that the statutory report shall be filed or that a meeting shall be held within a time to be fixed by the Court; and
 - (b) order the costs to be paid by any persons who in the opinion of the Court are responsible for the default.

189. Power to stay or restrain proceedings against company

At any time after the presentation of a petition for winding-up, and before a winding-up order has been made, the company or any creditor, or contributory may, where any action or proceeding against the company is pending, apply to the Court or the Court in which the action or proceeding is pending for a stay of proceedings therein, 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.

190. Avoidance of dispositions of property etc. after commencement of winding-up

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.

191. Petition to be *lis pendens*

Any petition for winding-up a company under this Act shall constitute a *lis pendens* within the meaning of any Act now or hereafter in force relating to the effect of a *lis pendens* upon purchasers or mortgagees.

(c) Commencement of winding-up

192. Commencement of winding-up by Court

- (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.

(d) Consequences of winding-up order

193. Copy of order to be filed with Registrar

On the making of a winding-up order a copy of the order must forthwith be filed by the company with the Registrar, who shall make a minute thereof in his books relating to the company.

194. Actions stayed on winding-up order

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.

195. Effect of winding-up order

An order for winding-up a company shall operate in favour of all the creditors and of all the members and contributories of the company as if made on the joint petition of a creditor and of a member or of a contributory.

(e) Official liquidators

196. Power of Court to appoint official liquidators

- (1) For the purpose of conducting the proceedings in winding-up a company by the Court and performing such duties in reference thereto as the Court may impose, the Court may appoint an official liquidator or official liquidators, but so that there shall not be more than 2 official liquidators at one time for the same company.
- (2) The Court may appoint an official liquidator provisionally at any time after the presentation of a winding-up petition.
- (3) Where an official liquidator is provisionally appointed by the Court, the Court may limit and restrict his powers by the order appointing him.

197. Meetings of creditors and contributories

- (1) When a winding-up order has been made by the Court, the provisional official liquidator, or if no provisional official liquidator has been appointed, then some person appointed by the Court shall forthwith summon separate meetings of the creditors and contributories of the company for the purpose of —
 - (i) determining whether or not the creditors and contributories respectively desire to nominate an official liquidator and who shall be the person so nominated; and
 - (ii) making a determination pursuant to section 210.

- (2) The Court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of any of the matters aforesaid, the Court shall decide the difference and make such order thereon as the Court may think fit.
- (3) Where the winding-up order has been made on the ground that the company is unable to pay its debts, the Court may dispense with the meeting of the contributories directed to be summoned under the preceding subsections.

198. Statement of company's affairs to be submitted to liquidator

- (1) Where the Court has made a winding-up order or appointed a provisional official liquidator there shall, unless the Court thinks fit to order otherwise and so orders, be made out and submitted to the official liquidator a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts, and liabilities, the names, residences, and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed, or as the official liquidator may require.
- (2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the secretary or other chief officer of the company, or by such of the persons hereinafter in this subsection mentioned, as the official liquidator, subject to the direction of the Court, may require to submit and verify the statement, that is to say, persons —
 - (a) who are or have been directors or officers of the company;
 - (b) who have taken part in the formation of the company at any time within one year before the relevant date;

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- (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 liquidator, capable of giving the information required;
 - (d) who are or have been within the said year officers of or in the employment of a company which is, or within the said year was, an officer of the company to which the statement relates.
- (3) The statement shall be submitted within 14 days from the relevant date, or within such extended time as the official liquidator or the Court may for special reasons appoint.
 - (4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official liquidator out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official liquidator may consider reasonable, subject to an appeal to the Court.
 - (5) If any person without reasonable excuse makes default in complying with the requirements of this section, he shall be liable to a fine of \$10 and in addition to a daily fine of \$2 for every day during which the default continues.
 - (6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section and to a copy thereof or extract therefrom.
 - (7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of Court, and shall on the application of the official liquidator be punishable accordingly.
 - (8) In this section the expression *the relevant date* means in a case where a provisional official 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.

[Section 198 amended by No. 113 of 1965 s. 8(1).]

199. Report of liquidator

- (1) Where the Court has made a winding-up order, the official liquidator unless the court otherwise directs shall, as soon as practicable after receipt of the statement of the company's affairs, to be submitted under the last preceding section, or, in a case where the Court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the Court —
 - (a) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities; and
 - (b) if the company has failed, as to the causes of 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 liquidator may also, if he thinks fit, make a further report or further reports stating the manner in which the company was formed, and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the Court.
- (3) If the official liquidator states in any such further report as aforesaid that in his opinion a fraud has been committed as aforesaid, the Court shall have the further powers provided in sections 225 and 226.

200. General provisions as to official liquidators

- (1) An official liquidator appointed by the Court may resign, or, on cause shown, be removed by the Court.
- (2) A vacancy in the office of an official liquidator appointed by the Court shall be filled by the Court.
- (3) If more than one official liquidator is appointed by the Court, the Court shall declare whether any act by this Act required or authorised to be done by the official liquidator is to be done by all or any one or more of the persons appointed.
- (4) An official liquidator appointed by the Court shall be known as official liquidator or provisional official liquidator, as the case may be, and an official liquidator shall be described by the style of official liquidator of the particular company in respect of which he is appointed and not by his individual name.
- (5) During any period in which there shall be no official liquidator all the property of the company shall be deemed to be in the custody of the Court.
- (6) Every official liquidator shall, within 14 days of his appointment, file with the Registrar a notice of his appointment.
- (7) An official liquidator appointed by the Court shall receive such salary or remuneration, by way of percentage or otherwise, as the Court may direct; and if more official liquidators than one are appointed, their remuneration shall be distributed amongst them in such proportions as the Court directs.
- (8) The Court may determine whether any, and what, security is to be given by any official liquidator on his appointment, and whether any, and what, security or additional security is to be given by any official liquidator at any time subsequent to his appointment, and whether a declaration of secrecy is to be demanded.

- (9) The acts of an official liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

201. Custody of company's property

Where a winding-up order has been made, or where a provisional official liquidator has been appointed, the official liquidator, or provisional official 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.

202. Vesting of property of company in liquidator

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

203. Powers of official liquidator

- (1) The official 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 other than an action to recover a book debt of the company in the name and on behalf of the company;
 - (b) to carry on the business of the company so far as may be necessary for the beneficial winding-up thereof;

- (c) to pay any classes of creditors in full;
 - (d) 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;
 - (e) to compromise all calls and liabilities to calls, debts and all liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding-up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability, or claim, and give a complete discharge in respect thereof.
- (2) The official liquidator in a winding-up by the Court shall have power —
- (a) to bring any action to recover book debts of the company in the name and on behalf of the company;
 - (b) where the amount involved does not exceed \$200, without the sanction of either the Court or the committee of inspection, to exercise any of the powers contained in subsection (1)(d) and (e);
 - (c) to sell the real and personal 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;
 - (d) 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;

- (e) 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;
 - (f) 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;
 - (g) to raise on the security of the assets of the company any money requisite;
 - (h) to take out in his official name letters of administration to the estate of 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;
 - (i) to employ a solicitor to assist him in the performance of his duties;
 - (j) to appoint an agent to do any business which the liquidator is unable to do himself;
 - (k) 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 official liquidator in a winding-up by the Court of the powers conferred by this section shall be subject to the control of the Court, and any creditor or contributory may

apply to the Court with respect to any exercise or proposed exercise of any of those powers.

[Section 203 amended by No. 113 of 1965 s. 8(1).]

204. Exercise and control of liquidator's powers

- (1) Subject to the provisions of this Act, the official liquidator of a company which is being wound up by the Court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall, in case of conflict, be deemed to override any directions given by the committee of inspection.
- (2) Where at any general meeting of creditors and contributories there shall arise any conflict of opinion as between a majority of the creditors present at such meeting on the one hand and the contributories present at the meeting on the other hand, the decision of the majority of the creditors shall prevail.
- (3) The official 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 to consider the appointment of the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories, as the case may be.
- (4) The official liquidator may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the winding-up.
- (5) Subject to the provisions of this Act, the official liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

205. Books to be kept by liquidator

Every official liquidator of a company which is being wound up by the Court shall keep, in manner prescribed by Rules of Court, 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 by Rules of Court, and any creditor or contributory may, subject to the control of the Court, personally or by his agent inspect any such books.

206. Liquidator to pay moneys into bank

- (1) Every official liquidator of a company which is being wound up by the Court shall, in such manner and at such times as the rules or the Court may from time to time direct, pay all money received by him into such bank and account as the Court may from time to time appoint.
- (2) If any such official liquidator at any time retains for more than 14 days a sum exceeding \$20, or such other amount as the Court in any particular case authorises him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount so retained in excess at a rate not exceeding 10% 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 expense occasioned by reason of his default.
- (3) An official 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.

[Section 206 amended by No. 113 of 1965 s. 8(1).]

207. Audit of liquidator's accounts

- (1) Every official liquidator of a company which is being wound up by the Court shall not less than once in each year during his tenure of office, lodge with the Registrar an account in triplicate in the form prescribed by Rules of Court of his receipts and payments as liquidator.

- (2) The account shall be verified by a statutory declaration in the form prescribed by Rules of Court.
- (3) The Registrar shall, within 3 months after the date of the lodging of the accounts cause the account to be audited by a registered auditor, and for the purpose of the audit the liquidator shall furnish the auditor with such vouchers and information as he may require, and the auditor may at any time require the production of and inspect any books or accounts kept by the liquidator.
- (4) When the account has been audited a copy thereof shall be filed with and kept by the Registrar, and the other copies shall be delivered to the liquidator who shall forthwith file one copy in the office of the Court and who shall keep the other copy, and each copy shall be open to the inspection of any creditor or of any person interested.
- (5) The liquidator shall cause the account, when audited, or a summary thereof, to be printed or typewritten, and shall send a copy of the account or summary by post to every creditor and contributory.
- (6) The costs of an audit under this section shall be fixed by the Registrar and be part of the expenses of winding-up.

208. Control of Court over liquidators

- (1) The Court shall take cognisance of the conduct of official liquidators of companies which are being wound up by the Court, and if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules, or otherwise with respect to the performance of his duties, or if any complaint is made to the Court by any creditor or contributory in regard thereto, the Court shall inquire into the matter and take such action thereon as it may think expedient.
- (2) The Court may at any time require any official liquidator of a company which is being wound up by the Court to answer any

inquiry in relation to any winding-up in which he is engaged, and may, if the Court thinks fit, examine him or any other person on oath concerning the winding-up.

- (3) The Court may also direct a local investigation to be made of the books and vouchers of the official liquidator.

209. Release of liquidators

- (1) When the official liquidator of a company which is being wound up by the Court has realised all the property of the company, or so much thereof as can, in his opinion, be realised without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Court shall, on his application cause a report on his accounts to be prepared, and on his complying with all the requirements of the Court, shall take into consideration the report and any objection which may be urged by any creditor or contributory or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly.
- (2) Where the release of a liquidator is withheld, the Court may, on the application of any creditor or contributory or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.
- (3) An order of the Court releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator; but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

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

(f) Committees of inspection

210. Meetings of creditors and contributories to determine whether committee of inspection shall be appointed

- (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 under section 197, to determine further whether or not an application is to be made to the Court for the appointment of a committee of inspection to act with the liquidator and who are to be members of the committee if appointed.
- (2) The Court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matters aforesaid, the Court shall decide the difference and make such order thereon as the Court may think fit.

211. Constitution and proceedings of committee of inspection

- (1) A committee of inspection appointed in pursuance 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 as in case of difference may be determined by the Court.
- (2) The committee shall meet at such times as they from time to time appoint, and failing such appointment at least once a month, and the official liquidator or any member of the committee may also call a meeting of the committee as and when he 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 official liquidator.
- (5) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from 5 consecutive meetings of the committee without the leave of those members who, together with himself, represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.
- (6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors (if he represents creditors) or of contributories (if he represents contributories) of which 14 days' notice has been given stating the object of the meeting.
- (7) On a vacancy occurring in the committee the official liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may by resolution reappoint the same, or appoint another creditor or contributory to fill the vacancy.
- (8) The continuing members of the committee, if not less than 2, may act notwithstanding any vacancy in the committee.

212. Powers of Court where no committee of inspection

Where there is no committee of inspection, the Court, on the application of the official liquidator, may do any act or thing or give any direction or permission which is by this Act authorised or required to be done or given by the committee.

(g) General powers of Court in case of winding-up by Court

213. Power to stay winding-up

- (1) The Court may at any time after an order for winding-up, on the application either of the official liquidator 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, and on such terms and conditions as the Court thinks fit.

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

214. Settlement of list of contributories and application of assets

- (1) As soon as may be after making a winding-up order in respect of a company other than a no liability company, 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.
- (3) The list of contributories when settled shall be *prima facie* evidence of the liabilities of the persons named therein to be contributories.

215. Delivery of property to liquidator

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

official liquidator any money, property, or books and papers in his hands to which the company is *prima facie* entitled.

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

- (1) The Court may at any time after making a winding-up order in respect of a company other than a no liability company, make an order on any contributory for the time being on the list of contributories, to pay in manner directed by the order any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this 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.

217. Power of Court to make calls

- (1) The Court may at any time after making a winding-up order in respect of any company other than a no liability company, 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.

218. Payment into bank of moneys due to company

- (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 some bank or any branch thereof named in such order to the account of the official liquidator instead of to the official liquidator, and any such order may be enforced in the same manner as if it had directed payment to the official liquidator.
- (2) All moneys and securities paid or delivered into any 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.

219. Order on contributory conclusive evidence

- (1) An order made by the Court on a contributory shall, subject to any right of appeal, be conclusive evidence that the money (if any) thereby appearing to be due or ordered to be paid is due.
- (2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings.

220. Power to appoint special manager

- (1) The official liquidator of a company, whether provisional or otherwise, which is being wound up by the Court may, if satisfied that the nature of the estate or business of the company or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the Court

and the Court may on such application appoint a special manager of the estate or business to act during such time as the Court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the Court.

- (2) The special manager shall give such security, and account in such manner, as the Court may direct.
- (3) The special manager shall receive such remuneration as may be fixed by the Court.
- (4) The special manager may at any time resign or on cause shown be removed by the Court.

221. Power to exclude creditors not proving in time

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

222. Adjustment of rights of contributories

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

223. Inspection of books by creditors and contributories

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

224. Power to summon persons suspected of having property of company

- (1) The Court may, at any time after the appointment of a provisional liquidator or the making of a winding-up order,

summon before it any officer of the company, or person known or suspected to have in his possession any property of the company, or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the promotion, formation, trade dealings, affairs or property of the company.

- (2) The Court may examine him on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories, and may reduce his answers to writing, and require him to sign them.
- (3) The Court may require him to produce any books and papers in his custody or power relating to the company, but where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the Court shall have jurisdiction in the winding-up to determine all questions relating to that lien.
- (4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, not having a lawful impediment, made known to the Court at the time of its sitting and allowed by it, the Court may cause him to be apprehended and brought before the Court for examination.

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

- (1) When an order has been made for winding-up a company by the Court, and the official liquidator has made a further report under 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 director or other officer of the company in relation to the company since its formation, the Court may, after consideration of the report and any other relevant matters, direct that any person who has taken any part in the promotion or formation of the company, or has been a director or officer of the company, shall attend before the Court on a day appointed by the Court for that purpose, and be examined as to the promotion or formation

or the conduct of the business of the company or as to his conduct and dealings as director or officer thereof.

- (2) The official liquidator and any creditor or contributory may take part in the examination either personally or by solicitor or counsel.
- (3) The Court may put or allow to be put such questions to the person examined as the Court thinks fit, notwithstanding that any question may be of a criminating nature.
- (4) The person examined shall be examined on oath and shall answer all such questions as the Court may put or allow to be put to him.
- (5) A person ordered to be examined under this section shall, at his own cost, before his examination, be furnished with a copy of the official liquidators' report, and may at his own cost employ a solicitor, with or without counsel, who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him: Provided that if any such person applies to the Court to be exculpated from any charges made or suggested against him, it shall be the duty of the official liquidator to appear on the hearing of the application and call the attention of the Court to any matters which appear to the official liquidator to be relevant and if the Court, after hearing any evidence given or witnesses called by the official liquidator, grants the application the Court may allow the applicant such costs as in its discretion it may think fit.
- (6) 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 in any Court of civil or criminal jurisdiction 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.

- (8) An examination under this section or under the last preceding section may, if the Court so directs and subject to general rules, be held before a Master or other officer of the Court or any special magistrate and the powers of the Court under this and the last preceding section as to the conduct of the examination, but not as to costs, may be exercised by the person before whom the examination is held.
- (9) On the hearing of any such application the official liquidator may himself give evidence or call witnesses.

226. Power to restrain fraudulent persons from managing companies

- (1) Where an order has been made for winding-up a company by the Court, and the official liquidator has made a further report under this Act stating that, in his opinion, a fraud has been committed by a person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the Court may, on the application of the official liquidator, order that that person, director, or officer shall not, without the leave of the Court, be a director of or in any way, whether directly or indirectly be concerned in or take part in the management of a company for such period, not exceeding 5 years from the date of the report, as may be specified in the order.
- (2) The official liquidator shall, where he intends to make an application under the last foregoing subsection, give not less than 14 days' notice of his intention to the person charged with the fraud, and on the hearing of the application that person may appear and himself give evidence or call witnesses.
- (3) It shall be the duty of the official liquidator to appear on the hearing of an application by him for an order under this section and on an application for leave under this section, and to call the attention of the Court to any matters which appear to him to be relevant, and on any such application the official liquidator may himself give evidence or call witnesses.

- (4) If any person acts in contravention of an order made under this section he shall be guilty of a crime and be liable on conviction to imprisonment for a period not exceeding 3 years.
- (5) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made.

[Section 226 amended by No. 51 of 1992 s. 16(1); No. 70 of 2004 s. 82.]

227. Power to arrest absconding contributory

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

228. Powers of Court cumulative

Any powers 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.

229. Delegation to liquidator of certain powers of Court

Provision may be made by general 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 the following matters: —

- (i) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;

- (ii) the settling lists of contributories and rectifying the register of members where required, and the collecting and applying of the assets;
- (iii) the paying, delivery, conveyance, surrender, or transfer of money, property, books or papers to the official liquidator;
- (iv) the making calls and adjusting the rights of contributories;
- (v) the fixing of a time within which debts and claims must be proved,

to be exercised or performed by the official liquidator as an officer of the Court and subject to the control of the Court:

Provided that the official 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.

230. Dissolution of company

- (1) When the affairs of a company have been completely wound up the Court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.
- (2) The order shall, within 14 days from the date thereof, be reported by the official liquidator to the Registrar, who shall make in his books a minute of the dissolution of the company.
- (3) If the official liquidator makes default in complying with the requirements of this section he shall be liable to a fine of \$10 and also to a daily fine of \$2 for every day during which the default continues.

[Section 230 amended by No. 113 of 1965 s. 8(1).]

Division 3 — Voluntary winding-up of company

(a) Resolutions for, and commencement of, voluntary winding-up

231. Circumstances in which a company may be wound up voluntarily

- (1) A company may be wound up voluntarily —
 - (a) when the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs on the occurrence of which the articles provide that the company is to be dissolved and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;
 - (b) if the company resolves by special resolution that the company be wound up voluntarily;
 - (c) if the company resolves by special 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 any of the provisions of subsection (1).

232. Notice of resolution to wind up voluntarily

- (1) When a company has passed a resolution for voluntary winding-up, it shall, within 14 days after the passing of the resolution, give notice of the resolution, by advertisement in the *Gazette*, and file a copy thereof certified by the chairman of the meeting with the Registrar.
- (2) If default is made in complying with this section the company and every officer of the company who is in default shall be liable to a fine not exceeding \$40 and also to a daily penalty of \$4 for every day during which the default continues, and for the purposes of this subsection the liquidator of the company shall be deemed to be an officer of the company.

[Section 232 amended by No. 113 of 1965 s. 8(1).]

233. Commencement of voluntary winding-up

A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution for voluntary winding-up.

(b) Consequences of voluntary winding-up

234. Effect of voluntary winding-up on business and status of company

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

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

235. Avoidance of transfers etc. after commencement of voluntary winding-up

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

(c) Declaration of solvency

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

- (1) Where it is proposed to wind up a company voluntarily the directors of the company or, in the case of a company having more than 2 directors, the majority of the directors may, at a meeting of the directors held before the date on which the notices of the meeting at which the resolution for the winding-up of the company is to be proposed are sent out, make a statutory declaration to the effect that they have made a full inquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be

able to pay its debts in full within a period not exceeding 12 months from the commencement of the winding-up.

- (2) A declaration made as aforesaid shall have no effect for the purposes of this Act unless it is filed with the Registrar before the date mentioned in subsection (1).
- (3)(a) Any person who makes a declaration of solvency under this section without proper justification therefor shall be liable to a fine not exceeding \$400.
- (b) Where a declaration of solvency is made under this section, and it appears in the winding-up of the company that the company will be unable to pay its debts in full within a period of 12 months from the date of the commencement of the winding-up, the onus shall be upon any person making a declaration of solvency in respect thereof to show that he had proper justification in forming the opinion declared to by him.
- (c) In considering whether a person had proper justification for forming the opinion declared to by him in a declaration of solvency, the Court, having cognisance of the matter, may call or receive evidence on oath to prove that such justification did in fact exist within the knowledge of such person.
- (4) A winding-up in the case of which a declaration has been made and filed in accordance with 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 made and filed as aforesaid, is in this Act referred to as a *creditors' voluntary winding-up*.

[Section 236 amended by No. 113 of 1965 s. 8(1).]

(d) Provisions applicable to a members' voluntary winding-up

237. Provisions applicable to a members' voluntary winding-up

The provisions contained in the 5 sections next following shall apply in relation to a members' voluntary winding-up.

238. Power of company to appoint and fix remuneration of liquidators

- (1) The company in general meeting shall appoint one or more liquidators for the purpose of winding-up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.
- (2) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof.

239. Power to fill vacancy in office of liquidator

- (1) If a vacancy occurs by death, resignation, or otherwise, in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.
- (2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.
- (3) The meeting shall be held in 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.

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

- (1) Where a company is proposed to be or is in course of being wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this 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 this section shall be binding on the members of the transferor company.
- (3) If 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 14 days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by this section.
- (4) If the liquidator elects to purchase the members' interest, the purchase money shall, if fixed by arbitration, but subject to any express provision in the award, be payable forthwith after the making of the award, and in any case must 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 winding-up the company or for appointing liquidators, but if an order is made within a year 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.
- (6) For the purposes of an arbitration under this section the provisions of the *Arbitration Act 1895*¹², shall be incorporated with this Act and shall apply as if there were a submission for

reference to 2 arbitrators, one to be appointed by each party; and the appointment of an arbitrator may be made under the hand of the liquidator, or, if there is more than one liquidator, then under the hands of any 2 or more of the liquidators.

241. Duty of liquidator to call general meeting at end of year

- (1) 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 commencement of the winding-up, and of each succeeding year, or as soon thereafter as may be convenient, 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) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding \$10.

[Section 241 amended by No. 113 of 1965 s. 8(1).]

242. Final meeting and dissolution

- (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 for the purpose of laying before it the account and giving any explanation thereof.
- (2) The meeting shall be called by advertisement in the *Gazette*, and once at least in a newspaper circulating in the district where the registered office or principal place of business of the company is situate, specifying the time, place, and object thereof, and published 28 days at least before the meeting.
- (3) Within 14 days after the meeting, the liquidator shall file with 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 if the copy is not filed or the return is not made in accordance with this subsection, the liquidator shall be liable to a fine of \$40 and also

to a daily fine of \$10 for every day during which the default continues.

Provided that, if a quorum is not present at the meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, 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) On the expiration of 3 months from the filing of the account and making of either of the returns hereinbefore mentioned, 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 this section is made, within 7 days after the making of the order, to file with the Registrar an office copy of the order, and if that person fails so to do, he shall be liable to a fine of \$40 and also to a daily fine of \$10 for every day during which the default continues.

[Section 242 amended by No. 113 of 1965 s. 8(1).]

(e) Provisions applicable to a creditors' voluntary winding-up

243. Provisions applicable to a creditors' voluntary winding-up

The provisions contained in the 8 sections next following shall apply in relation to a creditors' voluntary winding-up.

244. Meeting of creditors

- (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

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resolution for voluntary winding-up is to be proposed, and shall cause the notices of the meeting of creditors to be sent by post to each of the creditors simultaneously with the sending of the notices of the meeting of the company. At least 14 days' notice of such meeting shall be given to the creditors.

- (2) The meeting of creditors shall be held at a time and place convenient to the majority in value of the creditors.
- (3) The creditors may appoint one of their number or the director appointed under subsection (5) to preside at the meeting.
- (4) The company shall cause notice of the meeting of the creditors to be advertised once in the *Gazette* and once at least in 2 newspapers circulating in the district where the registered office or principal place of business of the company is situate.
- (5) The directors of the company shall —
 - (a) cause a full statement of the position of the company's affairs including —
 - (i) a detailed statement of the assets of the company showing the present value of the assets, firstly as a going concern and secondly on separate sales thereof; and
 - (ii) a list of the creditors of the company, the estimated amount of their claims, distinguishing secured and unsecured, and creditors entitled to preference under section 271,
to be laid before the meeting of creditors to be held as aforesaid; and
 - (b) appoint one of their number to attend at the meeting.
- (6) It shall be the duty of the director appointed to attend the meeting of creditors and the secretary to attend thereat and make full disclosure to the meeting of the company's position, affairs and the circumstances leading up to the proposed liquidation.

- (7) If the meeting of the company at which the resolution for winding-up the company 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 subsection (1) shall have effect as if it had been passed immediately after the passing of the resolution for winding-up the company.
- (8) If default is made —
- (a) by the company in complying with subsections (1), (2) and (4):
 - (b) by the directors of the company in complying with subsection (5):
 - (c) by any director or secretary of the company in complying with subsection (6),

the company, directors, or director, or secretary, as the case may be, except in case of incapacity from illness or of absence from the State, shall be liable to a fine not exceeding \$100, and, in case of default by the company, every officer of the company who is in default shall be liable to the like penalty.

[Section 244 amended by No. 113 of 1965 s. 8(1).]

245. Appointment of liquidator

The creditors and the company at their respective meetings mentioned in the last foregoing section of this Act may nominate a person to be liquidator for the purpose of winding-up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall, subject as hereinafter provided, be liquidator, and if no person is nominated by the creditors, the person, 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 14 days after the date on which the nomination was made by the

creditors, apply to the 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.

246. Appointment of committee of inspection

The creditors at the meeting to be held in pursuance of section 244, or at any subsequent meeting, may, if they think fit, appoint a committee of inspection consisting of not more than 5 persons, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding-up the company is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding 5 in number:

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, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the Court otherwise directs, be qualified to act as members of the committee, and on any application to the Court under this provision the Court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

Subject to the provisions of this section and to general rules, the provisions of section 211 (except subsection (1)) shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding-up by the Court.

247. Fixing of liquidators' remuneration and cesser of directors' powers

- (1) The creditors may fix the remuneration to be paid to the liquidator or liquidators, or may delegate such power to the committee of inspection (if any).
- (2) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors sanction the continuance thereof.

248. Power to fill vacancy in office of liquidator

- (1) If 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.
- (2) For that purpose a meeting of creditors may be called by any 2 creditors or by the Registrar.

249. Application of s. 240 to a creditors' voluntary winding-up

The provisions of section 240 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 the said section shall not be exercised except with the sanction either of the Court or of the committee of inspection.

250. Duty of liquidator to call meetings of company and creditors

- (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 creditors at the end of the first year from the commencement of the winding-up, and of each succeeding year or as soon thereafter as may be convenient, 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) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding \$10.

[Section 250 amended by No. 113 of 1965 s. 8(1).]

251. Final meeting and dissolution

- (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 meeting and giving any explanation thereof.
- (2) Each such meeting shall be called by advertisement in the *Gazette*, and once at least in a newspaper circulating in the district where the registered office or principal place of business of the company is situate, specifying the time, place, and object thereof, and published 28 days at least before the meeting.
- (3) Within 14 days after the date of the meetings, or, if the meetings are not held on the same date, after the date of the latter meeting, the liquidator shall file with 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 if the copy is not filed or the return is not made in accordance with this subsection the liquidator shall be liable to a fine of \$40 and also to a daily fine of \$10 for every day during which the default continues:

Provided that if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, 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) On the expiration of 3 months from the filing of the account and making of either of the returns hereinbefore mentioned 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 this section is made within 14 days after the making of the order, to file with the Registrar an office copy of the order, and if that person fails so to do he shall be liable to a fine of \$40 and also to a daily fine of \$10 for every day during which the default continues.

[Section 251 amended by No. 113 of 1965 s. 8(1).]

(f) Provisions applicable to every voluntary winding-up

252. Provisions applicable to every voluntary winding-up

The provisions contained in the 8 sections next following shall apply to every voluntary winding-up whether a members' or a creditors' winding-up.

253. Distribution of property of company

Subject to the provisions of this Act as to preferential payments, the property of the 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.

254. Powers and duties of liquidator in voluntary winding-up

- (1) The liquidator may —
- (a) in the case of a members' voluntary winding-up with the sanction of a special resolution of the company, and, in

the case of a creditors' voluntary winding-up, with the sanction of the Court, a meeting of the creditors, or the committee of inspection, exercise any of the powers given by section 203(1)(c), (d), and (e) to a liquidator in a winding-up by the Court;

- (b) exercise any of the other powers by this Act, given to the liquidator in a winding-up by the Court;
 - (c) exercise the power of the Court under this Act of settling a list of contributories, and the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories;
 - (d) exercise the power of the Court in making calls;
 - (e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution 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 themselves.
- (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 2.
- (4) Section 207, except subsection (5), shall apply to the liquidator of a company which is being wound up voluntarily, but it shall not be necessary to file a copy of the audited account in the office of the Court.

255. Power of Court to appoint or remove liquidator

- (1) If from any cause whatever there is no liquidator acting the Court may appoint a liquidator.
- (2) The Court may, on cause shown, remove any liquidator, and appoint another liquidator.

256. Notice by liquidator of his appointment

- (1) The liquidator shall, within 14 days after his appointment, file with the Registrar a notice of his appointment.
- (2)(a) The notice shall state the situation of his office, and notice of any change thereof shall be given by him within 21 days of such change.
- (b) Service made at such address shall be deemed good service on him and on the company.
- (3) If the liquidator fails to comply with the requirements of this section, he shall be liable to a fine not exceeding \$10 for every day during which the default continues.

[Section 256 amended by No. 113 of 1965 s. 8(1).]

257. Arrangement, when binding on creditors

- (1) Any arrangement entered into between a company about to be or in the course of being wound up, and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by a special resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors.
- (2) Any creditor or contributory may, within 28 days from the completion of the arrangement, appeal to the Court against it, and the Court may thereupon, as it thinks just, amend, vary, or confirm the arrangement.

258. Power to apply to Court to have questions determined or powers exercised

- (1) The liquidator or any contributory or creditor may apply to the 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 or decree on the application as it thinks just.

259. Costs of voluntary winding-up

- (1) 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.
- (2) The costs and expenses of winding-up shall include the costs and fees of any solicitor and the fees of any authorised auditor retained by the company for services rendered for the company, preparatory to, in the course of, and incidental to the winding-up of the company. The fees of any registered auditor shall be approved by the Registrar.

260. Saving for rights of creditors and contributories

The voluntary winding-up of a company shall not bar the right of any creditor or contributory to have it wound up by the Court, but in the case of an application by a contributory, the Court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding-up.

261. Power of Court to adopt proceedings of voluntary winding-up

Where a company is being wound up voluntarily and proceedings are taken to have it wound up by the Court, the Court may, notwithstanding that it makes an order directing the company to be wound-up by the Court, provide in such order or in any other order, for the adoption of all or any of the proceedings taken in the course of the voluntary winding-up.

Division 4 — Winding-up subject to supervision of Court

262. Power to order winding-up subject to supervision

When a company has passed a resolution for voluntarily 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.

263. Effect of petition for winding-up subject to supervision

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 and proceedings be deemed to be a petition for winding-up by the Court.

264. Application of s. 190 to winding-up subject to supervision

A winding-up subject to the supervision of the Court shall, for the purposes of section 190, be deemed to be a winding-up by the Court.

265. Power for Court to appoint or remove liquidators

- (1) Where an order is made for a winding-up subject to supervision, the Court may by that or any subsequent order remove any liquidator appointed in the voluntary winding-up or appoint any new or additional liquidator.
- (2) A liquidator appointed by the Court under this section shall have the same powers, be subject to the same obligations and in all respects stand in 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 so appointed by the Court or any liquidator continued under the supervision order, and fill any vacancy occasioned by the removal or by death or resignation.

266. Effect of supervision order

- (1) Where an order is made 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 altogether voluntarily:

Provided that the powers specified in section 203(1)(c), (d), and (e) 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 the Court, a meeting of the creditors, or the committee of inspection.

- (2) A winding-up subject to the supervision of the Court is not a winding-up by the Court for the purpose of the provisions of this Act which are set out in the Ninth Schedule, 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 purpose of section 203 (except subsection (1) thereof), except in so far as the operation of that section is excluded in a voluntary winding-up by Rules of Court.

Division 5 — Provisions applicable to every mode of winding-up

(a) Proof and ranking of claims

267. Term used: liquidator

In the sections in this Division hereinafter contained the word *liquidator* shall include the term *official liquidator*.

268. Debts of all descriptions to be proved

In every winding-up (subject in the case of insolvent companies to the application, in accordance with the provisions of this Act, of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

269. Application of bankruptcy rules in winding-up of insolvent companies

- (1) Except so far as is otherwise enacted in the winding-up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors, and to debts provable, and to the valuation of annuities, and future and contingent liabilities, and as to the priorities of debts and liabilities, as are in force for the time being under the law of bankruptcy with respect to estates of persons adjudged bankrupt, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding-up and make such claims against the company as they respectively are entitled to by virtue of this section.
- (2) Where a company, whether registered or incorporated in this State or elsewhere, is the creditor of an insolvent company

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which is being wound up under the provisions of this Act, if the company holds more than three-quarters of the subscribed and issued capital in the insolvent company, the claim of the company shall be deferred until the claims of the other creditors of the insolvent company have been satisfied according to their priorities in law.

Provided that nothing contained in this subsection shall apply to a claim by any person against the insolvent company under any charge now or hereafter given by such creditor company.

[Section 269 amended by No. 73 of 1953 s. 6.]

270. Priority of Crown in winding-up preserved

Subject as hereinafter provided, nothing in this Act shall prejudice or in any wise affect the right of the Crown to be paid debts owing to the Crown in priority of all other debts in the winding-up of a company, and such priority of the Crown shall be preserved and shall continue and have effect accordingly.

Provided that —

- (a) The priority of the Crown shall not extend to any corporate body representing the Crown actually engaged in trading and carrying on business as a State trading concern under the provisions of the *State Trading Concerns Act 1916*; and
- (b) This section shall be read subject to section 271.

271. Preferential payments

- (1) In the distribution of the assets of any company being wound up there shall be paid in priority to all other debts subject to subsection (3) —
 - (a) All wages or salary of any clerk or servant in respect of services rendered to the company during 4 months before the date of the commencement of the winding-up, not exceeding \$100; and

- (b) All wages of any labourer or workman, not exceeding \$100, whether payable for time or for piece-work, in respect of services rendered to the company during 4 months before the commencement of the winding-up: Provided that where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such 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 commencement of the winding-up.
- (2) The abovementioned debts shall rank equally between themselves and shall be paid in full, unless the assets of the company are insufficient to meet them, in which case they shall abate in equal proportions between themselves.
- (3) Subject to the retention of such sums as may be necessary for the costs of the winding-up or otherwise, the abovementioned debts shall be discharged forthwith, so far as the assets of the company are sufficient.
- (4) The expression *clerk or servant* as used in this section includes any commercial traveller or insurance or time payment canvasser or collector paid wholly or in part by commission.

[Section 271 amended by No. 113 of 1965 s. 8(1).]

272. Creditors to receive interest before surplus divided

In a winding-up under this Act, the contributories or shareholders shall not be entitled to have any surplus, after payment of 100 cents in the dollar on the debts of the company, divided amongst themselves until the creditors of the company whose debts are entitled to carry interest shall have received interest on such debts at the rate of 4% per annum to be calculated from the date of the commencement of the winding-up of the company.

[Section 272 amended by No. 113 of 1965 s. 5 and 8(1).]

(b) Effect of winding-up on antecedent and other transactions

273. Fraudulent preference

- (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 bankruptcy an undue preference, shall, if made or done by or against a company, be deemed, in the event of its being wound up, an undue preference of its creditors, and be invalid accordingly.
- (2) For the purposes of this section, the presentation of a petition for winding-up a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, and a resolution for voluntarily winding-up in any other case, shall be deemed to correspond with the order for sequestration 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.

274. Avoidance of attachments etc.

Where any company is being wound up 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.

275. Effect of floating charge

Where a company is being wound up, a floating charge on the undertaking or property of the company created within 6 months of the commencement of the winding-up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of, or subsequently to, the creation of, and in consideration for, the charge, together with interest on that amount at the rate of 4% per annum.

[Section 275 amended by No. 113 of 1965 s. 5 and 8(1).]

276. Disclaimer of onerous property

- (1) Where any part of the property of a company which is being wound up consists of —
- (a) land of any tenure burdened with onerous covenants;
 - (b) shares or stock in companies;
 - (c) unprofitable contracts; or
 - (d) any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money,

the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, may, subject to the provisions of this section, by writing signed by him at any time within 12 months after the commencement of the winding-up or such extended period as 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 28 days after the commencement of the winding-up, the power under this section of disclaiming the property may be exercised at any time within 12 months after he first became 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 disclaimer, the rights, interests, 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) Except as prescribed, a liquidator shall not be at liberty to disclaim a lease without leave of the Court, and 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 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 this section in any case where —
- (a) an application in writing has been made to him by any persons interested in the property requiring him to decide whether he will or will not disclaim; and
 - (b) the liquidator has not, within a period of 2 calendar months after the receipt of the application or such further period as may be allowed by the Court, given notice to the applicant that he disclaims the property or not.

In the case of a contract, if the liquidator, after such 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 the person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as the Court thinks just, and any damages payable under the order to 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 persons as it thinks fit, make an 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.

- (7) On any such vesting order being made, the property comprised therein, shall vest accordingly in the person therein named in that behalf without, unless otherwise prescribed, any conveyance or assignment for the purpose.
- (8) Where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee by demise, except upon the terms of making that person —
- (a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding-up; or
 - (b) if the Court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,
- and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order.
- (9) Any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the Court 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 alone or jointly with the company to perform the lessee's covenants in the lease, freed and discharged from all estates, encumbrances, and interests created therein by the company.
- (10) Any person who has suffered damages by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of such damages as may be recoverable under the provisions of this section, and may accordingly prove the amount as a debt in the winding-up.

277. Restriction of rights of creditor in execution or attachment

- (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 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 purpose of the foregoing provisions, be substituted for the date of the commencement of the winding-up; and
- (b) a person who purchases in good faith under a sale by the sheriff 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.
- (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 the sale of the land or of any interest in the land.
- (3) In this section and in the section next following the expression *goods* includes all chattels personal and the expression *sheriff* includes any officer charged with the execution of a writ or other process.

278. Duties of sheriff as to goods taken in execution

- (1) 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 sheriff 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 sheriff 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) Where under an execution in respect of a judgment for a sum exceeding \$40 the goods of a company are sold or money is paid in order to avoid sale, the sheriff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for 14 days, and if within that time notice is served on him of a petition for the winding-up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding-up of the company and an order is made or a resolution is passed, as the case may be, for the winding-up of the company, the sheriff shall pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor.

[Section 278 amended by No. 113 of 1965 s. 8(1).]

(c) Offences antecedent to or in course of winding-up

279. Offences by officers of companies in liquidation

- (1) If any person, being a past or present officer of a company who is connected with the management of the 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 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 discover to the liquidator all the property, real and personal, of the company, and how and to whom and for what consideration and when the company

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disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company; or

- (b) does not deliver up to the liquidator, or as he directs, all such part of the real and personal property of the company as is in his custody or under his control, and which he is required by law to deliver up; or
- (c) does not deliver up 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 up; or
- (d) within 12 months next before the commencement of the winding-up or at any time thereafter conceals any part of the property of the company or conceals any debt due to or from the company; or
- (e) within 12 months next before the commencement of the winding-up or at any time thereafter fraudulently removes any part of the property of the company; or
- (f) makes any material omission in any statement relating to the affairs of the company; or
- (g) knowing 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 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 12 months next before the 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 12 months next before the 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 12 months next before the 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 commencement of the winding-up or at any meeting of the creditors of the company within 12 months next before the commencement of the winding-up, attempts to account for any part of the property of the company by fictitious losses or expenses; or
- (m) has within 12 months next before the 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 12 months next before the 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 12 months next before the 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 a crime, and shall, in the case of the offences mentioned respectively in paragraphs (m), (n), and (o), be liable on conviction on indictment to imprisonment for a term not exceeding 2 years, and in the case of any other offence shall be liable on conviction on indictment to imprisonment for a term not exceeding one year:

Provided that it shall be a good defence to a charge under any of paragraphs (a), (b), (c), (d), (f), (n) and (o), if the accused proves that he had no intent to defraud, and to a charge under any of paragraphs (h), (i) and (j), if he proves 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 circumstances which amount to a crime under subsection (1)(o), 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 a crime, and on conviction thereof liable to be punished in the same way as if he had received the property knowing it to have been obtained in circumstances amounting to a crime.
- (3) For the purposes of this section, the expression *officer* shall include any manager or any person occupying the position of a director or in accordance with whose directions or instructions the directors of a company have been accustomed to act.

[Section 279 amended by No. 70 of 2004 s. 82.]

280. Liability where proper accounts not kept

- (1) If, where a company is wound up, it is shown that proper accounts were not kept by the company throughout the period of 2 years immediately preceding the commencement of the winding-up every director, manager, or accounting officer of the company who was knowingly a party to or connived at the default of the company shall, unless he shows that he acted

honestly or that in the circumstances in which the business of the company was carried on the default was excusable, be guilty of a crime and liable to imprisonment for one year.

Summary conviction penalty: \$6 000.

- (2) For the purposes of this section, proper accounts 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, also accounts of all goods sold and purchased, and statements of the annual stocktakings.

[Section 280 amended by No. 50 of 2003 s. 46(2); No. 4 of 2004 s. 58; No. 70 of 2004 s. 82.]

281. Responsibility of directors for fraudulent trading

- (1) If 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, on the application of the liquidator, or any creditor or contributory of the company, may, if it thinks proper so to do, declare that any of the directors, whether past or present, of the company who were knowingly parties to the carrying on of the business in manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court may direct.
- (2) Where the Court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the liability of any such director 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 or charge 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 director, company, or person and may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under this subsection.

For the purpose of the foregoing provision, the expression *assignee* includes any person to whom or in whose favour, by the directions of the director, 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 mentioned in subsection (1), every director of the company who was knowingly a party to the carrying on of the business in manner aforesaid, shall be guilty of a crime and liable to imprisonment for one year.
- (4) The Court may, in the case of any person in respect of whom a declaration has been made under subsection (1) or who has been convicted of an offence under subsection (3), order that that person shall not, without the leave of the Court, be a director of or in any way, whether directly or indirectly, be concerned in or take part in the management of a company for such period, not exceeding 5 years, from the date of the declaration or of the conviction, as the case may be, as may be specified in the order, and if any person acts in contravention of an order made under this subsection he shall be guilty of a crime and be liable on conviction on indictment to imprisonment for a term not exceeding 2 years.

In this subsection, the expression *the Court* in relation to the making of an order, means the Court by which the declaration was made or the Court before which the person was convicted, as the case may be, and in relation to the granting of leave means any Court having jurisdiction to wind-up the company.

- (5) For the purposes of this section, the expression *director* shall include any person who occupies the position of a director or in accordance with whose directions or instructions the directors of a company have acted.
- (6) 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 be deemed to be a final judgment within the meaning of section 52(j) of the *Bankruptcy Act 1924*².
- (7) It shall be the duty of the liquidator to appear on the hearing of an application for leave under subsection (4), and on the hearing of an application under that subsection or under subsection (1) the liquidator may himself give evidence or call witnesses.

[Section 281 amended by No. 4 of 2004 s. 58; No. 70 of 2004 s. 82.]

282. Power of Court to assess damages against delinquent directors etc.

- (1) If in the course of winding-up 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 been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the liquidator, or of any creditor or contributory, examine into the conduct of 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 apply notwithstanding that the offence is one for which the offender may be criminally liable.

283. Prosecution of delinquent officers and members of the company

- (1) If 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 director, manager, or other officer, or member of the company has been guilty of any offence in relation to the company for which he is criminally liable, the Court may, on the application of any person interested in the winding-up, or of its own motion, direct the liquidator to prosecute for the offence.
- (2) If it appears to the liquidator in the course of a voluntary winding-up that any past or present director, manager, or other officer, or member of the company has been guilty of any offence in relation to the company for which he is criminally liable, the liquidator may, with the previous sanction of the Court, prosecute the alleged offender.
- (3) All costs and expenses properly incurred by a liquidator in relation to any prosecution under subsections (1) or (2) may, with the action of the Court, be paid out of the assets of the company as part of the costs of winding-up.

(d) Supplementary provisions as to winding-up

284. Directors not to be liquidators and liquidators to file consent

- (1) Except in the case of a members' voluntary winding-up, no person who at any time within the 24 months preceding the commencement of the winding-up has been a director, or promoter of a company, shall be eligible to be appointed, or shall act as a liquidator for the purpose of winding-up the affairs of the company, unless so determined by a resolution carried by a majority of the creditors in number and value at a meeting of

which 14 days' notice has been given to every creditor stating the object of the meeting:

Provided that nothing in this section shall affect any appointment made before the commencement of this Act.

- (2) No person shall be appointed a liquidator of a company unless he has prior to such appointment consented to act as such liquidator.
- (3) A person appointed liquidator shall within 14 days after his appointment file a consent in writing to act as such liquidator.
- (4) In the case of a voluntary winding-up the consent of the liquidator to act shall be filed with the Registrar.
- (5) In the case of a compulsory winding-up or a winding-up under supervision of the Court, the consent of the liquidator to act shall be filed in the Court.

285. Enforcement of duty of liquidator to make returns etc.

- (1) If any liquidator who has made any default in filing, delivering, or making any return, account, or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within 28 days after the service on him of a notice requiring him to do so, the Court may, on the 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 such order 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 enactment imposing penalties on a liquidator in respect of any default as aforesaid.

286. Notification that a company is in liquidation

- (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) If default is made in complying with this section, the company and every director, manager, or other officer of the company, and every liquidator of the company and every receiver or manager, who knowingly and wilfully authorises or permits the default shall be liable to a fine of \$20.

[Section 286 amended by No. 113 of 1965 s. 8(1).]

287. Books of company to be evidence

Where any 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.

288. Disposal of books and papers of company

- (1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidator shall, unless the Court otherwise orders, so soon as the liquidator does not require their further use, be deposited by him with the Registrar, who, after retaining the same for 3 years from the date of the dissolution of the company, may destroy the same.
- (2) After 3 years from the dissolution of the company no responsibility shall rest on the company or on the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of the same not being forthcoming to any person claiming to be interested therein.

289. Information as to pending liquidations

- (1) If, where a company is being wound up, the winding-up is not concluded within one year after its commencement, the liquidator shall not less than once a year until the winding-up is concluded, file with the Registrar a statement in the prescribed form, verified by a statutory declaration in the form prescribed by Rules of Court and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.
- (2) Any person stating himself, in writing, to be a creditor or contributory of the company, shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom.
- (3) If a liquidator fails to comply with the requirements of this section he shall be liable to a penalty not exceeding \$10 for each day during which the default continues, and any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of Court, and shall, on the application of the liquidator, be punishable accordingly.

[Section 289 amended by No. 113 of 1965 s. 8(1).]

290. Application of unclaimed assets of company

- (1) If, where a company is being wound up, it appears either from any statement filed with the Registrar under the last foregoing section, 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 6 months after their receipt, the liquidator shall forthwith pay the same to the Registrar, to be credited to an account to be kept by the Registrar and to be called 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.

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- (1a)(a) Notwithstanding the provisions of subsection (1) the Registrar may from time to time, in any case, extend the time within which a liquidator is required to pay money to him under the provisions of that subsection.
- (b) The liquidator shall not be required to pay to the Registrar any money which during the time so extended, he may have distributed or applied in the course of the winding-up.
- (2) For the purpose of ascertaining and getting in any money payable to the Registrar in pursuance of this section, the Court may at any time order such liquidator to submit to it an account, verified by affidavit, of the sums received and paid by him as such liquidator, and may direct and enforce an audit of the account.
- (3) The Registrar may invest the whole or part of the moneys standing to the credit of the said account in the purchase of Government debentures or stock, or otherwise, and may deduct a percentage of the interest arising from such investment to recoup any necessary expenses, and may pay the same into the general revenue.
- (4) Any person claiming to be entitled to any money paid to the Registrar to the credit of the Companies Liquidation Account, may apply to the Registrar for payment thereof, and the Registrar may, on a certificate by the liquidator that the person is entitled or otherwise being satisfied that the claimant is so entitled, make an order for the payment to that person of the sum due, together with any interest accruing thereto.
- (5) Any person dissatisfied with the decision of the Registrar in respect of a claim made in pursuance of this section, may appeal to the Court.
- (6) Where any unclaimed moneys paid to any claimant under subsection (4) are afterwards claimed by any other person, the Registrar shall not be responsible for the payment of the same, but such person may have recourse against the claimant to whom the Registrar has paid the unclaimed moneys.

- (7) Where any unclaimed moneys of a company have remained in the Companies Liquidation Account for 6 years, the Registrar shall, after the expiration of such 6 years, pay the same to the Treasurer for the public use of the State, but on the order of the Registrar any such unclaimed moneys shall be repaid by the Treasurer to the person named in such order; but any such order must be presented for payment to the Treasurer within 6 years next after the payment of any such moneys to the Treasurer. After the expiration of which period the same shall pass to the credit of and form part of the general revenue.

[Section 290 amended by No. 73 of 1953 s. 7; No. 49 of 1996 s. 64.]

291. Resolutions passed at adjourned meeting of creditors and contributories

Where, after the commencement of this Act, 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.

(e) Supplementary powers of Court

292. Meetings to ascertain wishes of creditors or contributories

- (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.

293. Special commission for receiving evidence

- (1) The Court may appoint commissioners, either generally or for any specific matter, for the purpose of taking evidence under this Act, and the Court may refer the whole or any part of the examination of any witnesses under this Act to any person so appointed commissioner.
- (2) Every commissioner shall have in the matter so referred to him all the same powers of summoning and examining witnesses, of requiring the production or delivery of documents, of certifying or punishing defaults by witnesses, and of allowing costs and charges, and expenses to witnesses as the Court has.
- (3) The examination so taken shall be returned or reported to the Court in such manner as the Court directs.
- (4) Unless otherwise ordered by the Court, all evidence taken by commissioners pursuant to this section shall be so taken as in open Court.

294. Appeal to Court against decision of liquidator

If any person is aggrieved by any act or decision of the liquidator of a company which is being wound up under this Act, he may apply to the Court, and the Court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

(f) Provisions as to dissolution

295. Power of Court to declare dissolution of company void

- (1) Where a company has been dissolved, the Court may at any time within 2 years of 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 not been dissolved.
- (2) It shall be the duty of the person upon whose application the order was made, within 14 days after the making of the order, to file with the Registrar an office copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding \$40 and also to a daily fine not exceeding \$10 for every day during which the default continues.

[Section 295 amended by No. 113 of 1965 s. 8(1).]

(g) Provisions as to defunct companies

296. Registrar may strike defunct company off register

- (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) If the Registrar does not, within 28 days of sending the letter, receive any answer thereto, he shall, within 14 days after the expiration of the said 28 days, send to the company by post a registered letter 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 28 days from the date thereof, a notice will be published in the *Gazette* with a view to striking the name of the company off the register.

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- (3) If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within 28 days 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 3 months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.
- (4) If, in any case where a company is being wound up, 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 have not been made for a period of 6 consecutive months the Registrar shall publish in the *Gazette* and send to the company a like notice, as is provided in the last preceding subsection.
- (5) At the expiration of the time mentioned in the notice the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the *Gazette*, and on the publication in the *Gazette* of this notice the company shall be dissolved:

Provided that —

- (a) the liability (if any) of every director, managing officer, and members of the company shall continue, and may be enforced as if the company had not been dissolved; and
 - (b) nothing in this subsection shall affect the power of the Court to wind up a company the name of which has been struck off the register.
- (6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register under the provisions of this Act or the repealed Acts, the Court, on the application of the company or member or creditor, before the expiration of 6 years from the publication in the *Gazette* of the notice aforesaid, or in the case of a company which has been struck off the register under the provisions of the repealed Acts

within 6 years of the commencement of this Act, 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 company be restored to the register, order the name of the company to be restored to the register, and upon an office copy of the order being filed with the Registrar, the company shall be deemed to have continued in existence as if its name had not been struck off; and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position, as nearly as may be, as if the name of the company had not been struck off.

- (7) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or if no office has been registered, to the care of some director or officer of the company, or if there is no director or officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

[Section 296 amended by No. 47 of 1949 s. 19.]

297. Registrar to act as representative of defunct company in certain events

- (1) Where, after a company has been dissolved, it is proved to the satisfaction of the Registrar that the company, if still existing, would be legally or equitably bound to carry out, complete, or give effect to some dealing, transaction, or matter, and that in order to carry out, complete, or give effect to the same some purely ministerial, administrative, or mechanical act (not discretionary) should have been done by or on behalf of the company, or should be done by or on behalf of the company if still existing, including the withdrawal of a caveat, the giving or executing a discharge for a satisfied mortgage, a surrender of a

lease determined otherwise than by effluxion of time, a grant or surrender of easement, a transfer or instrument under the *Transfer of Land Act 1893*, or any amendment thereof, a conveyance, assignment, receipt or any deed or document of any description whatever there the withdrawal, giving, or executing the same would not have been a matter of option or discretion on the part of the company, it shall be lawful for the Registrar, as representing the company or its liquidator, under the provisions of this section to do or cause to be done any such act as aforesaid as he thinks the case so proved may require.

- (2) The Registrar shall execute or sign any deed, instrument, or document in pursuance of the provisions of this section by signing his name in his official capacity in the place where the company would or should have executed or signed, adding a memorandum stating that he has done so in pursuance of this section; and such execution or signature shall have the same force, validity, and effect as if the company, if existing, had duly executed such deed, instrument, or document.
- (3) This section and section 298 shall extend to a case where the dissolution occurred before the commencement of this Act as well as to a case where the dissolution occurs after such commencement.

298. Outstanding assets of defunct company

Where, after a company has been dissolved, there remains any outstanding property, real or personal, which was vested in the company or to which it was entitled, or over which it had a disposing power at the time it was so dissolved, but which was not got in, realised upon, or otherwise disposed of or dealt with by the company or its liquidator, such property, except called and uncalled capital, shall for the purposes hereinafter mentioned, notwithstanding any statute or rule of law to the contrary, by the mere operation of this section, be and become vested in the Registrar for all the estate and interest therein, legal or equitable, of the company or its liquidator at the date the company was dissolved, together with all claims, rights, and

remedies which the company or its liquidator then had in respect thereof.

299. Outstanding realty, how disposed of

- (1) Upon it being proved to the satisfaction of the Registrar that there is vested in him by operation of the last preceding section any land, messuage, tenement or hereditament, corporeal or incorporeal, whether of freehold, leasehold, or any other tenure whatever, and whether solely or together with any person wherein the estate or interest of the company is a beneficial estate or interest and not merely held in trust, it shall be lawful for the Registrar to sell or otherwise dispose of or deal with the same, or with any part thereof, or with any estate or interest therein, as to the Registrar seems expedient; and thereupon or at any time thereafter it shall be lawful for the Registrar to sell or otherwise dispose of or deal with the same, either solely or in concurrence with any other person, in such manner, for such price or other consideration, valuable or otherwise, by public auction or private contract, upon such terms and conditions as the Registrar thinks fit; with power to rescind any contract entered into for that purpose, and resell or otherwise dispose of or deal with such property as he thinks expedient or the circumstances of the case require, with power, if the sale be by public auction, to fix a reserve or to sell without a reserve or to buy in, as he thinks fit; and for the purpose of effecting any such realisation, disposition, or dealing, the Registrar may make, execute, sign, and give such contracts, transfers, conveyances, assignments, receipts, discharges, deeds, and documents as he thinks necessary or proper.
- (2) The moneys received by the Registrar in the exercise of any of the powers conferred on him by this Act shall in the first place be applied in defraying all costs and expenses incident thereto, and thereafter to any payment authorised by this Act, and the surplus (if any) shall be deemed to be trust moneys in his hands within the meaning and operation of section 46 of the *Trustees Act 1900*¹³, and he shall pay the same into the Court under that

section, to the credit of an account entitled in the name of the company, with the word "Defunct" added thereto, and the same shall, subject to Rules of Court, be dealt with according to the orders of the Court: But any petition presented for payment out of Court of any such moneys, and, any claim, suit, or action for or in respect of any such moneys, must be presented, made, or instituted within 6 years next after the dissolution of the company, after the expiration of which period of time all moneys then or at any time thereafter standing to the credit of the said account of the company shall, if there be no such petition, claim, suit or action pending, or any order of the Supreme Court to the contrary, be passed to the credit and form part of the general revenue.

300. Outstanding personality, how disposed of

All personal property vested in the Registrar by operation of this Act to which the company was beneficially entitled at the date it was dissolved may be got in, sold, or otherwise disposed of or dealt with by him; and the Registrar shall, as to any such chattel, estate, or interest, and the sale or disposition thereof or dealing therewith, and the giving effect thereto have all the discretionary and other powers which are conferred on him by the last preceding section with regard to realty; and all moneys coming to his hands in respect thereof shall be dealt with in the same way as prescribed by that section as to moneys derived from realty.

301. Registrar to keep accounts of assets which shall be open to inspection by Auditor General

The Registrar shall record in the register of companies kept by him, upon the folio of the company, a statement of any property coming to his hand or under his control or to his knowledge, vested in him by operation of this Act and of his dealings therewith, and shall keep full and accurate accounts of all moneys arising therefrom and of how the same have been disposed of, and shall also keep all accounts, vouchers, receipts

and papers relating to such property and moneys respectively, and the same shall be subject to inspection by the Auditor General, who shall have all the powers in respect of such accounts as are or may be conferred upon him by any Act relating to the collection and audit of public moneys and accounts now or hereafter in force.

Part VIII — Winding-up of unregistered companies

302. Term used: unregistered company

For the purposes of this Part the expression *unregistered company* shall not include a company registered under this Act or the repealed Acts, but save as aforesaid shall include any society, association, or company consisting of more than 5 members.

[Section 302 amended by No. 47 of 1949 s. 20.]

303. Winding-up of unregistered companies

- (1) Subject to the provisions of this Part any unregistered company may be wound up under this Act, and all the provisions of this Act with respect to winding-up shall apply to an unregistered company, with the following exceptions and additions: —
- (i) The principal place of business of such company in this State shall, for all the purposes of the winding-up, be deemed to be the registered office of the company;
 - (ii) No unregistered company shall be wound up under this Act voluntarily or subject to supervision except by leave of the Court;
 - (iii) The circumstances in which an unregistered company may be wound up are as follows: —
 - (a) if the company is dissolved or has ceased to carry on business, or is carrying on business only for the purpose of winding-up its affairs;
 - (b) if the company is unable to pay its debts;
 - (c) when the company, by reason of being unable to enforce contribution of capital from its members, or by reason of insufficient capital, or for any other reason, is unable satisfactorily to continue its business;
 - (d) if the Court is of opinion that it is just and equitable that the company should be wound up;

- (iv) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts —
- (a) if a creditor by assignment or otherwise, to whom the company is indebted in a sum exceeding \$50 then due has served on the company, by leaving at its principal place of business in this State, or by delivering to the secretary or some director, manager, or principal officer of the company, or by otherwise serving in such manner as the Court may approve or direct, a demand under his hand, requiring the company to pay the sum so due, and the company has for 28 days after the service of the demand neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor;
 - (b) if any action, or other proceeding, has been instituted against any member for any debt or demand due or claimed to be due from the company, or from him in his character of member, and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business, or by delivering it to the secretary or some director, manager, or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct, the company has not within 14 days after service of the notice paid, secured or compounded for the debt or demand, or procured the action or proceeding to be stayed or indemnified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs, damages, and expenses to be incurred by him by reason of the same;

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- (c) if execution or other process issued on a judgment, decree, or order obtained in any Court in favour of a creditor against the company or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied;
 - (d) if it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.
- (2) Nothing in this Part shall affect the operation of any enactment which provides for any partnership, association, or company being wound up, or being wound up as a company or as an unregistered company under any enactment repealed by this Act, except that references in any such first-mentioned enactment to any such repealed enactment shall be read as references to the corresponding provision (if any) of this Act.
- (3) A corporation that is a friendly society within the meaning of section 16C of the *Life Insurance Act 1995* of the Commonwealth shall not be wound up under this Act as an unregistered company except upon the application of a creditor.

[Section 303 amended by No. 113 of 1965 s. 8(1); No. 26 of 1999 s. 66(6).]

304. Contributories in winding-up of unregistered company

- (1) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves or to pay or contribute to the payment of the costs and expenses of winding-up the company; and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid.
- (2) In the event of the death, bankruptcy, or insolvency of any contributory, or marriage of any female contributory, the

provisions of this Act with respect to the representatives of deceased contributories, and to the trustees of bankrupt or insolvent contributories, and to the consequences of the marriage of a female contributory respectively shall apply.

305. Power of Court to stay or restrain proceedings

The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding-up, and before the making of a winding-up order, shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

306. Actions stayed on winding-up

Where an order has been made for winding-up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the Court and subject to such terms as the Court may impose.

307. Provision in case of unregistered company unable to sue or be sued

- (1) If any unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the Court may, by the order made for winding-up such company, or by any subsequent order, direct that all such property, real and personal, including all interest, claims, and rights, in, to, and out of property, real and personal, and including things in action, as may belong to or be vested in the company, or to or in any person or persons in trust for or on behalf of the company, or any part of such property is to vest in the official liquidator by his official name, and thereupon the same, or such part thereof as may be specified in the order, shall vest accordingly.

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- (2) The official liquidator may, in his official name, and after giving such indemnity, if any, as the Court directs, bring or defend any actions or other legal proceedings relating to any property vested in him, or any actions, or other legal proceedings necessary to be brought or defended, for the purposes of effectually winding-up the company and recovering the property thereof.

308. Provisions of this Part cumulative

The provisions of this Part with respect to unregistered companies shall be in addition to, and not in restriction of, any provisions hereinbefore in this Act contained with respect to winding-up companies by the Court, and the Court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding-up companies formed and registered under this Act.

Provided that an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part.

**Part IX — Application of this Act to companies formed
or registered under former Acts**

**309. Application to Act to companies formed under former
Companies Act**

In the application of this Act to existing companies it shall apply
in the same manner —

- (i) in the case of a limited company, as if the company had
been formed and registered under this Act as a company
limited by shares;
- (ii) in the case of a no liability company as if it had been
formed and registered under this Act as a no liability
company; and
- (iii) in the case of any other company, as if the company had
been formed and registered under this Act as an
unlimited company:

Provided that reference, express or implied, to the date of
registration shall be construed as a reference to the date at which
the company was registered under the *Companies Act 1893*³, or
other Act under which the company was registered, as the case
may be.

**310. Application of Act to companies registered under former
Companies Acts**

This Act shall apply to every company registered, but not
formed under the repealed Acts, in the same manner as it is in
Part X declared to apply to companies registered but not formed
under this Act:

Provided that reference, express or implied, to the date of
registration shall be construed as a reference to the date at which
the company was registered under the repealed Acts.

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311. Mode of transferring shares

A company registered but not formed under the repealed Acts may cause its shares to be transferred in manner in use before the commencement of this Act or in such other manner as the company may direct.

**Part X — Companies not formed under this Act
authorised to register under this Act**

312. Companies capable of being registered

- (1) With the exceptions and subject to the provisions contained in this section —
- (a) any company, consisting of 5 or more members, which was in existence on 13 January 1893; and
 - (b) any company formed after the date aforesaid, whether before or after the commencement of this Act in pursuance of any Act of Parliament, other than this Act or of letters patent, or being otherwise duly constituted according to law and consisting of 5 or more members,

may at any time register under this Act as an unlimited company or as a company limited by shares and the registration shall not be invalid by reason that it has taken place with a view to the company being wound up:

Provided that —

- (i) a company having the liability of its members limited by Act of Parliament or letters patent and not being a joint stock company as hereinafter defined, shall not register in pursuance of this section;
- (ii) a company having the liability of its members limited by Act of Parliament or letters patent, shall not register in pursuance of this section as an unlimited company;
- (iii) a company that is not a joint stock company as hereinafter defined shall not register in pursuance of this section as a company limited by shares;
- (iv) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed by the regulations of the company) at a general meeting summoned for the purpose;

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- (v) where a company not having the liability of its members limited by Act of Parliament or letters patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person or by proxy at the meeting.
- (2) In computing any majority under this section when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the articles of the company.

313. Definition of joint stock company

For the purposes of this Part, as far as relates to registration of companies as companies limited by shares, a joint stock company means a company having a permanent paid-up or nominal share capital of fixed amount divided into shares also of fixed amount or held and transferable as stock, or divided and held partly in one way and partly in the other and formed on the principle of having for its members the holders of those shares or that stock and no other persons, and such a company, when registered with limited liability under this Act, shall be deemed to be a company limited by shares.

314. Requirements for registration of joint stock companies

Before the registration in pursuance of this Part of a joint stock company, there shall be delivered to the Registrar the following documents: —

- (i) a list showing the names, addresses, and occupations of all persons who on a day named in the list, not being more than 14 clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing in cases where the shares are numbered each share by its number;

- (ii) a copy of any Act of Parliament, royal charter, letters patent, deed of settlement, contract of co-partnery, or other instrument constituting or regulating the company; and
- (iii) if the company is intended to be registered as a limited company, a statement specifying the following particulars: —
 - (a) The nominal share capital of the company and the number of shares into which it is divided, or the amount of stock of which it consists;
 - (b) The number of shares taken and the amount paid on each share;
 - (c) The name of the company, with the addition of the word “limited” as the last word thereof.

315. Requirements for registration by company not being a joint stock company

Before the registration in pursuance of this Part of any company, not being a joint stock company, there shall be delivered to the Registrar —

- (1) a list showing the names, addresses, and occupations of the directors or other managers (if any) of the company; and
- (2) a copy of any Act of Parliament, letters patent, deed of settlement, contract of co-partnery, or other instrument constituting or regulating the company.

316. Authentication of statements

The lists of members and directors, and any other particulars relating to the company required to be delivered to the Registrar, shall be verified by a statutory declaration of any 2 or more directors, or other principal officers of the company.

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317. Registrar may require evidence as to nature of company

The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is, or is not, a joint stock company as hereinbefore defined.

318. Addition of “limited” to name

When a company registers in pursuance of this Part with limited liability, the word “limited” shall form and be registered as part of its name.

319. Certificate of registration

On compliance with the requirements of this Part with respect to registration, and on payment of such fees, if any, as are prescribed, the Registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited, and thereupon the company shall be so incorporated and the Registrar shall give notice of the issue of such certificate in the *Gazette*.

[Section 319 amended by No. 28 of 2006 s. 66(2).]

320. Certificate to be evidence of compliance with Act

Such certificate, or the notification in the *Gazette*, shall be conclusive evidence that all the requisitions herein contained in respect of registration under this Act have been complied with, and that the company is authorised to be registered under this Act as a limited, or unlimited company, as the case may be, and the date of incorporation mentioned in such certificate shall be deemed to be the date at which the company is incorporated under this Act.

321. Vesting property in company

All property, real and personal (including things in action), belonging to or vested in a company at the date of its registration in pursuance of this Part shall on registration pass to

and vest in the company as incorporated under this Act for all the estate and interest of the company therein without further transfer, assignment, or assurance.

322. Saving for existing liabilities

Registration of a company in pursuance of this Part 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 registration.

323. Continuance of existing actions

All actions, and other legal proceedings, which at the time of the registration of a company in pursuance of this Part are pending by or against the company or the public officer or any member thereof may be continued in the same manner as if the registration had not taken place: Provided that execution shall not issue against the effects of any individual member of the company on any judgment, decree, or order obtained in any such action or proceeding; but in the event of the property and effects of the company being insufficient to satisfy the judgment, decree, or order, an order may be obtained for winding-up the company.

324. Effect of registration under Act

- (1) When a company is registered in pursuance of this Part the following provisions of this section shall have effect.
- (2) All provisions contained in any Act of Parliament, deed of settlement, contract of co-partnery, letters patent, or other instrument constituting or regulating the company shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum were contained in a registered memorandum and the residue thereof were contained in registered articles:

Provided that where any Act of Parliament, deed of settlement, contract of co-partnery, letters patent or other instrument

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constituting or regulating the company negatives or restricts any of the implied powers contained in the Third Schedule, the company may, at the general meeting referred to in subdivision (iv) of the proviso to section 312(1) or any adjournment of such meeting by resolution, of which notice has been given, assented to by not less than three-fourths of the members present in person or by proxy annul or vary the provision negating or restricting such implied power.

- (3) All the provisions of this Act shall apply to the company and the members, contributories, and creditors thereof in the same manner in all respects as if it had been formed under this Act subject as follows, that is to say: —
- (a) The regulations in Table A in the Second Schedule shall not apply unless adopted by special resolution;
 - (b) The provisions of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered;
 - (c) Subject to the provisions of this section, the company shall not have power to alter any provision contained in any Act of Parliament relating to the company;
 - (d) Subject to the provisions of this section the company shall not have power without the sanction of the Governor to alter any provision contained in any letters patent relating to the company;
 - (e) The company shall not have power to alter any provision contained in a royal charter or letters patent with respect to the objects of the company;
 - (f) In the event of the company being wound up every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any

such debt or liability; or to pay or contribute to the payment of the costs and expenses of winding-up the company, so far as relates to such debts or liabilities as aforesaid;

- (g) In the event of the company being wound up every contributory shall be liable to contribute to the assets of the company in the course of the winding-up all sums due from him in respect of any such liability as aforesaid; and in the event of the death, bankruptcy, or insolvency of any contributory or marriage of any female contributory, the provisions of this Act with respect to the representatives of deceased contributories, and to the assignees and trustees of bankrupt or insolvent contributories and the consequences of the marriage of female contributories, respectively shall apply.

- (4) The provisions of this Act with respect to —

- (a) the registration of an unlimited company as limited;
- (b) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital, and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding-up;
- (c) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding-up,

shall apply notwithstanding any provisions contained in any Act of Parliament, royal charter, deed of settlement, contract of co-partnery, letters patent, or other instrument constituting or regulating the company.

- (5) Except as provided in subsection (2), nothing in this section shall authorise the company to alter any such provisions contained in any deed of settlement, contract of co-partnery, letters patent, or other instrument constituting or regulating the

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company as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act.

- (6) Nothing in this Act shall derogate from any power of altering its constitution or regulations which may, by virtue of any Act of Parliament, deed of settlement, contract of co-partnery, letters patent, or other instrument constituting or regulating the company, be vested in the company.

325. Power to substitute memorandum and articles for deed of settlement

- (1) Subject to the provisions of this section a company registered in pursuance of this Part may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.
- (2) The provisions of this Act with respect to confirmation by the Court and registration of an alteration of the objects of a company, shall, so far as applicable, apply to an alteration under this section with the following modifications: —
- (a) There shall be substituted for the copy of the altered memorandum required to be filed with the Registrar a copy of the substituted memorandum and articles; and
- (b) On the registration of the alteration being certified by the Registrar, the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company.
- (3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.
- (4) In this section the expression *deed of settlement* includes any contract of co-partnery or other instrument constituting or

regulating the company, not being an Act of Parliament, royal charter, or letters patent.

326. Power of Court to stay or restrain proceedings

The provisions of this Act with respect to staying and restraining actions, and proceedings against a company at any time after the presentation of a petition for winding-up, and before the making of a winding-up order, shall, in the case of a company registered in pursuance of this Part, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

327. Actions stayed on winding-up order

Where an order has been made for winding-up a company registered in pursuance of this Part, no action or proceeding shall be commenced or proceeded with against the company or any contributory of the company, in respect of any debt of the company, except by leave of the Court and subject to such terms as the Court may impose.

Part XI — Foreign companies

328. Companies to which Part XI applies

- (1) In this Part and for the purposes thereof —
certified means certified in the prescribed manner to be a true copy or a correct translation;
carries on business includes establishing or using a share transfer or share registration office; and
to carry on business has a corresponding meaning;
company extends to and includes any unincorporated body or association of persons which may sue or be sued or hold property in the name of the secretary or other officer of the body or association duly appointed for that purpose, and which shall not have its head office or place of business in this State;
prospectus means any prospectus, notice, circular, advertisement or other invitation offering to the public for subscription or purchase any shares or debentures of the company.
- (2) This Part shall apply to all companies incorporated outside this State which after the commencement of this Act commence to carry on business within this State, and all companies incorporated outside this State which have before the commencement of this Act commenced to carry on or carried on business within this State and continue to carry on business within this State at the commencement of this Act.

329. Registration and documents to be delivered to Registrar

- (1) Every company to which this Part applies shall, within 28 days from the date of commencement to carry on business, or, in the case of companies carrying on business in this State, at the time of commencement of this Act within the times provided in this section, register under this Part and file with the Registrar for registration: —
 - (a) a certified copy of the certificate of incorporation of the company or a document of similar effect;

- (b) a certified copy of the charter, statute, or memorandum and articles of the company or other instrument constituting or defining the constitution of the company, and if the instrument is not written in the English language a certified translation thereof;
- (c) a list of the directors of the company normally resident in the Commonwealth of Australia and of the directors in this State, if any, 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 incorporated under this Act;
- (d) a memorandum of appointment under the seal of the company or executed in such manner as to be binding on the company and, in either case, verified in the prescribed manner stating the name and address of some one or more persons resident in this State authorised to accept on behalf of the company service of process and any notices required to be served on the company, which person shall be deemed to be the agent of such company for the purposes of this Act. The memorandum of appointment required by this paragraph may be by power of attorney. Where the appointment is made by some person duly authorised in manner aforesaid in that behalf by the company an original copy of the deed granting such power or authority shall be produced to the Registrar, who shall retain the same or a copy thereof certified under the hand of the Registrar to be a true copy, and such copy shall for all purposes be deemed to be an original;
- (e) notice of the situation of its registered office as required by section 330;
- (f) a statutory declaration, made and signed by the agent of the company in the form contained in the Form D of the Thirteenth Schedule, or to the like effect.

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- (2) Every company incorporated outside of this State which before the commencement of this Act (whether it has complied with Part VIII of the *Companies Act 1893*³, or not) commenced or carried on business in this State, shall, within the times specified in subsection (3), so far as it has not already done so, file with the Registrar the documents and particulars specified in the last foregoing subsection:

Provided that where a company has, prior to the commencement of this Act, complied with Part VIII of the *Companies Act 1893*³, a power of attorney duly filed as therein required and not revoked shall be deemed to have the same effect as if a memorandum as required by subsection (1)(d) and a declaration under paragraph (f) of the said subsection had been duly filed.

- (3)(a) Every company referred to in subsection (2) incorporated outside of this State but within the Commonwealth of Australia shall comply with subsection (2) within 6 months from the date of the commencement of this Act:

Provided that until the expiration of the period aforesaid a company which has, prior to the commencement of this Act, complied with Part VIII of the *Companies Act 1893*³, shall be deemed to have complied with the provisions of this Part.

- (b) Every company referred to in subsection (2) incorporated outside of this State and outside of the Commonwealth of Australia shall comply with subsection (2) within 12 months from the date of the commencement of this Act:

Provided that until the expiration of the period aforesaid, a company which has, prior to the commencement of this Act, complied with Part VIII of the *Companies Act 1893*³, shall be deemed to have complied with the provisions of this Part.

[Section 329 amended by No. 47 of 1949 s. 21; No. 28 of 2006 s. 66(2).]

330. Company to have registered office

- (1) Every company to which this Part applies shall, before commencing to carry on business in this State, have a registered office in this State which has been approved by the Registrar.
- (2) The office shall be accessible to the public for not less than 4 hours between the hours of 8.00 a.m. and 10.00 p.m. each day on at least 2 days in each week.
- (3) All communications and notices to the company may be addressed to the company at its registered office.
- (4) Notice of the situation of the registered office and the days and hours during which it is accessible to the public and of any change therein shall be filed with the Registrar before commencement of business, or within the prescribed time after the change, as the case may be, who shall record the same, and shall be advertised in the *Gazette* and one daily newspaper published in Perth.
- (5) The provisions of subsection (4) shall apply to a company already registered as a foreign company under the repealed Acts at the time of the commencement of this Act, and in so far as any such company shall not already have filed with the Registrar a notice containing the particulars specified in subsection (4) such company shall, within 28 days after the commencement of this Act file with the Registrar the notice required by subsection (4) and advertise such notice in the *Gazette* and in one daily newspaper published in Perth.

[Section 330 amended by No. 32 of 1947 s. 10.]

331. Certificate of registration

- (1) On the registration under this Part of a company (including a company registered under Part VIII of the *Companies Act 1893*³ the Registrar shall certify accordingly under his hand in Form E of the Thirteenth Schedule.

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- (2) On every appointment by a company registered under this Part of a new agent, or on the filing by or on behalf of any such company, of notice of alteration in —
- (i) the name of the company,
 - (ii) the name or address of the person authorised to accept service on behalf of the company; or
 - (iii) the situation of its registered office,
- a fresh certificate altered to meet the case shall be issued by the Registrar.
- (3) A certificate issued under either of the preceding subsections or a copy thereof certified under the hand of the Registrar shall be *prima facie* evidence in all legal proceedings that such company is formed or incorporated and is duly registered under this Part. A certificate issued under subsection (1), or if more than one certificate has been issued, then the certificate last issued in point of time shall be *prima facie* evidence in all such proceedings that the person named therein as agent is the agent of such company in this State, and that his address is as therein stated, and of all other particulars mentioned in such certificate.

[Section 331 amended by No. 32 of 1947 s. 11; No. 28 of 2006 s. 66(2).]

332. Power of companies incorporated in British Possessions to hold lands

A company formed and incorporated in the United Kingdom or in a British possession, which has duly registered under this Part, shall have the same power to hold lands in this State as if it were a company incorporated under this Act.

333. Service on agent or at office good service on company

Any process or notice required to be served on the company registered under this Part shall be sufficiently served —

- (a) if addressed to the company and left at, or sent by post in a prepaid registered letter to the registered office of the company; or

- (b) if addressed to any person whose name has been filed under section 329 as agent of the company and left at or sent by post in a prepaid registered letter to his registered address;

Provided that this section shall not derogate from the effect of any statute or rule now or hereafter in force regulating the service of legal process upon any person or corporate body according to the practice of the Court whence such process shall issue, but shall be deemed to be cumulative upon and in addition to any such statute or rule, nor shall this section affect the power of any Court to direct what service of its process shall be effective as regards any company or corporation.

334. Companies to file balance sheets

- (1) Every company to which this Part applies shall, at least once in every year, and at intervals of not more than 15 months, file with the Registrar a true copy, signed by the agent, of the last general balance sheet of the company prepared prior to such filing.
- (2) Such balance sheet shall be in such form and contain such particulars and include such documents as the company is required to make out and lay before the company in general meeting by the law for the time being applicable to such company in the country or State where it was incorporated, and shall be accompanied by a statutory declaration in a form prescribed by regulations that such law has been complied with: Provided that the Registrar may, in any case in which he thinks proper, require the balance sheet to be in such form and to contain such particulars and to include documents of such a nature as the Registrar requires by notice in writing to the company but this proviso shall not authorise the Registrar to require a balance sheet to contain any particulars or include any documents other than are required in the balance sheet of any class of public company under Part IV.

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- (3) If any such balance sheet is not written in the English language, there shall be annexed to it a certified translation thereof.
- (4) This section shall not apply to any company which by the law in force in the country or State where it was incorporated is not required to file with any person its balance sheet.

[Section 334 amended by No. 47 of 1949 s. 22.]

335. Return to be delivered to Registrar where documents etc. altered

If in the case of any company to which this Part applies any alteration is made in —

- (i) the charter, statutes, or memorandum and articles of the company or any such instrument as aforesaid; or
- (ii) the directors of the company, or the particulars contained in the list of the directors; or
- (iii) the names or addresses of the persons authorised to accept service on behalf of the company; or
- (iv) the situation of its registered office, or the hours when such office is accessible to the public, or
- (v) the nominal capital of the company; or
- (vi) the name of the company,

the company shall, within the prescribed time, file with the Registrar a return containing the prescribed particulars of the alteration.

[Section 335 amended by No. 32 of 1947 s. 12.]

336. Obligation to state name of company, whether limited and country where incorporated

Every company to which this Part applies shall —

- (i) in every prospectus inviting subscriptions for its shares or debentures in this State state the country in which the company is incorporated; and

- (ii) cause the name of the company and of the country in which the company is incorporated —
 - (a) to be affixed on every place where it carries on business; and
 - (b) to be stated in legible characters in all billheads, letter paper, notices, and other official publications of the company;and
- (iii) if the liability of the members of the company is limited, unless the last word of the name of the company is the word “limited”, cause notice of that fact —
 - (a) to be stated in legible characters in every such prospectus as aforesaid, and in all billheads, letter paper, notices, and other official publications of the company in this State; and
 - (b) to be affixed on every place where it carries on its business:

Provided that in the case of a company to which section 334 applies it shall be sufficient compliance with the provisions of paragraphs (ii)(b) and (iii)(a), if such company duly complies with the provisions of that section.

[Section 336 amended by No. 47 of 1949 s. 23.]

337. Company to give notice of intention to cease carrying on business

- (1) Before any company registered under this Part shall voluntarily cease to carry on business of this State it shall give at least 3 months' notice of its intention so to do.

Such notice shall be filed with the Registrar and advertised in 3 consecutive issues of the *Government Gazette* and of one daily newspaper published in Western Australia and circulating in Perth.

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- (2) Upon being satisfied that 3 months have expired since the filing and the last publication of the notice referred to in subsection (1) the Registrar shall remove the name of the company from the register.
- (3) Until removal of the name of the company from the register any process or notice may be served on the company as provided by section 333.

[Section 337 amended by No. 32 of 1947 s. 13.]

338. Notice to Registrar of liquidation of company outside the State

- (1) If any company to which this Part applies goes into liquidation in the country or State in which it is incorporated, the person whose name has been filed under section 329 as agent of the company shall, within 7 days of receiving information of such liquidation, file with the Registrar notice of the liquidation and of the appointment of the liquidator, and such liquidator shall, until a liquidator for Western Australia is appointed by the Court, have the powers of a liquidator for Western Australia.
- (2) Any creditor or contributory of such a company going into liquidation as aforesaid may apply to the Court for an order that the affairs of the company, so far as Western Australian assets are concerned, be wound up in Western Australia, and on such order being made, the provisions of this Part relating to the winding-up of a company incorporated in Western Australia shall, with such adaptations as are necessary, extend and apply accordingly.

339. Notice of dissolution of foreign company

If any company to which this Part applies is dissolved in the country in which it is incorporated, the person whose name has been filed under section 329 as agent of the company shall within 7 days of receiving information of such dissolution file notice of the dissolution with the Registrar, who shall thereupon remove the name of the company from the register.

340. Provision as to companies ceasing to do business in the State

- (1) Where the Registrar has reasonable cause to believe that a company to which this Part applies has ceased to have a place of business or to carry on business in Western Australia, he may serve on the company a written notice, inquiring whether the company has a place of business or is carrying on business in Western Australia.
- (2) If the Registrar does not receive an answer to his inquiry within one month after service of the notice if served on the company at an address within the Commonwealth, or within 3 months, if served on the company at an address outside the Commonwealth, he shall, within 14 days after the expiration of one month or 3 months (as the case may be) serve a further notice referring to the first notice, and stating that no answer thereto has been received and that if an answer to the second notice is not received within one month, if the notice is served on the company at an address within the Commonwealth, or within 3 months, if the notice is served on the company at an address outside the Commonwealth, from the service of such second notice, a notice will be published in the *Government Gazette* with a view to striking the name of the company off the register.
- (3) If the Registrar receives an answer to either notice to the effect that the company has no place of business and is not carrying on business in Western Australia, or does not receive an answer to his second notice within the time mentioned in subsection (2), he may publish in the *Government Gazette* and serve on the company a notice that at the expiration of 3 months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register.
- (4) At the expiration of 3 months the Registrar may, unless cause to the contrary is shown by the company, strike its name off the register, and having done so shall publish in the *Government Gazette* a notice that the name of the company has been struck

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off the register; and on the publication in the *Government Gazette* of this notice the company shall cease to be registered as a company to which this Part applies:

Provided that the liability (if any) of every director, managing officer and member of the company and of the person whose name has been filed under section 329 as the agent of the company shall continue and may be enforced as if the name of the company had not been struck off the register.

- (5) The company, or any member or creditor thereof aggrieved by the company having been struck off the register, may, within 2 years after the publication of the notice in the *Government Gazette* under subsection (4), apply to the Court for an order restoring the name of the company to the register. The Court, if satisfied that the company at the time of the striking off had a place of business or was carrying on business in Western Australia, or that for any other reason it is just that the name of the company be restored to the register, may order the name of the company to be restored to the register. Thereupon the company shall be deemed to have continued to be a company registered under this Part as if its name had not been struck off the register, and the Court may, by the order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off the register.
- (6) Any notice under this section may be served on the company in manner prescribed by section 329, or by posting it in a prepaid registered letter addressed to the company at its head office.

341. Winding-up of companies registered under this Part

Notwithstanding anything to the contrary in this Act contained, a company to which this part applies may be wound up under this Act in the same way as if it were an unregistered company within the meaning of Part VIII and all the provisions of that Part with reference to the winding-up of unregistered companies

shall, so far as applicable, apply to and in the winding-up of any such company as is first hereinbefore mentioned: Provided, however, that it shall not be necessary in any proceedings for, or in relation to, such winding-up as last aforesaid, to allege or prove that the company consists of more than 5 members.

342. Acts of agent of company to be binding on company

Every act or thing done or purporting to be done, and every instrument executed or signed by an agent appointed in pursuance of this Act on behalf of the company by whom he is appointed shall, if authorised by the memorandum of appointment, bind the company in the same way and to the same extent, and have the same force and effect in every respect as if the same had been done by the company and as if such instrument had been duly sealed with the common seal of the company, or otherwise executed or signed so as to bind the company.

343. Acts under memorandum of appointment good until notice filed with Registrar

Every memorandum of appointment of an agent granted or executed by a foreign company which shall have been deposited in the office of the Registrar shall, so far as is practicable as between the company, its successors, and assigns on the one hand, and any person dealing with the agent thereby appointed on the other hand, continue in force, notwithstanding the revocation of such memorandum or the winding-up or dissolution of such company, until written notice of such revocation, winding-up or dissolution, signed by the said agent, or by an agent appointed by the company in his place, shall have been filed at the office of the Registrar.

344. Proceedings on death or revocation of memorandum of appointment of agent

In the event of the death of any sole or sole surviving agent whose memorandum of appointment shall have been deposited

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in the office of the Registrar under this Part, or in the event of the filing under the last preceding section of a notice of revocation of the memorandum of appointment of any such agent, the company shall not, from the expiration of 6 months after such death or one month, or such extended time as may be allowed under special circumstances by the Registrar, after the filing of such notice, carry on business in this State until the provisions of section 329(1)(d) shall have been complied with, or again complied with, as the case may be.

345. Inspection

Every document deposited or filed with the Registrar under this Part shall be open to the inspection of any person on payment of 10 cents.

[Section 345 amended by No. 113 of 1965 s. 8(1).]

346. Provisions as to evidence

- (1) A declaration complying with the provisions of section 329(1)(f), or a copy of such declaration purporting to be certified by the Registrar as a true copy, shall as against the company be final and conclusive evidence, and for all other purposes shall be presumptive evidence of the facts therein stated in pursuance of the same section.
- (2) Any memorandum of appointment of an agent deposited under the provisions of this Part, or a copy of such memorandum purporting to be certified by the Registrar as a true copy, shall, for all purposes, be receivable in evidence before any Court, person or tribunal having authority by law to hear and receive evidence without further proof of the sealing, signature or other execution thereof.
- (3) A statutory declaration made by the agent of any foreign company, appointed under memorandum of appointment complying with section 329(1)(d), that he has not received any notice or information of the revocation of the memorandum or of the winding-up or dissolution of the company, shall, as

against the company, be conclusive proof that no such revocation, winding-up; or dissolution has taken place.

- (4)(a) A certificate of incorporation purporting to be under the hand of an officer authorised by the law of the country in which a foreign company purports to be incorporated, to grant such certificate, duly certified by declaration made, or purporting to be made, by one of the directors or the general manager or secretary of such company before a notary public or British Consul, or other person lawfully authorised to take such declaration, shall as against the company be conclusive evidence, and for all other purposes be presumptive evidence, that such company has been duly incorporated.
- (b) The date of incorporation mentioned in such certificate, or in such declaration, or if no such date be mentioned then the date of such certificate or the date of such declaration as aforesaid, shall be deemed to be the date of which such company was incorporated.
- (c) In the absence of a certificate of incorporation a copy of any act of incorporation or document of similar effect to a certificate of incorporation, under which the company purports to be incorporated, duly certified as by subsection (1) provided, with regard to a certificate of incorporation, shall be equivalent to a certificate of incorporation under the same subsection.

347. Local register to be kept by foreign companies

- (1) Every foreign company, or the agent of every foreign company, carrying on business in this State and having any shareholders who are resident in the State, shall, within 2 months from the deposit in the office of the Registrar of the memorandum of appointment of agent in accordance with section 329 or in the case of a company registered under Part VIII of the *Companies Act 1893*³, within the time fixed for compliance by it with section 329(2), open, keep and maintain or cause to be opened, kept and maintained, at the registered office of the said company in this State a branch register of members resident in

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this State, and (if not repugnant to the law of the State or country in which the company is incorporated) of members resident elsewhere, to be called a local register, for the registration of all such members of such company who may apply in writing to such agent to be registered therein.

- (2)(a) Every such register shall be kept in the manner provided by Part IV and transfers shall be effected on such register in the same manner and at the same charges as on the register kept at the head office of the company, and transfers lodged in the office of the company in this State shall be binding upon the company, and the Court shall be entitled to exercise the same jurisdiction of rectifying the same as is by section 107 vested in such Court with respect to a register of a company incorporated in this State.
- (b) Notwithstanding the provisions of subsection (4), where a company is not required by the law for the time being in force in the place in which it is incorporated, to have distinguishing numbers for all or any of its shares, the provisions of section 103, so far as they relate to distinguishing numbers of shares, do not apply to the shares of the company which are not required to be numbered by the law of the place where the company is incorporated.
- (3) Every such foreign company failing or refusing to comply with the provisions of this section shall incur a penalty not exceeding \$200 for every day during which such refusal or non-compliance shall continue, to be recovered in a summary manner before the Magistrates Court or by action or suit in the Supreme Court and shall be a charge on the property of the company, and in addition thereto, if such default continues for the space of 3 calendar months, the company, and every person acting as trustee or agent for the company or otherwise on its behalf, shall thereafter be incapable, while so in default, of bringing or maintaining any action, set-off, counter claim, or other legal proceeding whatsoever in this State.

- (4) Notwithstanding any other provision of this Act, the provisions of this section and sections 348 to 360 inclusive, shall apply to any company —
- (a) incorporated outside the State; and
 - (b) carrying on, inside the State, the business of life assurance or banking and in respect of such a company the following provisions shall apply: —
 - (i) The local register shall be established within 2 calendar months from the date of commencement ¹ of the *Companies Act Amendment Act 1949*.
 - (ii) For the purposes of this section and sections 348 to 360 inclusive the manager in this State of such company shall be deemed to be the agent of the company and the principal place of business of such company in this State shall be deemed to be the registered office.

[Section 347 amended by No. 32 of 1947 s. 14; No. 47 of 1949 s. 24; No. 73 of 1953 s. 8; No. 113 of 1965 s. 8(1); No. 59 of 2004 s. 141.]

348. Transfer of shares

On the application of any shareholder on the local register, his shares shall be transferred to the register of the head office of the company.

349. Power to reject transfer to vest in agent or local board

If, by the constitution of the foreign company, the company or its directors have power to reject a transfer of shares, such power shall, in respect of transfers tendered for registration in the State, be vested in the agent for the company or the local board of directors.

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350. Transfer of shares to local register

- (1) Any shareholder in a foreign company who desires to be registered in the local register may deliver an application in the Form F in the Thirteenth Schedule, together with a certificate of the shares in respect of which he desires to be registered, to the agent of the company at its registered office in this State.
- (2) The agent shall thereupon give to the shareholder a certificate of deposit in the Form G in the Thirteenth Schedule, and shall, with due diligence, forward the share certificate to the principal registered office of the company and if it there appears that no encumbrances or unpaid calls are registered against or due upon the shares, the shares shall be transferred to the local register, and notice of such transfer shall be given to the shareholder.
- (3) Upon production of the certificate of deposit, after notification of such transfer, the agent shall issue to the shareholder a certificate indorsed with the words "Local Register", showing that he is the proprietor of the shares, and such certificate shall be of the same force and effect as the superseded certificate.
- (4) For any failure, or refusal to comply with this section, the company shall incur the like penalties and suffer the like disabilities as prescribed by section 347.

351. Local register to be deemed part of company's register of members

A local register shall, as regards the parties entered therein, be deemed to be a part of the company's register of members, and also shall be *prima facie* evidence of all particulars entered therein, and of all matters by this Act directed or authorised to be inserted therein.

352. Certificate to be *prima facie* evidence of title

There may be kept at the office of every foreign company having a local register a State seal, and a certificate under the State seal of the company, specifying any share or shares or

stock held by any member thereof, shall be *prima facie* evidence of the title of the member to the share or shares or stock therein specified.

353. Inspection of register

- (1) The local register of members shall be kept at the registered office of the company in the State, and, except when closed as hereinafter mentioned, shall during not less than 2 hours in each day upon which the registered office of the company shall be open for business, be open to the inspection of any member gratis, and to the inspection of any other person on the payment of 10 cents or such less sum as the company may prescribe for each inspection, and every such member or other person may demand a copy of such register, or any part thereof, on payment of 10 cents for every 100 words required to be copied.
- (2) If such inspection or copy be refused, or if the company shall neglect to comply with the lawful demand for such inspection or copy, the company shall incur, for each refusal or neglect, a penalty not exceeding \$4, and a further penalty not exceeding \$4 for every day during which such refusal or neglect continues, and every agent of the company who knowingly and wilfully authorises or permits such refusal or neglect shall incur the like penalty. In addition to the above penalty a Judge may, by order, compel an immediate inspection of the local register, and make such further or other order as the nature of the case requires.

[Section 353 amended by No. 113 of 1965 s. 8(1).]

354. Register may be closed

Any foreign company, may, upon giving notice by advertisement in any newspaper published in Perth, or in the place nearest to the registered office of the company, close the local register of members for any time or times not exceeding in the whole 28 days in each year, provided that the register shall not be closed at any one period for more than 14 consecutive days.

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355. Validity of transfer of shares of deceased person

Any transfer of the shares or other interest registered in a local register of a deceased member of a foreign company, made by his representative, shall, notwithstanding such representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer.

356. Notice of rectification to be given to Registrar

When an order has been made rectifying the local register in the case of a company registered under this Part, the Court shall, by its order, direct that due notice of such rectification be given to the Registrar.

[Section 356 amended by No. 32 of 1947 s. 15.]

357. Dividends, how payable

The dividends in foreign companies accruing due from time to time, in respect of shares on any local register, shall be notified by the officer in charge of such local register, by letter or post card, to the shareholders on such local register, and by advertisement in the newspaper published nearest to the place of such local register, and shall be payable at the registered office of the company in the State to the shareholders on such local register at a time not later than 14 days from the date on which such dividends have been declared payable at the head office of the company.

[358-360. Deleted by No. 21 of 1951 s. 7.]

361. Effect of non-registration and penalties

- (1) If any company to which this part applies shall carry on business contrary to this Part the validity of any contracts, dealings, or transactions in relation to such business shall not be affected by this Part, but such company shall not be entitled to bring or maintain any action, set-off, counter-claim, or legal

proceeding in respect of any such contract, dealing, or transaction until it shall have complied with this Part.

- (2) If any company to which this Part applies fails to comply in any respect with any of the requirements of this Part, the company, the agent and every officer of the company who is in default shall be guilty of an offence or a continuing offence, as the case may be, punishable in accordance with the provisions of section 424.

[Section 361 amended by No. 21 of 1951 s. 8.]

Part XII — Receivers and managers

362. Appointment of receivers

- (1) Subject to subsection (2) a body corporate shall not be qualified for appointment as receiver of the property of a company.
- (2) Nothing in this section shall disqualify a body corporate from acting as receiver as aforesaid if acting under an appointment made before the commencement of this Act, but subject as aforesaid any body corporate which acts as receiver as aforesaid shall be liable to a fine not exceeding \$100.
- (3) No person who is not a registered liquidator shall be appointed as receiver of the property of the company unless, where the appointment is made by the Court, the Court, or in any other case, the Registrar, is satisfied and declares that it is expedient or desirable to appoint some person other than a registered liquidator.
- (4) Any receiver or other authorised person entering into possession of any assets of a company for the purpose of enforcing any charge, whether created before or after the commencement of this Act, shall, notwithstanding any agreement to the contrary, but without prejudice to his rights against the company or any other person, be liable for debts incurred by him or the company in the course of the receivership or possession for services rendered, goods purchased, or property hired, leased, used, or occupied. In this subsection the word *charge* means charge as defined by section 3.

Provided that this subsection shall not be deemed to constitute the chargee a chargee in possession.

- (5) Nothing in this section shall disqualify a body corporate from acting as receiver as aforesaid provided such body corporate has, by statute, been empowered so to act.

[Section 362 amended by No. 113 of 1965 s. 8(1).]

363. Power of Court to fix remuneration of receiver

Subject to the terms of any instrument giving power to any debenture holder, trustee for debenture holders, mortgagee or other person entitled to the benefit of the security thereby created or therein referred to, the Court may, on an application made by the liquidator of a company, or the receiver or manager, 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 a company, and may from time to time, on an application made either by the liquidator or by the receiver or manager, vary or amend any order so made.

364. Delivery to Registrar of accounts of receivers and managers

- (1) Every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument or by the Court shall, within 28 days, or such longer period as the Registrar may allow, after the expiration of the period of 6 months from the date of his appointment and of every subsequent period of 6 months and within 28 days after he ceases to act as receiver or manager, file with the Registrar an abstract in the prescribed form showing his receipts and his payments during that period of 6 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 liable to a fine not exceeding \$10 and in addition to a daily penalty not exceeding \$10 for every day during which the default continues.
- (3) The Registrar may cause the account to be audited by a registered auditor, and for the purpose of the audit the receiver or manager shall furnish the auditor with such vouchers and information as he may require, and the auditor may at any time

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require the production of and inspect any books or accounts kept by the receiver or manager.

- (4) The costs of an audit under this section shall be fixed by the Registrar and shall be paid by the receiver or manager out of the property of the company: Provided that for good reason the Court, on the application of the Registrar, may order that such costs and the costs of and incidental to the application, be borne and paid by the receiver or manager personally.

[Section 364 amended by No. 32 of 1947 s. 17; No. 113 of 1965 s. 8(1).]

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

- (1) If —
- (a) any receiver of the property of a company, who has made default in filing, delivering, or making any return, account, or other document, or in giving any notice, which a receiver is by law required to file, deliver, make or give, fails to make good the default within 14 days after the service on him of a notice requiring him to do so; 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 pay over to the liquidator the amount properly payable to him,

the Court may, on an application 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 mentioned in paragraph (a) of the last preceding subsection, an application for the purposes of this section may be made by any member or creditor of the

company or by the Registrar, and the order may provide that all costs of and incidental to the application shall be borne by the receiver, and in the case of any such default as is mentioned in paragraph (b) of that subsection the application shall be made by the liquidator.

- (3) Nothing in this section shall be taken to prejudice the operation of any enactments imposing penalties on receivers in respect of such default as is mentioned in subsection (1)(a).

Part XIII — Restrictions on sale of shares and offers of shares for sale

Division 1 — Restrictions relating to shares

366. Terms used

In this Part, unless the context otherwise indicates or requires —

Company includes any company, association, society or partnership consisting of more than 20 members and whether registered under this Act or not, but does not include a co-operative and provident society registered under the *Co-operative and Provident Societies Act 1903*, or a society registered under the *Housing Societies Act 1976*.

Debenture includes debenture stock, bonds and any other securities of a company, whether constituting a charge on the assets of a company or not.

Director includes any person occupying the position of director by whatever name called.

Dividend includes interest.

House does not include an office used for business purposes.

Prospectus includes any prospectus, notice, circular, advertisement or other invitation offering to the public for subscription or purchase any shares of a company.

Sale or to sell includes exchange.

Share includes share in the share capital of a company, whether a company within the meaning of this Act or not, and stock, bonds, debentures, debenture stock and other securities and units, whether having the benefit of security over the assets of the company or not.

Unit means any right or interest by whatever name called in a share.

[Section 366 amended by No. 26 of 1999 s. 66(7); No. 12 of 2001 s. 51.]

367. Provisions with respect to prospectuses of foreign companies inviting subscriptions for shares or offering shares for sale

- (1) It shall not be lawful for any person —
- (a) to issue, advertise, circulate or distribute in Western Australia any prospectus offering for subscription shares in a company incorporated or to be incorporated outside Western Australia, whether the company has or has not established, or when formed will or will not establish, a place of business in Western Australia, unless —
 - (i) before the issue, advertisement, circulation or distribution of the prospectus in Western Australia, a copy thereof, certified by the chairman and 2 other directors of the company as having been approved by resolution of the managing body, has been filed with the Registrar;
 - (ii) the prospectus states on the face of it that the copy has been so filed;
 - (iii) the prospectus is dated;
 - (iv) the prospectus otherwise complies with this Part;or
 - (b) to issue to any person in Western Australia a form of application for shares in such a company or intended company as aforesaid unless the form is issued with a prospectus which complies with this Part.

Provided that this provision shall not apply if 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.

- (2) This section shall not apply to the issue to existing members of a company of a prospectus or form of application relating to shares in the company, whether an applicant for shares will or will not have the right to renounce in favour of other persons, or

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to the issue to existing members of a company which is being liquidated for the purpose of reconstruction of a prospectus or form of application relating to shares in a company formed to acquire all or any of the assets of the company being liquidated, but, subject as aforesaid, 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.

- (3) Where any document by which any shares in a company incorporated outside Western Australia are offered for sale to the public would, if the company concerned had been a company within the meaning of this Act, have been deemed by virtue of section 51 to be a prospectus issued by the company, that document shall be deemed to be, for the purposes of this section, a prospectus issued by the company.
- (4) An offer of shares for subscription or sale to any person whose ordinary business or part of whose ordinary business it is to buy or sell shares, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this section.
- (5) Section 50 shall extend to every prospectus to which this section applies.
- (6) Any person who is knowingly responsible for the issue, circulation, or distribution of any prospectus or for the issue of a form of application for shares in contravention of the provisions of this section shall be liable to a fine not exceeding \$200.

[Section 367 amended by No. 113 of 1965 s. 8(1).]

368. Requirements as to prospectus

- (1) In order to comply with this Part a prospectus in addition to complying with the provisions of subsection (1)(a)(ii) and (iii) of the last foregoing section must —
 - (a) contain particulars with respect to the following matters: —
 - (i) The objects of the company;

- (ii) The instrument constituting or defining the constitution of the company;
- (iii) The enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected;
- (iv) An address in Western Australia where the said instruments, enactments, or provisions, or copies thereof, and if the same are in a foreign language a translation thereof certified in the prescribed manner, can be inspected;
- (v) The date on which and the country in which the company was incorporated;
- (vi) Whether the company has established a place of business in Western Australia, and, if so, the address of its principal office in Western Australia:

Provided that the provisions of subparagraphs (i), (ii), (iii), and (iv) shall not apply in the case of a prospectus issued more than 2 years after the date on which the company is entitled to commence business;

- (b) subject to the provisions of this section state the matters specified in Part A of section 47, other than those specified in paragraph (a) and set out the report specified in Part B of section 47, subject always to the provision contained in Part C of the said section:

Provided that —

- (i) where any prospectus to which this section applies is published as a newspaper advertisement, it shall be a sufficient compliance with the requirement that the prospectus must specify the objects of the company if the advertisement specifies the primary object with which the company was formed; and

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- (ii) in paragraph (3) of Part A of section 47 a reference to the constitution of the company shall be substituted for the reference to the articles; and
 - (iii) paragraph (1) of Part C of section 47 shall have effect as if the reference to the memorandum were omitted therefrom;
 - (c) if the prospectus is printed be printed in letters of not less than 8 points face measurement but it shall be lawful for a prospectus to be issued printed in letters of less than 8 points face measurement where the Registrar, before the issue of the prospectus, certifies in writing that the type and size of letters are legible and satisfactory.
- (2) Any condition requiring or binding any applicant for shares 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) 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 prospectus shall not incur any liability by reason of the non-compliance or contravention, if —
- (a) as regards any matter not disclosed, he proves that he was not cognisant 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 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 (15) of Part A of section 47, 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.

- (4) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act, apart from this section.

[Section 368 amended by No. 73 of 1953 s. 9.]

368A. Advertisement may be abridged prospectus

Notwithstanding anything in the last 2 preceding sections, where a prospectus complying with those sections has been issued, it shall not be necessary in any advertisement of that prospectus in a public newspaper to insert the particulars or matters required by those sections, except those with respect to the date, the fact that a copy has been duly filed, the names, descriptions, and addresses of the directors or proposed directors, and the number of shares subscribed by them, respectively, and with respect to the minimum subscription on which the directors may proceed to allotment, provided that the advertisement —

- (i) states —
- (a) that the advertisement is an abridgement of a prospectus;
 - (b) that copies of the abridged prospectus and the full prospectus have been filed with the Registrar;
 - (c) where in the local government district of Perth in the State, copies of the full prospectus and forms of application for shares may be obtained; and
 - (d) the primary object with which the company was formed;
- (ii) states that applications for shares will be received only on one of the forms of application referred to, and, as the

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case may be, either endorsed upon or annexed to, but detachable from the full prospectus; and

- (iii) does not contain anything to which the said requirements apply, and which is not in the prospectus, or is inconsistent with the prospectus.

[Section 368A inserted by No. 47 of 1949 s. 25; amended by No. 14 of 1996 s. 4.]

369. Restrictions on offering shares for subscription or sale

- (1)(a) Subject as hereinafter provided in this subsection it shall not be lawful for any person to go from house to house or from place to place, whether by appointment or otherwise, offering to any member of the public shares for subscription or purchase or in exchange for other shares.
- (b) Subject as hereinafter provided in this subsection it shall not be lawful to make an offer in writing to any member of the public (not being a person whose ordinary business or part of whose ordinary business it is to buy or sell shares, whether as principal or agent) of any shares for purchase unless the offer is made by or through an authorised share broker within the meaning of Division 2 and is accompanied by a statement in writing (which must be signed by the person making the offer and dated) containing such particulars as are required by this section to be included therein and otherwise complying with the requirements of this section, or, in the case of shares in a company incorporated outside Western Australia, either by such a statement as aforesaid, or by such a prospectus as complies with this Part: Provided that: —
 - (i) the provisions of paragraph (a) and/or paragraph (b) shall not apply in the case of shares of a co-operative company, which has been registered under this Act or under the repealed Acts for a period exceeding 2 years or in the case of shares of any company which, after notice of intention in the form prescribed to apply for exemption from the provisions of the said paragraphs or

of either of them has been advertised in the *Government Gazette* and in a daily newspaper published in Perth and generally circulating throughout the State, has applied to the Minister for such exemption and the application has on the recommendation of a law officer been granted;

- (ii) any exemption aforesaid granted by the Minister may at any time be revoked by him by notice in writing under his hand served on the company concerned and published in the *Government Gazette*;
 - (iii) the provisions of paragraph (b) shall not apply: —
 - (a) where the shares to which the offer relates are shares which are quoted on, or in respect of which permission to deal has been granted by any recognised stock exchange in Western Australia, and the offer so states and specifies the stock exchange; or
 - (b) where the shares to which the offer relates are shares which a company has allotted or agreed to allot with a view to their being offered for sale to the public.
- (2) The written statement aforesaid shall not contain any matter other than the particulars required by this section to be included therein, and shall not be in characters less large or less legible than any characters used in the offer or in any document sent therewith.
- (3) The said statement shall contain particulars with respect to the following matters: —
- (a) whether the person making the offer is acting as principal or agent, and if as agent, the name of his principal and an address in Western Australia where that principal can be served with process;
 - (b) the date on which and the country in which the company was incorporated, and the address of its registered or principal office in Western Australia;

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- (c) the authorised share capital of the company and the amount thereof which has been issued, the classes into which it is divided and the rights of each class of shareholders, stockholders, bondholders, or debenture holders in respect of capital, dividends and voting;
- (d) the dividends (if any) paid by the company on each class of shares during each of the 3 financial years immediately preceding the offer, and if no dividend has been paid in respect of shares of any particular class during any of those years, a statement to that effect;
- (e) the total amount of any debentures, stock or bonds issued by the company and outstanding at the date of the statement, together with the rate of interest payable thereon;
- (f) the names and addresses of the directors of the company and of any person occupying the position of director of the company;
- (g) whether or not the shares offered are fully paid up, and, if not, to what extent they are paid up;
- (h) whether or not the shares are quoted on, or permission to deal therein has been granted by, any recognised stock exchange in Western Australia or elsewhere, and, if so, which, and, if not, a statement that they are not so quoted, or that no such permission has been granted;
- (i) where the offer relates to units, particulars of the names and addresses of the persons in whom the shares represented by the units are vested, the date of and the parties to any document defining the terms on which those shares are held, and an address in Western Australia where that document or a copy thereof can be inspected.

In this subsection the expression *company* means the company by which the shares to which the statement relates were or are to be issued.

- (4) If any person knowingly acts, or incites, causes, or procures any person to act, in contravention of this section, he shall be liable to a fine not exceeding \$200, and in the case of a second or subsequent offence to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$200, or to both such imprisonment and fine.
- (5) Where a person convicted of an offence under this section is a company (whether a company within the meaning of this Act or not), every director and every officer concerned in the management of the company shall be guilty of the like offence unless he proves that the act constituting the offence took place without his knowledge or consent.
- (6) For the purposes of this section, a person shall not, in relation to a company, be regarded as not being a member of the public by reason only that he is a holder of shares in the company or a purchaser of goods from the company.
- (7) Where any person makes an offer in contravention of the provisions of this section, the Court or any Court before which he is convicted of having made an offer in contravention of this section may order that any contract made as a result of the offer shall be void, and, where it makes any such order, may give such consequential directions as it thinks proper for the repayment of any money or the transfer of any shares.
- (8) Where a Court makes an order under subsection (7) (whether with or without consequential directions) an appeal against the order and the consequential directions, if any, shall lie to the Court.

[Section 369 amended by No. 21 of 1951 s. 9; No. 17 of 1953 s. 6; No. 73 of 1953 s. 10; No. 113 of 1965 s. 8(1).]

370. Restriction on sale of shares in companies with illegal objects

- (1) No person shall, whether as principal or agent, sell or offer, or agree to sell or attempt to sell any shares in any company,

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whether formed or to be formed within or outside the State, if any of the objects of the company is to do any act in or outside the State, or carry on business in or outside the State, which act or business would, if done or carried on within the State, be illegal.

Penalty: \$200.

- (2) In any proceedings for an offence against this section a document purporting to be a memorandum or proposed memorandum of association of a company shall on mere production be deemed *prima facie* evidence of the existence of the company, or proposal to form the company, as the case may be, of the contents of its memorandum of association, and of the fact that its objects are those stated in the said memorandum.

[Section 370 amended by No. 113 of 1965 s. 8(1).]

Division 2 — Restrictions relating to share brokers

371. Terms used

In this Division, unless the context otherwise requires —

authorised representative means any servant or agent of a share broker, who is employed or engaged by such share broker in the carrying on of his business as a share broker and who is authorised by his employer or principal to sell shares as the representative of his employer or principal in the course of the carrying on of the said business;

authorised share broker means a person authorised by this Division to carry on the business of a share broker;

recognised stock exchange means the stock exchange in Perth as existing at the time of the commencement of this Act, and any other stock exchange or association of share brokers now or hereafter established in this State, which is declared by the Governor by notice in the *Government Gazette* to be a recognised stock exchange for the purposes of this Act;

share broker means any person who carries on the business of buying and selling the shares of any company as a broker or agent for other persons including the companies whose shares are bought or sold.

[Section 371 amended by No. 32 of 1947 s. 18.]

372. Authorised share brokers

The following persons, upon being registered and whilst such registration continues, shall be authorised share brokers for the purposes of this Division, that is to say —

- (a) members of the stock exchange in Perth while their membership continues;
- (b) members of any recognised stock exchange (other than the stock exchange in Perth) while their membership continues;
- (c) authorised representatives of persons included in the classes mentioned in paragraphs (a) and (b);
- (d) any other persons who, upon application to the Court, obtain an order of the Court authorising the Registrar to register them as authorised share brokers and who lodge with the Treasurer a deposit as hereinafter in this Division provided for.

373. Provision as to registration of authorised share brokers

The following provisions shall apply to the registration of authorised share brokers: —

- (a) The Registrar shall keep in his office a register in which the names and addresses of all authorised share brokers seeking registration shall be entered, together with such other information as may be prescribed by regulations.
- (b) The names and addresses of authorised share brokers shall be entered in the said register separately in different parts thereof so as to distinguish the different

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classes of share brokers as indicated in the various paragraphs of section 372 respectively.

- (c) Share brokers of any of the classes mentioned in paragraphs (a), (b) and (c) of the said section may make application direct to the Registrar in accordance with the regulations, furnishing therewith in writing in support of the application such documents, particulars and evidence as may be prescribed by the regulations.
- (d) Upon receipt of an application made under paragraph (c), and subject to the same being in conformity with this Act and the regulations, the Registrar shall upon payment of the prescribed registration fee register the applicant as an authorised share broker and issue to him a certificate of registration in the prescribed form under the hand of the Registrar.
- (e) Any person of the class mentioned in section 372(d) who desires to be registered as an authorised share broker shall —
 - (i) make application to the Court in accordance with Rules of Court for an order authorising the Registrar to register him as an authorised share broker; and
 - (ii) if such order is made, deposit with the Treasurer the sum of \$1 000 or an equivalent security approved by the Treasurer.
- (f) Where a person has obtained the order and made the deposit provided for in paragraph (e), he may thereafter make application direct to the Registrar in accordance with the regulations, furnishing therewith an office copy of the order and a certificate in writing under the hand of the Under Treasurer as to the making of said deposit, and such other particulars as may be prescribed by the regulations.
- (g) Upon receipt of an application made under paragraph (f) and subject to the same being in conformity with this

Act and the regulations, the Registrar shall, upon payment of the prescribed registration fee, register the applicant as an authorised share broker and issue to him a certificate of registration in the prescribed form under the hand of the Registrar.

[Section 373 amended by No. 113 of 1965 s. 8(1); No. 28 of 2006 s. 66(2).]

374. Duration of registration

The registration of an authorised share broker shall remain in force until the happening of any one of the following events, namely: —

- (a) the death, bankruptcy, or insolvency of the share broker;
- (b) in the case of a share broker, other than an authorised representative, when he ceases to carry on the business of a share broker in this State;
- (c) in the case of a share broker who is a member of the stock exchange in Perth, or any other recognised stock exchange, when he ceases to be such a member;
- (d) in the case of a share broker who has made a deposit with the Treasurer under of section 373(e), if he withdraws such deposit;
- (e) in the case of an authorised representative, when he ceases to be the employee or agent of a member of a recognised stock exchange; and
- (f) in the case of any share broker, when the registration is cancelled by the Registrar as authorised by section 373 for any reason other than those mentioned in the foregoing paragraphs.

[Section 374 amended by No. 32 of 1947 s. 19.]

375. Provisions as to application to Court for order authorising registration

- (1) Every application for an order authorising the Registrar to register a person as an authorised share broker shall be made under and in accordance with Rules of Court.
- (2) Any Rules of Court made for the purposes of this section shall provide, *inter alia*: —
 - (a) that the applicant shall, not less than 28 days prior to making the application, file in the Court a notice of his intention to make such application and advertise a copy of such notice 3 times in a daily paper circulating in that part of the State in which the applicant proposes to carry on business as a share broker, and so that the last of such advertisements shall be not earlier than 14 days before the date fixed by the Court for the hearing of the application;
 - (b) that the notice mentioned in paragraph (a) shall state an address for service in Perth at which notices required to be served upon the applicant may be served on him;
 - (c) that any person who desires to oppose the application shall not later than 3 days prior to the date fixed for the hearing of the application file a notice of his intention so to do in the Court, and also serve a copy thereof upon the applicant.
- (3) Any person may, subject to Rules of Court, attend on the hearing of an application under this section, either in person or by counsel and oppose the same.
- (4) The Court, after hearing the application, may grant or refuse the same as it thinks fit.
- (5) The Court shall refuse the application if it be proved to the satisfaction of the Court that the applicant —
 - (a) is an undischarged bankrupt; or

- (b) has been convicted in any part of His Majesty's Dominions of an offence, his conviction for which necessarily involved a finding that he acted fraudulently or dishonestly; or
 - (c) has been convicted within the period of 5 years next preceding the date of the hearing of the application of an offence against this Act involving a finding that he acted fraudulently or dishonestly; or
 - (d) by reason of any other circumstances which appear to the Court to be sufficient, is not a fit and proper person to be registered as an authorised share broker for the purposes.
- (6) The decision of the Court refusing an application under this section shall be final and shall not be subject to any appeal therefrom.

376. Provisions relating to deposits made with Treasurer

- (1) Where any authorised share broker has in accordance with this Division deposited any sum or equivalent security with the Treasurer, then —
- (a) in the event of the depositor becoming bankrupt, the amount of the deposit or the security representing the same shall be paid or assigned (as the case may be) to the Official Receiver or other trustee in bankruptcy, to be applied in the first instance in payment *pro rata* of any moneys due to clients of such share broker in respect of dealings with such clients and as to any surplus thereafter to be applied in accordance with the law and practice in bankruptcy; or
 - (b) if, in a case where the depositor is a corporation, the corporation is ordered to be wound up by or under the supervision of the Court, the amount of the deposit or the security representing the same shall be handed to the

liquidator to be applied in like manner to that set out in paragraph (a) above,

and the Governor may by regulations prescribe the circumstances in which, apart from the preceding provisions of this subsection, a sum or equivalent security deposited as aforesaid may be withdrawn; but save as aforesaid, no person shall be entitled to withdraw or assign any deposit made under this Division as aforesaid.

- (2) The Governor may make such regulations as appear to him to be necessary or expedient with respect to the investment by the Treasurer of sums deposited with him under this Division, the payment to the depositor of the interest or dividends from time to time accruing due on any securities on which a deposit is for the time being invested or on any equivalent security deposited in lieu of money, and the realisation of such securities in specified circumstances.

377. Cancellation of registration of authorised broker by Registrar

- (1) Subject to the provisions of this section, the Registrar shall cancel the registration of a registered authorised share broker upon the happening of any one of the following events: —
- (a) the events specified in section 374(a), (b), (c), (d), and (e); or
 - (b) if it appears to the Registrar that the share broker is no longer a fit and proper person to be registered for the reason that —
 - (i) he has, either before or after being registered, been convicted within His Majesty's Dominions of an offence, his conviction for which necessarily involved a finding that he acted fraudulently or dishonestly; or
 - (ii) he has been convicted of an offence against this Act involving a finding that he acted fraudulently or dishonestly; or

- (iii) he has committed a breach of any regulations made by the Governor under this Act for regulating the conduct of business by authorised share brokers; or
 - (iv) through physical or mental infirmity he has become incapable of carrying on his business as an authorised share broker.
- (2) Where the Registrar proposes, in pursuance of subsection (1), to cancel the registration of an authorised share broker for any reason mentioned in subsection (1)(b), the Registrar —
 - (a) shall serve on the share broker a written notice of his intention specifying the particular matter upon the consideration of which his decision will be based, and inviting him to notify in writing to the Registrar within 14 days from the date of the service of the notice whether he desires his case to be referred to the Court sitting in Chambers; and
 - (b) if he so notifies the Registrar that he desires his case to be so referred, shall, in accordance with Rules of Court, refer the case to a Judge of the Supreme Court sitting in Chambers.
- (3)(a) Any inquiry by the Judge under subsection (2) shall be so conducted as to afford a reasonable opportunity for representations to be made to the Court by or on behalf of the person whose case is the subject of the investigation.
- (b) For the purpose of any such investigation, the Rules of the Supreme Court relating to proceedings in Chambers on ordinary summonses shall apply.
- (4) The decision of the Court upon a case which has been referred to it under this section shall be final and conclusive.
- (5) Every cancellation of registration under this section shall be effected by the Registrar striking out, expunging or erasing the name of the share broker from the register and serving notice

thereof in writing in the prescribed form upon such share broker.

378. Information to be supplied to Registrar

- (1) For the purpose of enabling the Registrar to determine whether authorised share brokers seeking registration shall be registered, or whether the registration of authorised share brokers already registered shall be cancelled, the Governor may by regulations prescribe —
 - (a) the matters in relation to which information shall be supplied to the Registrar;
 - (b) the nature of the information to be so supplied, and the times when, and the manner in which, it shall be supplied;
 - (c) the persons or bodies by whom or which the information shall be supplied.
- (2) Any person who commits any contravention of, or fails or refuses to comply in any respect with any regulation made under this section shall be guilty of an offence against this Act.

379. Names of registered authorised share brokers to be published

The Registrar shall cause to be published in the *Government Gazette* at least once in every year a list of the names and addresses of all the authorised share brokers at the time of such publication registered under this Act.

Part XIV — Investment companies

380. Terms used

- (1) In this Part, unless the context requires otherwise —
- Investment company*** means a company declared by proclamation of the Governor under this section to be an investment company;
- Marketable securities*** means any debentures, funds, stock, shares or bonds of any Government or local government or of any corporation, company or society and includes any right in respect of shares in any company.
- (2) Subject to this Part, the provisions of this Act contained in the other Parts shall apply to investment companies.
- (3) The Governor may (on the application of the company or otherwise) by proclamation published in the *Government Gazette*, declare to be an investment company any company which is engaged primarily in the business of investment in marketable securities for the purpose of revenue and for profit and not for the purpose of exercising control.

[Section 380 amended by No. 57 of 1997 s. 35.]

381. Restriction on borrowing by investment companies

- (1) No investment company shall borrow a greater amount than an amount equivalent to 50% of the paid-up share capital of the company, and of the amount so borrowed a greater amount than an amount equivalent to 25% of the paid-up capital of the company shall not be borrowed otherwise than by the issue of debentures.
- (2) Any debenture so issued —
- (a) shall not be redeemable (except at the option of the borrower exercised not earlier than 2½ years after the date of issue) within 5 years of the date of issue; and
 - (b) shall not be issued to a bank as security for an overdraft.

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382. Restriction on investments of investment companies

- (1) No investment company shall invest an amount greater than 10% of the paid-up share capital of the investment company in any one company.
- (2) No investment company shall hold more than 5% of the subscribed ordinary share capital of any one company.

383. Restriction on underwriting by investment companies

- (1) No investment company shall underwrite or sub-underwrite —
 - (a) to an amount exceeding 40% of its paid-up share capital — any issue of securities in which, by any Act of the Parliament of the State of Western Australia or of the Parliament of any other State of the Commonwealth of Australia or of the Parliament of the Commonwealth of Australia or of the Parliament of New Zealand, trustees are authorised to invest trust funds in their hands; or
 - (b) to an amount exceeding 20% of its paid-up share capital — any issue of any other kind of securities.
- (2) Where an investment company underwrites or sub-underwrites any issue of securities within the limits authorised by the last preceding subsection and as a result of such underwriting or sub-underwriting such company holds any securities to an extent greater than that authorised by the last preceding section, such company shall, within the period of 12 months after such underwriting or sub-underwriting, reduce its holding of such securities so as to comply with the provisions of the last preceding section and until the expiration of the said period of 12 months no offence shall be deemed to have been committed by such company or by any member of the governing body, director, manager or officer of such company by reason only of the fact that such company is holding any securities to an extent greater than authorised by the last preceding section.

384. Special requirements as to articles and prospectus of investment companies

The articles of any investment company and every prospectus issued by or on behalf of any investment 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 in addition to any other matters required by the other provisions of this Act to be stated therein —

- (a) the type of security in which it is among the objects of the company to invest; and
- (b) whether it is among the objects of the investment company to invest within Australia or outside Australia or both within and outside Australia.

385. Investment companies not to hold shares in other Australian investment companies

No investment company shall purchase or hold any shares in or debentures of —

- (a) any other investment company; or
- (b) any company registered in any other State or Territory of the Commonwealth of Australia or in New Zealand which is engaged primarily in the business of investment in marketable securities for the purpose of revenue and for profit and not for the purpose of exercising control and which is specified for the purposes of this section by proclamation of the Governor published in the *Government Gazette*; or
- (c) any company which by the law in force for the time being in the place where it is incorporated is not required at any time to file its balance sheet with any person.

[Section 385 amended by No. 73 of 1953 s. 11.]

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386. Investment company not to speculate in commodities

No investment company shall for the purpose of profit buy or sell or deal in any raw materials or manufactured goods, whether in existence or not, otherwise than by investing in companies trading in such raw materials or manufactured goods.

387. Special provisions as to balance sheets and accounts of investment companies

- (1) There shall be stated under separate headings in every balance sheet of every investment company, in addition to any other matters required by the other provisions of this Act to be stated therein —
 - (a) the investments of the company, including investments of the kind following: —
 - (i) investments in Government, local government and other public debentures, stock or bonds;
 - (ii) investments in subsidiary companies;
 - (iii) investments in companies (not being companies included in subparagraph (ii)) the shares in or debentures of which are dealt in on any prescribed stock exchange in the Commonwealth of Australia or elsewhere;
 - (iv) investments in any other companies;
 - (b) the manner in which the investments of the company have been valued.
- (2) There shall accompany every such balance sheet and be signed by the persons who sign the balance sheet —
 - (a) a complete list of all purchases and sales of securities by the investment company during the period to which the accounts relate, together with a statement of the total amount of brokerage paid by the company during that period and the proportion thereof paid to any authorised share broker within the meaning of Division 2 of

Part XIII who, or any employee or nominee of whom, is a director, manager, or officer of the company; and

- (b) a complete list of all the investments of the investment company as at the date of the balance sheet showing the names and quantities of such investments.
- (3) The balance sheet of every investment company shall be in the form of the Twelfth Schedule.
- (4) The profit and loss account of every investment company shall show separately, in addition to any other matters required by the other provisions of this Act to be shown therein, income from underwriting (including sub-underwriting).

[Section 387 amended by No. 32 of 1947 s. 20; No. 14 of 1996 s. 4.]

388. Investment fluctuation reserve

- (1) All profits and losses of an investment company from the purchase and sale of securities shall be respectively credited and debited to a reserve account to be kept by the company and to be called the investment fluctuation reserve.
- (2) The investment fluctuation reserve shall not be available for the payment of dividends.

389. Penalties

Every investment company and every member of the governing body, director, manager or officer of an investment company guilty of permitting, causing, directing or authorising a breach of any of the provisions of this Part shall be guilty of an offence and shall be liable to a penalty of not more than \$200 and in the case of a continuing offence to a penalty of not more than \$20 for every day on which such breach continues after conviction.

[Section 389 amended by No. 113 of 1965 s. 8(1).]

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390. Saving

Where at the date on which a company is by proclamation declared to be an investment company it —

- (a) was holding any investments not authorised by this Part or to an extent greater than authorised by this Part; or
- (b) had in any manner borrowed and was indebted for an amount greater than the amount authorised by this Part to be borrowed in that manner,

such investment company shall, within the period of 3 years after the date, comply with the provisions of this Part as to investments and borrowing, and until the expiration of the said period of 3 years no offence shall be deemed to have been committed by such company or by any member of the governing body, director, manager or officer of such company by reason only of the fact that such company —

- (i) is holding any investments not authorised by this Part or to an extent greater than authorised by this Part; or
- (ii) (without increasing its total borrowing or indebtedness as at the passing of this Act) has in any manner borrowed and is indebted for an amount greater than the amount authorised by this Part to be borrowed in that manner.

[Section 390 amended by No. 73 of 1953 s. 12.]

Part XV — Registrar's office and administration

[391. Deleted by No. 28 of 2006 s. 66(1).]

392. Registrar's office

- (1) Any person may inspect the documents kept by the Registrar relating to companies under this Act on payment of such fees as may be prescribed; and any person may require a certificate of the incorporation of any company or other certificate issued under this Act 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.
- (2) A copy of or extract from any document kept, recorded, filed, or registered at the office of the Registrar, 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.

[Section 392 amended by No. 28 of 2006 s. 66(2).]

393. Fees

There shall be paid to the Registrar in respect of the several matters mentioned in the Tenth Schedule, the several fees specified therein, or, in lieu thereof, such other fees as the Governor may by regulation from time to time direct, and also, in respect of matters not mentioned in the Schedule in relation to which fees may be prescribed under this Act, such fees as the Governor may by regulation from time to time prescribe in relation to such matters.

394. Registrar to enforce Act

- (1) The Registrar shall take all practical steps to see that every company complies with the provisions of this Act in so far as a company is required to keep any books, registers or records or

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do or refrain from doing any thing and for that purpose may appoint inspectors or other officers or agents.

- (2) The Registrar and every person executing any power or duty conferred or imposed on the Registrar and any inspector, officer, or other agent of the Registrar appointed under or by virtue of this Act or the regulations shall, before entering upon his duties or exercising any power under this Act, make a declaration in the form prescribed.
- (3) Any person who acts in the execution of any duty under or by virtue of this Act or the regulations before he has made the prescribed declaration, or who after making the declaration makes a record of or divulges any information relating to the affairs of a company or person except in the performance of any duty under this Act, shall be guilty of an offence.

Penalty: \$200.

[Section 394 amended by No. 113 of 1965 s. 8(1).]

395. Power to require inspection

- (1) The Registrar or any inspector, officer, or agent duly authorised by the Registrar may require a company or any director, manager or other officer thereof to produce for his inspection the registers of members and mortgages and the minute book of general meetings required by this Act to be kept by the company for the purpose only of ascertaining whether or not the requirements of this Act have been complied with.
- (2) If any company, director, manager, or other officer refuses or neglects to produce for the inspection of the Registrar, inspector, or agent any minute book or register of members or mortgages or obstructs or hinders the Registrar, inspector, or agent in the execution of his duty, the company and every officer of the company who is in default shall be liable to a fine not exceeding \$100.

[Section 395 amended by No. 113 of 1965 s. 8(1).]

396. Enforcement of duty of company to make returns to Registrar

- (1) If 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 return, account or other document, or to give notice to him of any matter, fails to make good the default within 14 days after the 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 officers 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.
- (4) Where any company or director or officer of any company or any liquidator satisfies the Registrar that the circumstances were or are such that it or he was or will be unable to file with deliver or send to the Registrar any return, account, or other document or to give notice to him of any matter within the time prescribed in relation thereto by or under this Act, or that there was or will be reasonable excuse for its or his delay in filing, delivering, or sending such return, account, or other document or giving such notice and the Registrar is of the opinion that the rights of other persons have not been or will not be prejudiced thereby, the Registrar may if he thinks fit grant to such company, director, or officer, or liquidator such extension of the time prescribed as aforesaid as he may deem reasonable.

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397. Documents to be certified

- (1) The Registrar shall not accept for filing or registration any memorandum or articles of a company or document affecting the memorandum or articles (other than an order of the Court) or other document or agreement (other than a prospectus) relating or incidental to the registration or incorporation of a company under this Act, including a company required to be registered under Part XI unless such document bears a certificate in the Form H in the Thirteenth Schedule signed by a solicitor or where the certificate contains a statement that no person has given advice in respect of, or prepared the document for or in expectation of fee or reward by a director of the company or, if the company is a co-operative company, by the person for the time being holding the office of, or acting as, secretary of the Federation Trust Limited.
- (2) Any person who gives a certificate to be used under subsection (1), knowing the same to be false, shall be liable to a fine not exceeding \$100.
- (3) In this section —
solicitor means an Australian legal practitioner within the meaning of that term in the *Legal Profession Act 2008* section 3.
[Section 397 amended by No. 47 of 1949 s. 26; No. 17 of 1953 s. 7; No. 113 of 1965 s. 8(1); No. 65 of 2003 s. 23(2); No. 21 of 2008 s. 649.]

398. Duty of Registrar to refuse registration in certain cases

The Registrar shall not register any company, whether the registration has been applied for before or after the commencement of this Act, if any of the objects of the company is to do any act outside the State or to carry on any business outside the State, which act or business would, if done or carried on within the State, be illegal.

399. Registrar may apply to Court for winding-up in certain cases

- (1) The Registrar may apply to the Court for the winding-up of a company in the same manner as any creditor may apply under Part VII for the winding-up of a company —
 - (a) where a company formed for any illegal object has been registered under the provisions of this Act;
 - (b) where a company formed for any legal object is carrying on any illegal business or object.
- (2) The provisions of Part VII in so far as it provides for a winding-up by the Court shall apply to any application by the Registrar under this section.

400. Appeal to Court against decision of Registrar

- (1) If any person is aggrieved by any act or decision of the Registrar he may apply to the Court, and the Court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.
- (2) Any application under this section shall be dealt with by way of rehearing, and the Court shall not be limited to the facts which were before the Registrar.
- (3) This section shall not apply to any act or decision of the Registrar by this Act declared to be conclusive or final.

401. Authority of Registrar to destroy documents

- (1) The Registrar may if in his opinion it is no longer necessary or desirable to retain them, destroy or give to the Public Library of the State¹⁴ —
 - (a) in the case of any company (whether or not that company has been dissolved or has ceased to be registered) —
 - (i) any annual return or balance sheet that has been lodged or filed for not less than 7 years; or

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- (ii) any other document (other than the memorandum and articles or any other document affecting them) that has been lodged, filed or registered for not less than 15 years;
 - (b) in the case of a company that has been dissolved or has ceased to be registered for not less than 15 years, any document lodged, filed or registered.
- (2) Subsection (1) applies to documents lodged, filed or registered under this Act or under the repealed Acts.

[Section 401 inserted by No. 59 of 1976 s. 4.]

Part XVI — Miscellaneous

(a) Auditors and liquidators

402. Registration of persons qualified to act as auditors or liquidators

- (1) Any person may apply to the Registrar in the prescribed manner to be registered as qualified to act as an auditor or as a liquidator, as the case may be.
- (2) The Registrar shall cause such application to be advertised at least twice in a daily newspaper circulating in Perth at an interval of 7 days inviting all persons having any objection to such applicant being registered as an auditor or liquidator to lodge such objection within 7 days of the second publication of such application.
- (3) On receipt of any such objection the Registrar may require the person making same to forward to him a statutory declaration in support of his objection.
- (4) The Registrar shall consider the said application and all matter in reference thereto before him and if he is satisfied that —
 - (a) the applicant is a person of good fame; and
 - (b) the applicant holds a diploma or license from any recognised authority to carry on the business of an auditor or accountant; and
 - (c) the applicant has had a previous training sufficient to enable him to satisfactorily discharge the duties of an auditor or accountant,

the Registrar may, subject to the provisions of section 405 direct such applicant to be registered as an auditor or liquidator, as the case may be, and shall issue to him a certificate of registration in the prescribed form.

[Section 402 amended by No. 21 of 1951 s. 10.]

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403. Gazettal of registration

When any person is registered as qualified to act as an auditor or as a liquidator or when any such registration is cancelled the Registrar shall cause notice of the fact to be advertised forthwith in the *Government Gazette*.

404. Only registered persons to act as auditors or liquidators

- (1) Except as otherwise provided in this Act, no person shall —
- (a) act as the auditor of any company; or
 - (b) act as the liquidator of any company,

unless he has been registered in accordance with section 402 and is still so registered.

- (2) Except as otherwise provided in this Act, no company shall appoint any person —
- (a) to act as the auditor of the company; or
 - (b) to act as the liquidator of the company,

unless he has been registered in accordance with section 402 and is still so registered.

- (3) Any person or company contravening subsection (1) or subsection (2) shall be guilty of an offence.

Penalty: \$200.

- (4) The preceding subsections shall not prevent any unregistered person from acting or being appointed as an auditor or as a liquidator if his appointment as such is made before the expiration of 28 days after the commencement of this Act.

- (5) If the Attorney General is satisfied that it is impracticable or inconvenient for any company to appoint a registered auditor he may, on the report of the Registrar, authorise a competent person not registered to act as auditor of the company subject to

such conditions or restrictions as the Attorney General may think fit to impose.

[Section 404 amended by No. 32 of 1947 s. 21; No. 113 of 1965 s. 8(1).]

405. Qualifications for registration as auditor or liquidator

- (1) A body corporate shall not be registered either as an auditor or as a liquidator.
- (2) Any person, who has attained the age of 21 years, is of good character and repute and in the opinion of the Registrar is competent to audit the accounts of companies, may be registered as an auditor.
- (3) Any person who has attained the age of 21 years, is of good character and repute, and in the opinion of the Registrar is competent to act as a liquidator of companies may be registered as a liquidator.

406. Cancellation of registration of auditor or liquidator

- (1) The Registrar shall take cognisance of the conduct of registered auditors and registered liquidators and in the event —
 - (a) of any such auditor or liquidator not faithfully performing his duties or not duly observing all the requirements imposed upon him by any statute, rules, regulations or otherwise with respect to the performance of his duties or is not a fit and proper person to remain registered; or
 - (b) of any complaint in regard thereto being made to the Registrar in the prescribed manner by any inspector, or by any company or by any member or creditor of a company,

the Registrar shall, subject to the regulations, inquire into the matter, and, if satisfied that the same is warranted, the Registrar may cancel the registration of the auditor or the liquidator.

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- (3) The Court may on the complaint of any inspector or any interested party, order an inquiry in relation to the discharge of his duties by any registered auditor or liquidator and may direct in what manner and by whom the costs of such an inquiry are to be borne.
- (4) Any order for costs made by the Court under this section may be enforced in the like manner in which an order for costs in a civil action in the Court may be enforced.

[Section 406 amended by No. 21 of 1951 s. 11.]

(b) Rules

407. Power of Court to make rules

- (1) The Judges of the Court may make Rules of Court under the *Supreme Court Act 1935* —
 - (a) for carrying into effect the objects of this Act so far as relates to the winding-up of companies, to reduction of capital, maintenance by liquidators of the securities given by them as required by this Act, and to any other matters wherein the Court has jurisdiction; and
 - (b) prescribing the fees to be paid in respect of any such proceedings; and
 - (c) prescribing scales of fees and remuneration to be charged by solicitors in respect of companies and any matters under or relating to this Act; and
 - (d) prescribing the manner in which the jurisdiction of the Court under this Act is to be exercised and whether in Court or in Chambers, or by a Judge or Master of the Court; and
 - (e) relating to procedure generally for the purposes of this Act, including rules as to costs and fees.

Provided that until such rules are made, the rules prescribed in the Eleventh Schedule or, where such rules are not applicable, the general practice of the Supreme Court shall, so far as the

time is applicable, and not inconsistent with this Act apply to all proceedings under this Act.

- (2) Rules made by the Judges under this section shall not have any force until confirmed by the Governor and published in the *Gazette*.

(c) Regulations — tables and forms

408. Regulations

- (1) The Governor may make regulations for any purposes which he deems necessary or convenient in order to give full effect to the provisions and intentions of this Act.
- (2) Such regulations may prescribe penalties not exceeding \$100 for the contravention thereof, or of other regulations.

[Section 408 amended by No. 113 of 1965 s. 8(1).]

409. Application and alteration of forms and fees

- (1) The forms in the various Schedules to this Act or forms as near thereto as circumstances admit shall be used in all matters to which those forms refer.
- (2) The Governor may by regulation alter or add to any of the forms contained in the Schedules (other than the Second Schedule).
- (3) The Governor may make regulations varying the Tenth Schedule or repealing the Tenth Schedule and substituting a new Tenth Schedule in place thereof.
- (4) A regulation made under subsection (2) or subsection (3) shall have effect as if it were included in this Act.

[Section 409 amended by No. 18 of 1982 s. 4.]

(d) Service of documents

410. Service of documents

- (1) A document may be served on a company by leaving it at, or sending it by post in a prepaid registered letter to the registered office of the company.
- (2) Any document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof; and in proving service of such document it shall be sufficient to prove that such document was properly directed, and that it was posted as a prepaid registered letter.

(e) Enforcement of orders

411. Power to enforce orders

- (1) All orders made by the Court under this Act may be enforced in the same manner as orders of the Court made in any action pending therein may be enforced.
- (2) Subject to Rules of Court, an appeal from any order or decision made or given by the court under this Act shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the Court in matters within its ordinary jurisdiction.

412. Power of Court to grant relief in certain cases

- (1) If in any proceeding for negligence, default, breach of duty, or breach of trust against a person to whom this section applies it appears to the Court hearing the case that that person is or may be liable in respect of 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 person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the Court for relief, and the Court on any such application shall have the same powers 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.
- (3) Where any case to which subsection (1) applies is being tried by a Judge with a jury, the Judge, after hearing the evidence, may, if he is satisfied that the defendant ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the Judge may think proper.
- (4) The persons to whom this section applies are the following —
 - (a) directors of a company;
 - (b) managers of a company;
 - (c) officers of a company;
 - (d) persons employed by a company as auditors;
 - (e) liquidators of a company.

(f) Lost documents

413. Loss of memorandum etc.

- (1) It shall be lawful for any company duly incorporated or registered in this State, in case the memorandum or articles of association of such company, or any other document relating to such company filed with the Registrar in pursuance of the provisions of any law shall have been lost or destroyed, to apply to the Court for liberty to file with the Registrar a copy of the

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memorandum or articles of association of such company, or such other document relating to such company as originally so filed with the Registrar.

- (2) Any such application as aforesaid may be made by summons, and such summons shall be served on the Registrar in the first instance, and notice thereof shall also be given to such other persons and in such manner as the Court may direct.
- (3) The Court, upon being satisfied by affidavit or by *viva voce* evidence or otherwise, of the fact that the original memorandum or articles of association of, or other document relating to, such company filed as aforesaid has been lost or destroyed, and of the date of the filing thereof with the Registrar, and that a copy of such memorandum or articles of association or other document produced to the Court is a correct copy of such memorandum or articles of association or other document, may give a certificate in or to the effect of the Form I in the Thirteenth Schedule upon such copy, and may make an order empowering the company to file such copy with the Registrar, who shall thereupon, and upon the filing of such copy with him, register the same in the manner required by law in respect of the original memorandum or articles of association or other document.
- (4) Upon such registration as aforesaid such copy for all purposes whatsoever shall be deemed to be and from such date as is mentioned in the certificate as the date of the filing of the original with the Registrar to have been and to have the same force and effect as the original memorandum, articles of association, or other document of which it purports to be a copy.
- (5) The Court may by order upon a like application as hereinbefore mentioned by any person aggrieved, and after notice to any other person whom the Court may direct, vary or rescind the certificate; and such order may be filed with the Registrar, to be by him registered. Provided that no payments, contracts, dealings, acts, and things *bona fide* made, had or done before the registration of such order, and upon the faith of and in

reliance upon the certificate, shall be invalidated or affected by such variation or rescission.

- (6) The Court may make such order as to the costs of any application under this Act as shall appear just.
- (7) This section shall apply, not only to companies under this Act or the repealed Acts, but also to all companies incorporated by or under any Act of the Parliament of Western Australia.

414. Lost share certificates

In the event of the loss, defacement, or destruction of any share certificate, letter of allotment, transfer receipt, or any other document of title to shares, it shall be lawful for a company, on request in writing of the person entered in the register of members as the holder of such shares, to issue a duplicate thereof upon the following conditions: —

- (1) An advertisement shall be inserted in one daily newspaper in Perth and in the *Government Gazette*, containing particulars of the lost document, and giving notice of the intention of the company at the expiration of 28 days from the publication of such advertisement to issue a duplicate thereof.
- (2) The company shall require the applicant, and such other persons as it may see fit, to make statutory declarations of and as to the circumstances surrounding the loss, defacement, or destruction.
- (3) The company may require such indemnities, bonds, or guarantees from the applicant or such other person as it sees fit to protect it from any claim or loss arising by reason of or incidental to the issue of such duplicate.
- (4) Any document issued hereunder shall bear indorsed on the face thereof the words “Issued in lieu of lost (defaced or destroyed) share certificate or letter of allotment or transfer receipt”, as the case may be.

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- (5) Within 7 days from the issue of such substitute document the company shall file a copy of the advertisement and details of the substitute document so issued with the Registrar.
- (6) All costs and expenses of and incidental to the issue of a substitute document hereunder shall be at the cost of the owner of the lost document.

(g) Miscellaneous

415. Proceedings not invalidated by irregularities

- (1) No proceeding taken before any Court under the repealed Acts or under this Act shall be invalidated by any defect, irregularity, or deficiency of notice or time, unless the Court is of opinion that substantial injustice may be caused by such defect, irregularity, or deficiency, and that such injustice cannot be remedied by any order of such Court.
- (2) The Court may, if it think fit, make an order declaring that such proceeding is valid, notwithstanding any such defect, irregularity or deficiency.

416. Provision as to security for costs in actions brought by certain companies

- (1) Where a company is plaintiff or complainant in any action or other legal proceedings, other than such as in section 417 mentioned any Court or Judge or magistrate having jurisdiction in the matter may, if he has reason to believe that if the defendant is successful in his defence the assets of the company will be insufficient to pay his costs, require sufficient security to be given for those costs, and may stay all proceedings until such security is given.
- (2) In this section the word *company* includes all companies however and wherever incorporated, whether a company within the meaning of this Act or not, and a company within the meaning of Part VIII.

417. Pleadings in actions against members

In any action brought by a company against any member to recover any call or other money due from such member in his character of member it shall not be necessary to set forth the special matter, but it shall be sufficient to allege that the defendant is a member of the company, and is indebted to the company in respect of a call made, or other money due.

418. Expenses of winding-up where assets are not sufficient

Where a company being wound up, either by or under the supervision of the Court or voluntarily, has not sufficient available assets, the liquidator shall not be required to incur any expense in relation to the winding-up without all expense so incurred being guaranteed by the party requiring same.

419. Power of assignee to sue

Any person to whom any chose in action belonging to a company is assigned in pursuance of this Act may bring or defend any action relating to such chose in action in his own name.

420. Transfer to avoid liability

- (1) The transfer after the commencement of this Act of a share in any company to an infant shall not relieve the transferor of any liability.
- (2) No transfer after the commencement of this Act of a share in any company made for the purpose of avoiding or evading liability with regard to such share, shall relieve the transferor of any liability in regard to such share if the transfer is made to any person for a nominal consideration, or for no consideration, or for valuable consideration expressed, but not paid to the transferor, or for a consideration paid to the transferee, or with a trust or reservation expressed or implied for the benefit of the transferor, or to a person known to the transferor to be unable to pay the liability on such share, unless such transfer shall have

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been made and registered 2 years before the company shall be wound up.

421. Non-application of rule against perpetuities to certain schemes

(1) The rule of law relating to perpetuities shall not apply and shall be deemed never to have applied to the trusts of any fund or scheme for the benefit of any employees of a company whether such fund or scheme was established before or is established after the commencement of this Act.

(2) In this section —

company includes any company or society formed, whether before or after the commencement of this Act, in pursuance of any Act, or Imperial Act, or of letters patent or Royal charter or otherwise duly constituted according to law, and also a company registered under Part XI;

employee includes a director or any person at any time in the employment of a company, and the wife, husband, de facto partner, child, grandchild, parent, and any dependent of any such person and any other person entitled to or capable of receiving any benefit under any fund or scheme;

fund or scheme includes any provident, superannuation, sick, accident, assurance, unemployment, pension, co-operative benefit or other like fund, scheme, arrangement or provision.

[Section 421 amended by No. 28 of 2003 s. 21.]

422. Penalty on company publishing misleading statements

(1) If any company advertises, circulates, or publishes any written or printed statement of the amount of its capital, which is misleading, or in which the amount of nominal or authorised capital is stated without the words “nominal” or “authorised”, or in which the amount of capital or authorised or subscribed capital is stated, but the amount of paid-up capital is not stated, every such company and every director or manager knowingly

authorising, directing or consenting to such advertisement, circulation or publication shall be liable to a fine not exceeding \$100.

- (2) Subsection (1) shall apply to a company registered under Part XI which commits any contravention of such subsection within this State.

[Section 422 amended by No. 113 of 1965 s. 8(1).]

423. Penalty for improper use of word “Limited” or “No liability”

If any person or persons trade or carry on business under any name or title of which “Limited”, or “No liability”, or any contraction or imitation of either of those words, is the last word, that person or those persons shall, unless duly incorporated with limited liability, or no liability, as the case may be, be liable to a fine not exceeding \$4 for every day upon which that name or title has been used.

[Section 423 amended by No. 113 of 1965 s. 8(1).]

424. Penalty for non-performance of provisions of Act

Where any matter or thing is by this Act directed or forbidden to be done, and such act so directed to be done remains undone, or such act so forbidden to be done is done, in every such case, unless a specific penalty is provided therefor, every company or person offending against such direction or prohibition shall be liable to a fine not exceeding \$40, and, in the case of a continuing offence, to a daily penalty not exceeding \$10 for every day during which the offence continues.

[Section 424 amended by No. 113 of 1965 s. 8(1).]

425. Penalty for false statement

If any person in any prospectus, return, declaration, report, certificate, notice, balance sheet, or other document required by or for the purposes of any provision of this Act wilfully makes a

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statement false in any material particular knowing it to be false, he shall be guilty of a crime and shall be liable on conviction on indictment to imprisonment for a term not exceeding 2 years.

Summary conviction penalty: \$6 000.

[Section 425 amended by No. 113 of 1965 s. 8(1); No. 50 of 2003 s. 46(2); No. 4 of 2004 s. 58; No. 70 of 2004 s. 82.]

[426. Deleted by No. 59 of 2004 s. 141.]

427. Time for prosecution

Notwithstanding anything contained in the *Criminal Procedure Act 2004*, or any other Act, proceedings may be taken for any offence under this Act within one year from the commission thereof, or within 6 months from the date of the commencement of the liquidation of the company.

[Section 427 amended by No. 59 of 2004 s. 141; No. 84 of 2004 s. 78.]

428. Onus of proof

In proceedings in respect of offences against this Act the following allegations contained in the prosecution notice or indictment shall be deemed proved in the absence of satisfactory proof by the accused to the contrary: —

- (a) that a named company is a company duly incorporated and to which this Act or any named section thereof applies;
- (b) that the accused, or a person named in the prosecution notice or indictment, is a director, manager, or an officer of the company named in the prosecution notice or indictment;
- (c) that any meeting of the shareholders or creditors of any company required by this Act to be held within any particular time has not been held as required by a specified section of this Act.

[Section 428 amended by No. 84 of 2004 s. 80 and 82.]

429. Transition provisions for returns, balance sheets, and accounts

- (1) Any annual return required to be filed by any existing company within 12 months from the date on which this Act comes into operation shall be sufficient if it is in the form required or authorised by the *Companies Act 1893*³.
- (2) Where any existing company having a share capital is required to alter its form or method of keeping accounts and records or the form of its balance sheet to comply with sections 125 to 131 it shall be deemed sufficient compliance with this Act if the alteration of such form or method is made as from the first balancing date of the company next following the date on which this Act comes into operation or, where that balancing date falls earlier than 6 months after the date of the coming into operation of this Act, from the second balancing date of the company next following the date of the coming of this Act into operation: Provided that until such alteration the accounts, records, and balance sheets shall be in the form authorised or required by the *Companies Act 1893*³, and the memorandum and articles of association of the company.

430. Powers of certain foreign companies

Where by any private Act, whether passed before or after this Act, powers have been conferred on any company incorporated outside the State, the express grant of powers to the company by the private Act shall not be held to restrict by implication any other powers of the company.

431. Certified copy of articles of company to be *prima facie* evidence

Any document appearing to be certified by some person as secretary or manager of any incorporated company as a true copy of, or extract from, any memorandum or articles of association, or rules or regulations of such company, shall in all

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courts be received as *prima facie* evidence of the contents of the instrument of or from which it appears to be a copy or extract.

432. Declaration

Every declaration required by this Act, or intended to be used in any matter or proceeding under this Act, may be made before a notary public, justice of the peace, or any person who may witness a statutory declaration, or, out of this State, before any person authorised to take declarations in the place where such declaration shall be made, and it shall be sufficient if such declaration purports to be made under or in pursuance of this Act.

[Section 432 amended by No. 24 of 2005 s. 63.]

433. Exemption from stamp duty on reconstruction

Whenever a new incorporated company is formed by reconstruction upon the basis of a sale by the liquidator of a pre-existing company to the new company, it shall be lawful for the Treasurer, in his discretion, to exempt from *ad valorem* duty, wholly or partially, any transaction whereby the assets of the pre-existing company are transferred to the new company.

[Section 433 amended by No. 12 of 2008 Sch. 1 cl. 3(2).]

434. Form of register, index or accounts

- (1) Any register, index or accounts required by this Act to be kept by a company, may, notwithstanding anything in this Act, be kept either by making entries in bound books or by recording the matters in question in any other manner.
- (2) Where any such register, index, or accounts are 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 this subsection, the company and every officer of the company who is in default, shall be liable to a

penalty of \$100, and in addition to a daily penalty of \$4 for every day during which the offence continues.

[Section 434 inserted by No. 47 of 1949 s. 27; No. 113 of 1965 s. 8(1).]

First Schedule

No. of Act	Title
56 Vict. No. 8	<i>The Companies Act 1893</i>
60 Vict. No. 2	<i>The Companies Act 1893 Amendment Act 1896</i>
61 Vict. No. 35	<i>The Companies Act Amendment Act 1897</i>
62 Vict. No. 28	<i>An Act to amend the Companies Act 1893 Amendment Act 1897</i>
63 Vict. No. 54	<i>The Companies Act Amendment Act 1899</i>
2 Ed. VII. No. 19	<i>The Companies Act Amendment Act 1902</i>
No. 31 of 1922	<i>The Companies Act Amendment Act 1922</i>
No. 28 of 1929	<i>The Companies Act Amendment Act 1929</i>
No. 19 of 1930	<i>The Companies Act further Amendment Act 1930</i>
No. 48 of 1931	<i>The Companies Act Amendment Act 1931</i>
No. 40 of 1938	<i>The Companies Act Amendment Act 1938</i>

Second Schedule

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Table A

Regulations for Management of a Company Limited by Shares

Preliminary

1. In these regulations: —

The Act means the *Companies (Co-operative) Act 1943*.

When any provision of the Act is referred to, the reference is to that provision as modified by any statute for the time being in force.

Unless the context otherwise requires, expressions defined in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined.

Shares

2. Subject to the provisions, if any, in that behalf of the memorandum of association, and without prejudice to any special rights previously conferred on the holders of existing shares, any share may be issued with such preferred, deferred, or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital, or otherwise, as the company may from time to time by special resolution determine, and any preference share may, with the sanction of a special resolution, be issued on the terms that it is or at the option of the company is liable, to be redeemed.
3. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class), may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be 2 persons at least holding or representing by proxy one-third of the issued shares of the class, and that any holder of shares of the class present in person or by proxy may demand a poll.

4. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the seal of the company specifying the share or shares held by him and the amount paid up thereon, provided that in respect of a share or shares held jointly by several persons, the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders, shall be sufficient delivery to all.
5. If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, if any, not exceeding 10 cents, and on such terms, if any, as to evidence and indemnity as the directors think fit.

[Regulation 5 amended by No. 113 of 1965 s. 8(1).]

6. No part of the funds of the company shall directly or indirectly be employed in the purchase or dealing in or in loans upon the security of, or in relation to the company's shares, but nothing in this regulation shall prohibit transactions mentioned in the proviso to section 59(2) of the Act.

Lien

7. The company shall have a lien on every share (not being a fully paid share), for all moneys (whether presently payable or not), called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares (other than fully paid shares), standing registered in the name of a single person for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this regulation. The company's lien, if any, on a share shall extend to all dividends payable thereon.
8. The company may sell, in such manner as the directors think fit, any shares on which the company has lien but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of 14 days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or to the person entitled thereto by reason of his death or bankruptcy.
9. For giving effect to any such sale the directors may authorise some person to transfer the shares sold to the purchaser thereof. The

purchaser shall be registered as the holder of the shares comprised in any such transfer and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

10. The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale), be paid to the person entitled to the shares at the date of the sale.

Calls on Shares

11. (a) The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than 28 days from the last call; and each member shall (subject to receiving at least 14 days' notice specifying the time or times of payment) pay to the company at the time or times so specified the amount called on his shares.
- (b) A call shall be deemed to have been made at the time when the resolution of the directors authorising such call was passed.
- (c) On the trial or hearing of any action by the company against any member to recover any debt due for any call, it shall be sufficient to prove that the name of the member sued is on the register of members as the holder, or one of the holders, of the number of shares in respect of which such debt accrued, and that notice of such call was given in pursuance of the company's regulations, and it shall not be necessary to prove the appointment of the directors who made such call, nor that a quorum of directors was present at the board when such call was made, nor that the meeting at which such call was made was duly convened or constituted nor any other matter whatsoever, but proof of the matters first above-mentioned shall be conclusive evidence of the debt.
12. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

13. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of 7% per annum from the day appointed for the payment thereof, to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.
14. The provisions of these regulations as to the liability of joint holders and as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.
15. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.
16. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him, and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, 7%) as may be agreed upon between the member paying the sum in advance and the directors.

Transfer and Transmission of Shares

17. The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee, and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.
18. Shares shall be transferred in the following form, or in any usual or common form which the directors shall approve : — I, A.B., of _____, in consideration of the sum of \$ _____ paid to me by C.D., of _____ (hereinafter called “the said transferee”) do hereby transfer to the said transferee the share (or shares) numbered _____ in the undertaking called the _____ Company, Limited, to hold unto the said transferee, subject to the several conditions on which I hold the same; and I, the said transferee, do hereby agree to take the

said share (or shares) subject to the conditions aforesaid. As witness our hands the day of .
Witness to the signatures of, etc.

19. The directors may decline to register any transfer of shares, not being fully paid shares to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers during the 14 days immediately preceding the ordinary general meeting in each year. The directors may decline to recognise any instrument of transfer unless —
- (a) a fee not exceeding 50 cents is paid to the company in respect thereof, and
 - (b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

If the directors refuse to register a transfer of any shares, they shall, within 28 days after the date on which the transfer was lodged with the company, send to the transferee notice of the refusal.

[Regulation 19 amended by No. 113 of 1965 s. 8(1).]

20. The legal personal representatives of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to the share. In the case of a share registered in the names of 2 or more holders, the survivors or survivor, or the legal personal representatives of the deceased survivor, shall be the only persons recognised by the company as having any title to the share.
21. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be properly required by the directors, have the right either to be registered as a member in respect of the share, or instead of being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy.

22. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

Forfeiture of Shares

23. If a member fails to pay any call or instalment of any call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.
24. The notice shall name a further day (not earlier than the expiration of 14 days from the date of the notice), on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.
25. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.
26. A forfeited share may be sold, or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.
27. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company receive payment in full of the nominal amount of the shares.
28. A statutory declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts

therein stated as against all persons claiming to be entitled to the share. The company may receive the consideration, if any, given for the share on any sale or disposition thereof, and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of, and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

29. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium as if the same had been payable by virtue of a call duly made and notified.

Conversion of Shares into Stock

30. The company may by ordinary resolution convert any paid-up shares into stock, and re-convert any into paid-up shares, of any denomination.
31. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as, and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that amount, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.
32. The holders of stock shall, according to the amount of the stock held by them have the same rights, privileges, and advantages as regards dividends, voting at meetings of the company, and other matters, as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.
33. Such of the regulations of the company as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder".

Alteration of Capital

34. The company may from time to time by special resolution increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.
35. Subject to any direction to the contrary that may be given by the company in general meeting, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of those shares in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.
36. The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture, and otherwise as the shares in the original share capital.
37. The company may by special resolution —
- (a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
 - (b) subdivide its existing shares, or any of them, into shares of smaller amount than is fixed by the memorandum of association subject, nevertheless, to the provisions of section 64(1)(iv) of the Act;
 - (c) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.
38. The company may by special resolution reduce its share capital and any capital redemption reserve fund in any manner and with, and subject to, any incident authorised, and consent required, by law.

General Meetings

39. A general meeting shall be held once in every calendar year at such time (not being more than 15 months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or in default, at such time in the third month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any 2 members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.
40. The above-mentioned general meetings shall be called ordinary general meetings; all other general meetings shall be called extraordinary general meetings.
41. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section 116 of the Act. If at any time there are not within the State of Western Australia sufficient directors capable of acting to form a quorum, any director or any 2 members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

[Regulation 41 amended by No. 47 of 1949 s. 28(a)(i).]

Notice of General Meetings

42. Subject to the provisions of section 119(1) of the Act relating to special resolutions 14 days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day, and the hour of meeting, and, in case of special business, the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but with the consent of all the members entitled to receive notices of some particular meeting, that meeting may be convened by such shorter notice and in such manner as those members may think fit.

43. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any member shall not invalidate the proceedings at any meeting.

Proceedings at General Meetings

44. All business shall be deemed special that is transacted at an extraordinary general meeting, and all that is transacted at an ordinary meeting with the exception of sanctioning a dividend, the consideration of the accounts balance sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors and directors.

[Regulation 44 amended by No. 47 of 1949 s. 28(a)(ii) and (iii).]

45. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, 3 members personally present shall be a quorum.
46. If within 30 minutes from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within 15 minutes from the time appointed for the meeting the members present shall be a quorum.
47. The chairman, if any, of the board of directors, or in his absence one of the directors, to be chosen by the meeting, shall preside as chairman at every general meeting of the company.
48. If there is no such chairman or director present within 30 minutes after the time appointed for holding the meeting, or if present is unwilling to act as chairman, the members present may choose some one of their number to be chairman.
49. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

When a meeting is adjourned for 14 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

50. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least 3 members present in person or by proxy entitled to vote or by one member or 2 members so present and entitled, if that member or those 2 members together hold not less than 15% of the paid-up capital of the company, and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.
51. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
52. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.
53. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of Members

54. On a show of hands every member present in person or by attorney shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.
55. In the case of joint holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be

determined by the order in which the names stand in the register of members.

56. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, curator bonis, or other person in the nature of a committee or curator bonis appointed by that court, and any such committee, curator bonis or other person may, on a poll, vote by proxy.
57. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.
58. On a poll votes may be given either personally or by proxy.
59. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under seal, or under the hand of an officer or attorney duly authorised. A proxy need not be a member of the company.
60. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than 24 hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.
61. An instrument appointing a proxy may be in the following form, or any other form which the directors shall approve: —

Company, Limited

“I _____, of _____, in the State of _____, being a member of the _____ Company, Limited, hereby appoint _____, of _____, as my proxy, to vote for me and on my behalf at the (ordinary or special, as the case may be) general meeting of the company to be held on the _____ day of _____ and at any adjournment thereof.”

Signed this _____ day of _____

62. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

Corporations acting by Representatives at Meetings

63. Any corporation which is a member of the company may by resolution of its directors or other governing bodies authorise such person as it thinks fit to act as its representative at any meeting of the company or of any class of members of the company, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

Directors

64. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.
65. The remuneration of the directors shall from time to time be determined by the company in general meeting.
66. The qualification of a director shall be the holding of at least one share in the company.

Powers and Duties of Directors

67. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by the Act, or by these articles, required to be exercised by the company in general meeting, subject, nevertheless, to any regulation of these articles, to the provisions of the Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.
68. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term as they may think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in

determining the rotation or retirement of directors; but his appointment shall be subject to determination *ipso facto* if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined.

[Regulation 68 amended by No. 47 of 1949 s. 28(a)(iv).]

69. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.
70. The directors shall cause minutes to be made in books provided for the purpose —
- (a) of all appointments of officers made by the directors;
 - (b) of the names of the directors present at each meeting of the directors and of any committee of the directors;
 - (c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors;
- and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.
71. The directors may delegate to any one or more of their number and/or to any one or more of the officers of the company power to operate upon any bank account of the company, and at any time may cancel or vary any such delegation.

Seal

72. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of a director and of the secretary or such other person as the directors may appoint for the purpose and that director and the secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Disqualification of Directors

73. The office of director shall be vacated if the director —
- (a) ceases to be a director by virtue of section 147 of the Act; or
 - (b) without the consent of the company in general meeting holds any other office of profit under the company except that of managing director or manager; or
 - (c) becomes bankrupt or takes the benefit whether by assignment, composition or otherwise of any law relating to bankrupt or insolvent debtors; or
 - (d) becomes prohibited from being a director by reason of any order made under section 226 or 281 of the Act; or
 - (e) is found lunatic or becomes of unsound mind; or
 - (f) resigns his office by notice in writing to the company; or
 - (g) is directly or indirectly interested in any contract with the company or participates in the profits of any contract with the company.

Provided, however, that a director shall not vacate his office by reason of his being a member of any corporation or firm which has entered into any contract with or done work for the company if he shall have declared the nature of his interest in manner required by section 154 of the Act; but the director shall not vote in respect of any such contract or work or any matter arising thereout, and if he does so vote his vote shall not be counted.

Rotation of Directors

74. At the first ordinary general meeting of the company the whole of the directors shall retire from office, and at the ordinary general meeting in every subsequent year one-third of the directors for the time being, or if their number is not 3 or a multiple of 3, then the number nearest one-third, shall retire from office.
75. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who become directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.
76. A retiring director shall be eligible for re-election.

77. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto, and in default the retiring director shall be deemed to have been re-elected unless at such meeting it is resolved not to fill up such vacated office.
78. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.
79. Any casual vacancy occurring in the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.
80. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.
81. The company may by special resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of Directors

82. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.
83. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall when the number of directors exceeds 3, be 3, and when the number of directors does not exceed 3, be 2.
84. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number

fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

85. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within 5 minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.
86. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.
87. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within 5 minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.
88. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes, the chairman shall have a second or casting vote.
89. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends and Reserve

90. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.
91. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.
92. No dividend shall be paid otherwise than out of profits.

93. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid up on any of the shares in the company, dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.
94. The directors may, before recommending any dividend, set aside out of the profits of the company, such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalising dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company, or be invested in such investments (other than shares of the company), as the directors may from time to time think fit.
95. If several persons are registered as joint holders of any share, any one of them may give effectual receipts for any dividend or other moneys payable on or in respect of the share.
96. Any dividend may be paid by cheque or warrant sent through the post to the registered address of the member or person entitled thereto, or in the case of joint holders to any one of such joint holders at his registered address, or to such person and such address as the member or person entitled or such joint holders, as the case may be, may direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent, or to the order of such other person as the member or person entitled or such joint holders, as the case may be, may direct.
97. No dividend shall bear interest against the company.

Accounts

98. The directors shall cause to be kept proper accounts in which shall be kept full, true, and complete accounts of the affairs and transactions of the company.
99. The accounts shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

100. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.
101. The directors shall from time to time in accordance with section 126 of the Act, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets, and reports as are referred to in that section.
102. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting, together with a copy of the auditor's report, shall, not less than 14 days before the date of the meeting, be sent to all persons entitled to receive notices of general meetings of the company.

Audit

103. Auditors shall be appointed and their duties regulated in accordance with sections 137, 138 and 139 of the Act.

Notices

104. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address within the State of Western Australia) to the address, if any, within the said State supplied by him to the company for the giving of notices to him.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of 24 hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

105. If a member has no registered address within the State of Western Australia and has not supplied to the company an address within the said State for the giving of notices to him, a notice addressed to him and

advertised in a newspaper circulating in the neighbourhood of the registered office of the company, shall be deemed to be duly given to him at noon on the day on which the advertisement appears.

106. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register of members in respect of the share.
107. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, within the State of Western Australia supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.
108. Notice of every general meeting shall be given in some manner hereinbefore authorised to —
- (a) every member except those members who (having no registered address within the State of Western Australia) have not supplied to the company an address within the said State for the giving of notices to them, and also to —
 - (b) every person entitled to a share in consequence of the death or bankruptcy of a member, who, but for his death or bankruptcy, would be entitled to receive notice of the meeting. No other persons shall be entitled to receive notices of general meetings.

Table B

Regulations for Management of a No Liability Company

Preliminary

1. In these regulations: —

The Act means the *Companies (Co-operative) Act 1943*.

When any provision of the Act is referred to, the reference is to that provision as modified by any Statute for the time being in force.

Unless the context otherwise requires, expressions defined in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined.

Members not liable for Calls

2. Nothing in these articles shall render any member of the company liable to be sued for any calls in respect of any shares held by him or for any contribution to the debts and liabilities of the company.

Shares

3. Subject to the provisions, if any, in that behalf of the memorandum of association, and without prejudice to any special rights previously conferred on the holders of existing shares, any share may be issued with such preferred, deferred, or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital or otherwise, as the company may from time to time by special resolution determine, and any preference share may, with the sanction of a special resolution, be issued on the terms that it is, or at the option of the company is liable, to be redeemed.
4. Any shares may be issued at such premiums as the directors may think fit.
5. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class), may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply but so that the necessary quorum shall be 2 persons at least holding or representing by proxy one-third of the issued shares of the class, and that any holder of shares of the class present in person or by proxy may demand a poll.
6. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the seal of the company specifying the share or shares held by him and the amount paid up thereon, provided that in respect of a share or shares held jointly by several persons, the company shall not be bound to issue

more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

7. If a share certificate is defaced, lost, or destroyed, it may be renewed on payment of such fee, if any, not exceeding 10 cents, and on such terms, if any, as to evidence and indemnity, as the directors think fit.

[Regulation 7 amended by No. 113 of 1965 s. 8(1).]

8. No part of the funds of the company shall directly or indirectly be employed in the purchase or dealing in or in loans upon the security of, or in relation to the company's shares, but nothing in this regulation shall prohibit transactions mentioned in the proviso to section 59(2) of the Act.

Calls

9. The directors may from time to time make such calls as they think fit upon the members in respect of all moneys (if any) unpaid on their shares, and not by the conditions of allotment or other special arrangement, made payable at fixed times.
10. The resolution of the directors authorising a call to be made shall be passed not less than 14 days before the day upon which the call shall be payable, and every call shall be deemed to be made at the time when the resolution therefor was passed.
11. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, such sum shall carry interest at the rate of 7% per annum from the day appointed for the payment thereof, to the time of the actual payment or redemption, but the directors shall be at liberty to waive payment of that interest wholly or in part.
12. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, 7%) as may be agreed upon between the member paying the sum in advance and the directors.
13. The company may apply all dividends which may be declared in respect of any shares in payment of any calls made in respect of the same shares remaining unpaid.

Transfer and Transmission of Shares

14. The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee, and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.
15. Shares shall be transferred in the following form, or in any usual or common form which the directors shall approve: I, A.B., of _____, in consideration of the sum of \$ _____ paid to me by C.D. of _____ (hereinafter called "the said transferee") do hereby transfer to the said transferee the share (or shares) numbered _____ in the undertaking called the _____ Company, No Liability, to hold unto the said transferee, subject to the several conditions on which I hold the same; and I, the said transferee, do hereby agree to take the said share (or shares) subject to the conditions aforesaid. As witness our hands the _____ day of _____ .
- Witness to the signatures of, &c.,
16. The directors, and at any branch-office, the local director, or the company's attorney may decline to register any transfer of shares upon which any call or instalment or any money paid by the company on behalf of the holder of the share, shall be due and unpaid.
17. The directors may suspend the registration of transfers during the 14 days immediately preceding the ordinary general meeting in each year. The directors may decline to recognise any instrument of transfer unless —
- (a) a fee not exceeding 50 cents is paid to the company in respect thereof; and
 - (b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

If the directors refuse to register a transfer of any shares, they shall within 28 days after the date on which the transfer was lodged with the company send to the transferee notice of the refusal.

[Regulation 17 amended by No. 113 of 1965 s. 8(1).]

18. The legal personal representatives of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to the share. In the case of a share registered in the names of 2 or more holders the survivors or survivor, or the legal personal representatives of the deceased survivor, shall be the only persons recognised by the company as having any title to the share.
19. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be properly required by the directors, have the right, either to be registered as a member in respect of the share or, instead of being registered himself to make such transfer of the share as the deceased or bankrupt person could have made; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy.
20. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

Conversion of Shares into Stock

21. The company may by ordinary resolution convert any paid-up shares into stock, and reconvert any stock into paid-up shares of any denomination.
22. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as, and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that amount, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.
23. The holders of stock shall, according to the amount of the stock held by them have the same rights, privileges, and advantages as regards dividends, voting at meetings of the company, and other matters, as if

they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company), shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

24. Such of the regulations of the company as are applicable to paid-up shares shall apply to stock, and the words *share* and *shareholder* therein shall include “stock” and “stockholder”.

Alteration of Capital

25. The company may from time to time by special resolution increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.
26. Subject to any direction to the contrary that may be given by the company in general meeting, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the share offered, the directors may dispose of those shares in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.
27. The new shares shall be subject to the same provisions with reference to the payment of calls, transfer, transmissions, forfeiture, and otherwise as the shares in the original share capital.
28. The company may by special resolution —
- (a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
 - (b) subdivide its existing shares, or any of them, into shares of smaller amount than is fixed by the memorandum of association

subject, nevertheless, to the provisions of section 64(1)(iv) of the Act;

- (c) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.
29. The company may by special resolution reduce its share capital and any capital redemption reserve fund in any manner and with, and subject to, any incident authorised, and consent required, by law.

General Meetings

30. A general meeting shall be held once in every calendar year at such time (not being more than 15 months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or in default, at such time in the third month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any 2 members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.
31. The abovementioned general meetings shall be called ordinary general meetings; all other general meetings shall be called extraordinary general meetings.

[Regulation 31 amended by No. 47 of 1949 s. 28(b)(i).]

32. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default may be convened by such requisitionists, as provided by section 116 of the Act. If at any time there are not within the State of Western Australia sufficient directors capable of acting to form a quorum, any director or any 2 members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

[Regulation 32 amended by No. 47 of 1949 s. 28(b)(i).]

Notice of General Meetings

33. Subject to the provisions of section 119(1) of the Act relating to special resolutions, 14 days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day, and the hour of meeting, and, in case of special business, the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but with the consent of all the members entitled to receive notices of some particular meeting, that meeting may be convened by such shorter notice and in such manner as those members may think fit.
34. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any members shall not invalidate the proceedings at any meeting.

Proceedings at General Meetings

35. All business shall be deemed special that is transacted at an extraordinary general meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, the consideration of the accounts, balance sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors and directors.
- [Regulation 35 amended by No. 47 of 1949 s. 28(b)(ii) and (iii).]*
36. No business shall be transacted at any general meeting, unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, 3 members personally present shall be a quorum.
37. If, within 30 minutes from the time appointed for the meeting, a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting the members present shall be a quorum.

38. The chairman, if any, of the board of directors, or in his absence one of the directors to be chosen by the meeting, shall preside as chairman at every general meeting of the company.
39. If there is no such chairman, or director, present within 30 minutes after the time appointed for holding the meeting, or if he is present but is unwilling to act as chairman, the members present may choose some one of their number to be chairman.
40. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 14 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
41. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least 3 members present in person or by proxy entitled to vote or by one member or 2 members so present and entitled, if that member or those 2 members together hold not less than 15% of the paid-up capital of the company, and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.
42. If a poll is duly demanded it shall be taken in such a manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
43. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.
44. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other

question shall be taken at such time as the chairman of the meeting directs.

Votes of Members

45. On a show of hands every member present in person or by attorney shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.
46. In the case of joint holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.
47. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, *curator bonis*, or other person in the nature of a committee or *curator bonis* appointed by that court, and any such committee, *curator bonis*, or other person may, on a poll, vote by proxy.
48. No member shall be entitled to vote at any general meeting in respect of any share unless all calls due and payable on such share have been paid.
49. No member shall be entitled to vote in respect of any share that he has acquired by transfer unless he has been the registered holder of the share in respect of which he claims to vote for at least one clear day previously to the time of holding the meeting at which he proposes to vote.
50. On a poll votes may be given either personally or by proxy.
51. The instrument appointing a proxy shall be in writing under the hand of the appointor or his attorney duly authorised in writing, or, if the appointor is a corporation, either under seal, or under the hand of an officer or attorney duly authorised. A proxy need not be a member of the company.
52. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed, or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than 24 hours before the time for holding the meeting or adjourned meeting, at which the person named in the

instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

53. An instrument appointing a proxy may be in the following form, or any other form which the directors shall approve: —

Company, No Liability

“I _____, of _____ in the State of _____, being a member of the _____ Company, No Liability, hereby appoint _____ of _____ as my proxy, to vote for me and on my behalf at the (ordinary or special, as the case may be) general meeting of the company to be held on the _____ day of _____ and at any adjournment thereof.”
Signed this _____ day of _____

54. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

Corporations acting by Representatives at Meetings

55. Any corporation which is a member of the company may by resolution of its directors or other governing bodies authorise such person as it thinks fit to act as its representative at any meeting of the company or of any class of members of the company, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

Directors

56. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.
57. The remuneration of the directors shall from time to time be determined by the company in general meeting.
58. The qualification of a director shall be the holding of at least one share in the company.

Powers and Duties of Directors

59. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by the Act or by these articles, required to be exercised by the company in general meeting, subject, nevertheless, to any regulation of these articles, to the provisions of the Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting, but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.
60. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term as they may think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation or retirement of directors; but his appointment shall be subject to determination *ipso facto* if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined.
[Regulation 60 amended by No. 47 of 1949 s. 28(b)(iv).]
61. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company, in general meeting.
62. The directors shall cause minutes to be made in books provided for the purpose —
- (a) of all appointments of officers made by the directors;
 - (b) of the names of the directors present at each meeting of the directors and of any committee of the directors;
 - (c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors;
- and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

63. The directors may delegate to any one or more of their number and/or to any one or more of the officers of the company power to operate upon any bank account of the company and may at any time cancel or vary any such delegation.

The Seal

64. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of a director and of the secretary, or such other person as the directors may appoint for the purpose; and that director and the secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Disqualification of Directors

65. The office of director shall be vacated if the director —
- (a) ceases to be a director by virtue of section 147 of the Act; or
 - (b) without the consent of the company in general meeting holds any other office of profit under the company except that of managing director or manager; or
 - (c) becomes bankrupt or takes the benefit whether by assignment, composition, or otherwise, of any law relating to bankrupt or insolvent debtors; or
 - (d) becomes prohibited from being a director by reason of any order made under section 226 or 281 of the Act; or
 - (e) is found lunatic or becomes of unsound mind; or
 - (f) resigns his office by notice in writing to the company; or
 - (g) is directly or indirectly interested in any contract with the company or participates in the profits of any contract with the company:

Provided, however, that a director shall not vacate his office by reason of his being a member of any corporation or firm which has entered into any contract with or done work for the company if he shall have declared the nature of his interest in manner required by section 154 of the Act; but the director shall not vote in respect of any such contract or

work or any matter arising thereout, and if he does so vote his votes shall not be counted.

Rotation of Directors

66. At the first ordinary general meeting of the company the whole of the directors shall retire from office, and at the ordinary general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not 3 or a multiple of 3, then the number nearest one-third, shall retire from office.
67. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who become directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.
68. A retiring director shall be eligible for re-election.
69. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto, and in default the retiring director shall be deemed to have been re-elected unless at such meeting it is resolved not to fill up such vacated office.
70. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.
71. Any casual vacancy occurring in the board of directors, may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.
72. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.
73. The company may by special resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of Directors

74. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director, shall, at any time summon a meeting of the directors.
75. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall when the number of directors exceeds 3, be 3, and when the number of directors does not exceed 3, be 2.
76. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.
77. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within 5 minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.
78. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.
79. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within 5 minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.
80. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes, the chairman shall have a second or casting vote.

81. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends and Reserve

82. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.
83. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.
84. No dividend shall be paid otherwise than out of profits.
85. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid to members according to the nominal amount of the shares held by them respectively.
86. The directors may, before recommending any dividend, set aside out of the profits of the company, such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalising dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company, or be invested in such investments (other than shares of the company), as the directors may from time to time think fit.
87. If several persons are registered as joint holders of any share, any one of them may give effectual receipts for any dividend or other moneys payable on or in respect of the share.
88. Any dividend may be paid by cheque or warrant sent through the post to the registered address of the member or person entitled thereto, or in the case of joint holders to any one of such joint holders at his registered address, or to such person and such address as the member or person entitled or such joint holders, as the case may be, may direct. Every such cheque or warrant shall be made payable to the order of the person

to whom it is sent, or to the order of such other person as the member or person entitled or such joint holders, as the case may be, may direct.

89. No dividend shall bear interest against the company.

Accounts

90. The directors shall cause to be kept proper accounts in which shall be kept full, true, and complete accounts of the affairs and transactions of the company.
91. The accounts shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.
92. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.
93. The directors shall from time to time in accordance with section 126 of the Act, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets, and reports as are referred to in that section.
94. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting together with a copy of the auditors' report shall not less than 14 days before the date of the meeting be sent to all persons entitled to receive notices of general meetings of the company.

Audit

95. Auditors shall be appointed and their duties regulated in accordance with sections 137, 138, and 139 of the Act.

Notices

96. A notice may be given by the company to any member either by advertisement, personally, or by sending it by post to him to his

registered address, or (if he has no registered address within the State of Western Australia) to the address, if any, within the said State supplied by him to the company for the giving of notices to him.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of 24 hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

Any notice given by advertisement under this article shall, in the case of a company having its registered office at Perth, be advertised once at least in each of 2 daily newspapers circulating in Perth, and in the case of a company having its registered office in any place other than in Perth be advertised in one daily newspaper circulating in Perth, and in one newspaper circulating in the locality wherein the registered office of the company is situated, and any notice given by advertisement shall be deemed to be duly given at noon on the first day on which the advertisement appears.

97. If a member has no registered address within the State of Western Australia and has not supplied to the company an address within the said State for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company shall be deemed to be duly given to him at noon on the day on which the advertisement appears.
98. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register of members in respect of the share.
99. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, within the State of Western Australia supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

100. Notice of every general meeting shall be given in some manner hereinbefore authorised to —
- (a) every member except those members who (having no registered address within the State of Western Australia) have not supplied to the company an address within the said State for the giving of notices to them and also to —
 - (b) every person entitled to a share in consequence of the death or bankruptcy of a member who, but for his death or bankruptcy, would be entitled to receive notice of the meeting. No other persons shall be entitled to receive notices of general meetings.

Third Schedule

[s. 35]

Implied Powers of Companies

The word *company* in this table when not applied to the company in respect whereof the following powers are implied, shall be deemed to include any partnership or other body of persons, whether incorporated or not incorporated, and whether domiciled in Western Australia or elsewhere, and whether formed or to be formed.

1. To purchase, take on lease or on hire, or in exchange or otherwise to acquire in any manner howsoever, for such tenure and upon such conditions and terms as may seem fit —
 - (a) any estates or interests in any lands, freehold, leasehold or any other tenure, whether situate in the State of Western Australia or elsewhere, and any easements, licenses, rights or privileges connected with or in relation to any real estate;
 - (b) any plant, machinery, apparatus, implements, tools, appliances, minerals, metals, ores, stone, timber, coal, clay, merchandise of any kind, ships, vessels, locomotives, rolling-stock, and personal property of every description whatsoever.
 - (c) any concessions, rights, options, licenses, privileges, or advantages from any authorities, supreme, municipal, local or otherwise.
2. To acquire or undertake the whole or any part of the business property and liabilities of any persons or company carrying on any business which the company is authorised to carry on or possessed of property suitable for the purposes of the company, and to undertake all or any part of the liabilities of any such person, firm, or company.
3. To enter into partnership or into any arrangement for the sharing profits, union of interests, co-operation, joint adventure, reciprocal concession or otherwise, or amalgamate with any person or company carrying on, or engaged in or about to carry on or engage in any business or transaction which the company is authorised to carry on or engage in or any business or transaction capable of being conducted or entered upon so as to directly or indirectly benefit the company.

4. To apply for, purchase, rent or acquire, maintain and prolong any patents, brevets d'inventions or inventions calculated to benefit or facilitate the operations of the company use, exercise, develop, and to sell or grant licenses in respect thereof or otherwise turn to account such patents, brevets d'inventions or inventions.
5. To subscribe for, purchase or otherwise acquire and hold, underwrite, sell on commission, dispose of, and deal in shares, debentures, debenture stock, or securities of any other company or corporation or any Government or authority, supreme, municipal, local, or otherwise.
6. To carry on any business or operations which may seem to the company capable of being conveniently carried on with advantage or calculated, directly or indirectly, to enhance the value of or render profitable any of the company's property or rights for the time being.
7. To develop and turn to account any real or personal property acquired by, or in which the company is interested and in particular by laying out, constructing, improving, altering, pulling down, decorating, maintaining, furnishing, fitting up, and improving the same or any part thereof or any buildings or erections thereon and by fencing, draining, irrigating, clearing or planting any property owned, leased or managed by the company, or in which it is otherwise interested, and thereon to erect, construct and maintain any buildings, improvements, dams, drains, water schemes, roads, bridges, or works whatsoever.
8. To promote, form, subsidise, and establish any company or companies, corporation, or corporations for the purpose of acquiring all or any of the property, rights and liabilities of the company, or for any other purposes which may seem directly or indirectly calculated to benefit the company.
9. To make loans or advances, undertake obligations and liabilities, and execute bonds and guarantees of any kind whether on behalf of the company or otherwise, and in particular for shareholders not being directors or for any persons or parties dealing with the company.
10. To invest and deal with the moneys of the company not immediately required upon such securities, and in such manner, as may from time to time be determined.

11. To discount and purchase bills, notes and other negotiable securities, and to guarantee the payment of moneys and the performance of any contracts or obligations.
12. To raise or borrow money upon such terms and in such manner and upon such securities as the company shall think fit and to secure the same or the repayment or performance of any debt, liability, contract, or engagement incurred or to be entered into by the company in any way and in particular by the issue of debentures or debenture stock, or by giving mortgages, charges, or securities charged upon or over all or any of the company's real and personal property (both present and future) including its uncalled capital, and to purchase, pay off, or redeem any such securities.
13. To make, draw, accept endorse, execute and negotiate bills of exchange, promissory notes, drafts, bills of lading, bonds, guarantees, and all or any negotiable or transferable instruments.
14. To pay for any property rights or concessions acquired by the company, or any services rendered to the company, or satisfy any debt or liability of the company, either wholly or partly in cash or in debentures or in shares with or without preferred or deferred rights in respect of dividend or repayment of capital, or otherwise, or in securities or partly in one mode and partly in another or others and generally in such form or manner as the company may deem advisable.
15. To obtain any Act of Parliament for enabling the company to carry any of its objects into effect, or for effecting any modification of the company's constitution or for any other purpose which may seem expedient, and to oppose any proceedings or applications which may seem calculated directly or indirectly to prejudice the company's interests.
16. To establish and form or assist in establishing and forming, and to support, aid, and join any association, union or body calculated in any way to benefit the company, and to subscribe to the same such money as the company may think expedient, and to agree to be bound by the decision and actions of and to do or join in doing all such acts and things as may be decided upon by the governing authorities of any such association, union, or body in accordance with the rules or articles thereof.

17. To give donations, subsidies, or contributions to any association, union, or body, whether industrial, social, political, patriotic, or otherwise, and to establish and support or aid in the establishment and support of associations, institutions, funds or trusts calculated to benefit employees or ex-employees of the company or the dependants or connections of such persons, and to grant pensions and allowances and to make payments towards insurance, and to subscribe or guarantee money for charitable or benevolent objects, or for any exhibition, or for any public, general, or useful object.
18. To distribute any assets of the company among the members in specie, whether by way of dividends, bonus, or return of capital or otherwise, subject, however, to such sanction or confirmation (if any) as is required by law.
19. To amalgamate the business of the company with that of any other company in any manner and on any terms which may be considered advisable.
20. To pay all costs, charges, and expenses incurred or sustained in or about the formation, registration and promotion of the company or which the company shall consider to be preliminary, including therein the cost of advertising, commissions for underwriting, brokerage, printing and stationery.
21. To remunerate any person or company for services rendered or to be rendered in placing or assisting in placing or guaranteeing the placing of any of the shares in the company's capital or any debentures, debenture stock, or other securities of the company, or in or about the formation or promotion of the company or the conduct of its business.
22. To sell or dispose of or grant options over the undertaking of the company or any part thereof or of any real or leasehold estate belonging to the company for such consideration as the company may think fit, and in particular for shares, debentures or securities of any other company having its objects altogether or in part similar to those of the company.
23. To relinquish, abandon, surrender, or give up, with or without any consideration therefor, any rights, concessions or other property of the company.

Fourth Schedule

[s. 37 and 409]

**Form of Statement in lieu of Prospectus to be delivered to
Registrar by a Proprietary Company on becoming a Public
Company**

The Companies (Co-operative) Act 1943

Statement in lieu of prospectus delivered for registration by (insert the name of
the company).

Pursuant to section 37 of the *Companies (Co-operative) Act 1943*. Delivered for
registration by

The nominal share capital of the company	\$		
Divided into	Shares of \$		each.
	” ”		”
	” ”		”
Amount (if any) of above capital which consists of redeemable preference shares	Shares of \$		each.
The date on or before which these shares are, or are liable, to be redeemed			
Names, descriptions and addresses of directors or proposed directors			
Amount of shares issued	Shares.		
Amount of commissions paid in connection therewith			
Amount of discount, if any, allowed on the issue of any shares, or so much thereof as has not been written off at the date of the statement			
Unless more than one year has elapsed since the date on which the company was entitled to commence business —			
Amount of preliminary expenses	\$		

Companies (Co-operative) Act 1943

Fourth Schedule

Form of Statement in lieu of Prospectus to be delivered to Registrar by a Proprietary Company on becoming a Public Company

Amount paid to any promoter	Name of promoter. Amount \$
Consideration for the payment	Consideration.
If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively	
Number and amount of shares and debentures issued within the 2 years preceding the date of this statement as fully or partly paid up otherwise than for cash or agreed to be so issued at the date of this statement	1. Shares of \$ fully paid. 2. Shares upon which \$ per share credited as paid.
Consideration for the issue of those shares or debentures	3. Debenture \$ 4. Consideration of: —
Names and address of vendors of property (1) purchased or acquired by the company within the 2 years preceding the date of this statement or (2) agreed or proposed to be purchased or acquired by the company	
Amount paid or payable in cash, shares, or paid or payable to each separate vendor	
Amount paid or payable in cash, shares, or debentures for any such property, specifying the amount paid or payable for goodwill	Total purchase price \$ Cash \$ Shares \$ Debentures \$ Goodwill \$

Dates of, and parties to, every material contract
(other than contracts entered into in the ordinary
course of business or entered into more than
2 years before the delivery of this statement)

Time and place at which the contracts or copies
thereof may be inspected

Names and address of the auditors of the company

Full particulars of the nature and extent of the
interest of every director in any property purchased
or acquired by the company within the 2 years
preceding the date of this statement or proposed to
be purchased or acquired by the company, or,
where the interest of such a director consists in
being a partner in a firm, the nature and extent of
the interest of the firm, with a statement of all

sums paid or agreed to be paid to him or to the
firm in cash or shares, or otherwise, by any person
either to induce him to become or to qualify him
as, a director, or otherwise for services rendered or
to be rendered to the company by him or by the
firm

Rates of the dividends (if any) paid by the
company in respect of each class of shares in the
company in each of the 3 financial years
immediately preceding the date of this statement or
since the incorporation of the company, whichever
period is the shorter

Particulars of the cases in which no dividends have
been paid in respect of any class of shares in any
of these years

If any of the unissued shares or debentures are to
be applied in the purchase of any business the
amount, as certified by the persons by whom the
accounts of the business have been audited, of the
net profits of the business in respect of each of the
3 financial years immediately preceding the date of

Companies (Co-operative) Act 1943

Fourth Schedule

Form of Statement in lieu of Prospectus to be delivered to Registrar by a Proprietary Company on becoming a Public Company

this statement, provided that in the case of a business which has been carried on for less than 3 years and the accounts of which have only been made up in respect of 2 years or one year, the above requirement shall have effect as if references to 2 years or one year, as the case may be, were substituted for references to 3 years, and in any such case the statement shall say how long the business to be acquired has been carried on

(Signatures of the persons abovenamed as directors or proposed directors or of their agents authorised in writing.)

Date

Note.— In this Form the expression *vendor* includes a vendor as defined in Part C of section 50, and the expression *financial year* has the meaning assigned to it in that part of the said section.

Fifth Schedule

[s. 54.]

Form of Statement in lieu of Prospectus to be delivered to Registrar by a Company which does not issue a Prospectus or which does not go to allotment on a Prospectus issued

The Companies (Co-operative) Act 1943

Statement in lieu of Prospectus delivered for Registration by (insert the name of the company).

Pursuant to section 54 of the *Companies (Co-operative) Act 1943*.

Delivered for registration by

The nominal share capital of the company

\$

Divided into Shares of \$ each.

” ” ”

” ” ”

Amount (if any) of above capital which consists of redeemable preference shares Shares of \$ each.

The date on or before which these shares are, or are liable to be redeemed

Names, descriptions and addresses of directors or proposed directors

Minimum subscription (if any) fixed by the memorandum or articles of association on which the company may proceed to allotment

If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively

Companies (Co-operative) Act 1943

Fifth Schedule

Form of Statement in lieu of Prospectus to be delivered to Registrar by a Company which does not issue a Prospectus or which does not go to allotment on a Prospectus issued

Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash	1. Shares of \$ fully paid. 2. Shares upon which \$ per share credited as paid. 3. Debenture \$
The consideration for the intended issue of those shares and debentures	4. Consideration: —
Names and address of vendors of property purchased or acquired, or proposed to be purchased or acquired by the company	
Amount (in cash, shares, or debentures) payable to each separate vendor	
Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill	Total purchase price \$ Cash \$ Shares \$ Debentures \$ Goodwill \$
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company; or	Amount Paid Amount Payable
Rate of the commission	Rate per cent.
The number of shares (if any) which persons have agreed for a commission to subscribe absolutely	
Estimated amount of preliminary expenses	\$
Amount paid or intended to be paid to any promoter	Name of promoter.
Consideration for the payment	Amount \$ Consideration:

Form of Statement in lieu of Prospectus to be delivered to Registrar by a Company which does not issue a Prospectus or which does not go to allotment on a Prospectus issued

Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than 2 years before the delivery of this statement)

Time and place at which the contracts or copies thereof may be inspected

Names and address of the auditors of the company (if any)

Full particulars of the nature and extend of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become or qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company

If it is proposed to acquire any business, the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the 3 financial years immediately preceding the date of this statement provided that in the case of a business which has been carried on for less than 3 years and the accounts of which have only been made up in respect of 2 years or one year the above requirement shall have effect as if references to 2 years or one year, as the case may be, were substituted for references to 3 years, and in any such case the statement shall say how long the business to be acquired has been carried on

Companies (Co-operative) Act 1943

Fifth Schedule

Form of Statement in lieu of Prospectus to be delivered to Registrar by a Company which does not issue a Prospectus or which does not go to allotment on a Prospectus issued

(Signatures of the persons abovenamed as directors or proposed directors, or of their agents authorised in writing.)

.....
.....

Date

Note. — In this Schedule the expression *vendor* includes a vendor as defined in Part C of section 47, and the expression *financial year* has the meaning assigned to it in that Part of the said section.

Sixth Schedule

[s. 112 and 126 to 134]

Form A

Form of Annual Return of a Company having a Share Capital

Annual return of the Limited made up to 31 March 20.....

The address of the registered office of the company is as follows: —

.....

Summary of Share Capital and Shares.

Nominal share capital \$..... divided into (a) Shares of each

Total number of shares taken up (a) to the
..... day of 20....., being the date
of the return (which number must agree with the total
shown in the list as held by existing members)

Number of shares issued subject to payment wholly in
cash

Number of shares issued as fully paid up otherwise
than in cash

Number of shares issued as partly paid up to the
extent of per share otherwise than in
cash

(b) Number of shares (if any)
issued at a discount

Total amount of discount on the issue of shares which
has not been written off at the date of this return \$

(c) There has been called up on each of
..... shares \$

(c) There has been called up on each of
..... shares \$

(c) There has been called up on each of
..... shares \$

Companies (Co-operative) Act 1943

Sixth Schedule

Form of Annual Return of a Company having a Share
Capital

(d) Total amount of calls received, including
payments on application and allotment \$

Total amount (if any) agreed to be considered as paid
on shares which have been issued as
fully paid up otherwise than in cash \$

Total amount (if any) agreed to be considered as paid
on shares which have been issued as
partly paid up to the extent of per share
otherwise than in cash \$

Total amount of calls unpaid \$

Total amount of the sums (if any) paid by way of
commission in respect of any shares or debentures or
allowed by way of discount in respect of any
debentures since the date of the last return \$

Total number of shares forfeited \$

Total amount paid (if any) on shares forfeited \$

Total amount of the indebtedness of the company in
respect of all mortgages and charges affecting the
property of the company \$

Name(s) of the auditor(s) of the company at the date
of this return:

.....

Date of holding last annual meeting

List of holders of debentures which do not constitute a
charge on assets of company, and same particulars as
required in relation to shares

(a) *Where there are shares of different kinds or amounts (e.g., preference
and ordinary or \$2 and 10 cents) state the number and nominal values
separately.*

(b) *If the shares are of different kinds state them separately.*

(c) *Where various amounts have been called, or there are shares of different
kinds, state them separately.*

(d) *Include what has been received on forfeited as well as on existing shares.*

Lists of the names, addresses and occupations of all members of the company and of all persons who have ceased to be members since the date of the last return or (in the case of a first return) the incorporation of the company must accompany this return.

Copy of last audited balance sheet of the company.

Note. — This return must include a written copy, certified by a director or by the manager or secretary of the company to be a true copy, of the last balance sheet which has been audited by the company’s auditors (including every document required by law to be annexed thereto), together with a copy of the report of the auditors thereon (certified as aforesaid), and if any such balance sheet is in a foreign language there must also be annexed to it a translation thereof in English certified in the prescribed manner to be a correct translation. If the said last balance sheet did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets there must be made such additions to and corrections in the said copy as would have been required to be made in the said balance sheet in order to make it comply with the said requirements, and the fact that the said copy has been so amended must be stated thereon.

PROPRIETARY COMPANY

Certificates to be given by a Proprietary Company.

A. “I certify that the company has not since the date of the (e) last annual return issued any invitation to the public to subscribe for any shares, stock, bonds, or debentures of the company”

..... (Signature).
(State whether Director or Manager).

(e) *If necessary strike out the words “last annual return” and substitute therefore the words “incorporation of the company,” or “commencement of the Companies (Co-operative) Act 1943,” as the case may be.*

Companies (Co-operative) Act 1943

Sixth Schedule

Form of Annual Return of a Company having a Share Capital

B. Should the number of members of the company exceed 21 the following certificate is also required: —

“I certify that the excess of members of the company above 21 consists wholly of persons who are in the employment of the company and/or of persons who, having been formerly in the employment of the company were while in such employment, and have continued after the determination of such employment, to be members of the company.”

..... (Signature).
(State whether Director or Manager).

The return must be signed at the end by a director or by the manager of the company.

Delivered for filing by

Particulars of the (f) Directors of the Limited, at the date of the annual return.

(g) The present Christian Name or Names and Surname.	Any former Christian Name or Names or Surname.	Nationality.	Nationality of Origin (if other than the present nationality).	Usual Residential Address.	(h) Other Business Occupation (if any). If none, state so.

(f) “Director” includes any person who occupies the position of a director by whatever name called and any person in accordance with whose directions or instructions the directors of a company are accustomed to act.

(g) In the case of a corporation its corporate name and registered or principal office should be shown.

(h) In the case of an individual who has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships must be entered.

List of persons holding shares in the Limited, on theday of 20....., showing their names and addresses, and an account of the shares so held.

N.B. — If the names in this list are not arranged in alphabetical order, an index sufficient to enable the name of any person in the list to be readily found must be annexed to this list.

The word “shares” includes unsecured debentures, bonds and stock.

Folio in Register Ledger containing Particulars.	Names, Addresses and Occupations.				(i) Number of Shares held by Existing Members at Date of Return (j)	Remarks (k)
	Surname.	Christian Name.	Address.	Occupation.		

(Signature)
(State whether Director or Manager.)

- (i) *The aggregate number of shares held, and not the distinctive numbers, must be stated, and the column must be added up throughout so as to make one total to agree with that stated in the summary to have been taken up.*
- (j) *When the shares are of different classes, this column must be sub-divided so that the number of each class held may be shown separately. Where any shares have been converted into stock the amount of stock held by each member must be shown.*
- (k) *In the case of shares acquired since the date of the last return or (in the case of the first return) of the incorporation of the company the date of the acquisition of the shares and any other explanatory details should appear in the remarks column.*

Names, addresses, and occupations of all persons who have ceased to be members during the period since the date of the last return, or in the case of a first return, since the incorporation of the company and the number of shares

Companies (Co-operative) Act 1943

Sixth Schedule

Form of Annual Return of a Company having a Share Capital

held by each of the members at the date they ceased to be members, specifying the types or kinds of shares.

Folio in Register Ledger containing Particulars.	NAMES, ADDRESSES AND OCCUPATIONS.				NUMBER OF SHARES HELD.	
	Surname.	Christian Names.	Address.	Occupation.	Pref.	Ord.

(Signature)
(State whether Director or Manager.)

[Form A amended in Gazette 5 Nov 1947 p. 2022-4; amended by No. 113 of 1965 s. 8(1).]

Form B

Companies (Co-operative) Act 1943

Balance Sheet of (being a banking Company).
 at

Dr.	\$		Cr.	\$
To Capital paid up (viz: — Preference shares paid in cash to		By coin, bullion and cash in hand or at bankers		
Ordinary shares paid up to . per share)		” Government, local government, and other public stocks and funds and other debentures		
” Notes in circulation		” Bills and remittances in transitu.		
” Bills in circulation		” Notes and bills of other banks		
” Government deposits —		” Balances due from other banks ..		
Not bearing interest		” Stamps		
Bearing interest				
” Other deposits (and interest accrued) —				
Not bearing interest		” Real Estate, consisting of bank premises		
Bearing interest		” Other real estate		
” Balances due to other banks		” Furniture and fittings		
” Contingent liabilities as per contra —		” Bills, discounted and other advances, after provisions for bad or doubtful debts		
Debentures or debenture stock outstanding		” Money due to bank other than as above-mentioned, after provision for bad or doubtful debts		
Debts due on judgment		” Liabilities of customers and others in respect of contingent liabilities, as per contra		
Debts due and secured otherwise than by debentures or debenture stock		” Shares in other companies		
” Amounts due on contracts not included in any of the above-mentioned items		” Other assets		
” Any other liabilities				
” Reserve fund				
” Profit and loss				

I (manager or public officer or by whatever designation the principal officer is styled) do solemnly and sincerely declare —

That the reserve fund (if any) and accumulated profits (if any) are used in the business (or how otherwise).

That the accompanying statement and balance sheet of the bank is, to the best of my knowledge and belief true in every particular.

(Names, addresses and occupations of the persons who are the directors of the company at the date of the statement.)

Companies (Co-operative) Act 1943

Sixth Schedule

Form of Annual Return of a Company having a Share
Capital

And I make this solemn declaration under the provisions of section 106 of the
Evidence Act 1906.

Declared at _____ in the State of Western Australia,
this _____ day of _____

We _____ of _____ being directors of
the _____ do hereby certify that in our opinion the above
balance sheet is true and correct, and is drawn up so as to exhibit a true and
correct view of the state of the company's affairs.

Dated at _____ this _____ day of _____

Note. — In the preparation of the foregoing balance sheet regard should also be
had to the requirements of the following sections of the Act, namely: —
Section 58 (commissions and discounts), section 59 (outstanding loans),
section 60 (statement *re* redeemable preference shares), section 61 (discount on
shares), section 68 (*re* interest on share capital), section 92 (*re* re-issued
debentures), section 127 (preliminary expenses, etc.), section 129 (subsidiary
companies).

[Form B amended by No. 14 of 1996 s. 4.]

Form C

Companies (Co-operative) Act 1943

Company or Society, Limited (not being a banking Company).

Balance sheet at 20

<i>Liabilities</i>	\$	<i>Assets</i>	\$
*Capital		‡Government, local government, and other public debentures or stock ...	
†Reserves (for particulars of specific investments, if any, see contra) ..		‡Freehold property	
Profit and loss		Leasehold property, showing the provision made for depreciation and ultimate extinction of the asset	
Debentures		‡Plant and machinery	
Mortgages		‡Fixtures, fittings, and furniture	
Deposits with accrued interest		‡Stock in trade	
Sundry creditors —		Sundry debtors (after making provision for all debts considered bad or doubtful)	
Amounts owing on open accounts		Bills and notes receivable (after making provision for all debts considered bad or doubtful)	
Amounts owing on judgment		‡Shares in other companies	
Bills and notes payable		Amount at credit with bankers	
Liabilities not otherwise enumerated		Cash in hand	
Contingent liabilities		‡Other items (specifying them)	
		Contingent assets	

I, (manager or public officer, or by whatever designation the principal officer is styled) hereby certify: —

That the reserves (if any) and accumulated profits (if any) are used in the business (or how otherwise).

That the accompanying profit and loss account and balance sheet of the company is, to the best of my knowledge and belief, true in every particular.

That the names, addresses, and occupations of persons who are the directors of the company at the date of this certificate are: —

Dated at this day of

We, of , and of , being the directors of the Limited, do hereby certify that, in our opinion, the above balance sheet is true and correct, and is drawn up so as to exhibit a correct view of the state of the company's affairs.

Seventh Schedule

[s. 113.]

Form of Annual Return of Company not having a Share Capital

Annual return of the _____ Company, Limited, made up to
the _____ day of _____ 20 _____ .

The address of the registered office of the company is as follows: —

The total amount of the indebtedness of the company in respect of all
mortgages and charges which, or a list of which, are required to be
registered with the Registrar of Companies under the *Companies*
(Co-operative) Act 1943

\$

particulars of the * Directors of the
Company, Limited, at the date of the annual return.

†The present Christian Name or Names and Surname.	Any former Christian Name or Names or Surname.	Nationality.	Nationality of Origin (if other than the present Nationality).	Usual Residential Address.	‡Other Business Occupation (if any). If none, state so.

* “Director” includes any person who occupies the position of a director by whatever name called and any person in accordance with whose directions or instructions the directors of a company are accustomed to act.

† In the case of a corporation its corporate name and registered or principal office should be shown.

‡ In the case of an individual who has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships must be entered.

Copy of last audited balance sheet of the company.

Note. — This return must include a written copy, certified by a director or by the manager or secretary of the company to be a true copy, of the last balance

Companies (Co-operative) Act 1943

Seventh Schedule

Form of Annual Return of Company not having a Share Capital

sheet which has been audited by the company's auditors (including every document required by law to be annexed thereto), together with a copy of the report of the auditors thereon (certified as aforesaid), and if any such balance sheet is in a foreign language there must also be annexed to it a translation thereof in English certified in the prescribed manner to be a correct translation. If the said balance sheet did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets, there must be made such additions to and corrections in the said copy as would have been required to be made in the said balance sheet in order to make it comply with the said requirements, and the fact that the said copy has been so amended must be stated thereon.

The return must be signed at the end by a director or by the manager or secretary of the company.

Delivered for filing by —

List of persons who, on 31 March 20 , were members of the company and of persons who since the date of the last return (or in case of first return since date of incorporation) have ceased to be members.

Folio in Register of Members.	Names, Addresses, and Occupations.				Date when became Member.	Date when ceased to be Member and how.	Remarks.
	Surname.	Christian Name.	Address.	Occupation			

(Signature)
(State whether Director or Manager or Secretary)

Eighth Schedule

[s. 136]

Form of Statement referred to in Section 136 of the Act

Companies (Co-operative) Act 1943

Return made pursuant to section 136

The liability of the members is (limited), or as the case may be.

*The capital of the company is _____ divided into
shares of _____ each. †

The number of shares issued is †

Calls to the amount of _____ dollars per share have been made
under which the sum of _____ dollars has been received.

That the liabilities of the company on 1 January (or July) last were: —

Debts owing to sundry persons by the company: —

On judgments \$
On specialties \$
On notes or bills \$
On simple contracts \$
On estimated liabilities \$

That the assets of the company on that day were: —

Government securities (stating them) \$
Bills of exchange and promissory notes \$
Cash at the bankers \$
Other securities and assets \$

* If the company has no capital divided into shares, the portion of the statement relating to capital and shares must be omitted.

† If shares are of different types distinguish.

I, (Manager, or as the case may be) do solemnly and sincerely declare that the above return is true in every particular; and I make this declaration under the provisions of section 106 of the *Evidence Act 1906*.

Ninth Schedule

[s. 266]

Provisions which do not apply in the case of a Winding-up subject to supervision of the Court

Meetings of creditors and contributories (s. 197).

Statement of Company's affairs to be submitted to Official Liquidator (s. 198).

Report by Official Liquidator (s. 199).

Power of Court to appoint Liquidator and appointment and powers of
provisional Liquidator (s. 196).

General provisions as to Liquidators (s. 200, except subsection (9)).

Exercise and control of Liquidators' powers (s. 204).

Books to be kept by Liquidator (s. 205).

Payments of Liquidator into bank (s. 206).

Audit of Liquidators' accounts (s. 207).

Release of Liquidators (s. 209).

Meeting of creditors and contributories to determine whether Committee of
Inspection shall be appointed (ss. 197 and 210).

Constitution and proceedings of Committee of Inspection (s. 211).

Appointment of Special Manager (s. 220).

Power to order public examination of promoters, directors, etc. (s. 225).

Power to restrain fraudulent persons from managing companies (s. 226).

Delegation to Liquidator of certain powers of Court (s. 229).

Tenth Schedule — Fees to be paid to the Registrar

[s. 409(3)]

[Heading inserted in Gazette 23 Jun 2009 p. 2434.]

Item	Matter	Fee (\$)
1.	On submission of the memorandum of a company	274.00
2.	For the registration of a company	274.00
3.	For every authorisation by the Governor under the provisos to section 28(7)	73.00
4.	For every approval of the Registrar to the change of name of a company	73.00
5.	On lodgment of request to the Registrar to exercise the powers conferred by section 297, 299 or 300 (Application fee)	38.25
6.	For every act done by the Registrar as representing a defunct company under section 297, 299 or 300 (Application fee)	73.00
7.	On late lodgment, registration or filing of any document under this Act, in addition to any other fee — (a) if lodged, registered or filed within one month after the period prescribed by law	14.00
	(b) if lodged, registered or filed more than one month after the period prescribed by law, in addition to the fee payable in paragraph (a)	42.00
	<i>The Registrar, if satisfied that just cause existed for the late lodgment, may waive in whole or in part the additional fee under paragraph (b).</i>	

Companies (Co-operative) Act 1943**Tenth Schedule**

Fees to be paid to the Registrar

Item	Matter	Fee (\$)
8.	For every application for the reservation of a name	24.70
9.	For every application for extending the time of such reservation	24.70
10.	On filing any statement in lieu of prospectus	35.50
11.	On filing any prospectus	608.00
12.	On filing an annual return of a company	79.00
13.	For every application for the consent of the Minister under section 46(3a)(a)	73.00
14.	For every application for the consent of the Minister under section 173(2)	73.00
15.	For every application for exemption from the provisions of section 369(1)	73.00
16.	On lodging any other application	24.70
17.	For every certificate issued by the Registrar	9.30
18.	For every inquiry as to the availability of any name sought to be adopted by a company — for every name the subject of the inquiry	8.60
19.	For production at the Office of State Revenue of documents lodged by or in relation to a company	13.50
20.	(a) For every inspection of a document or documents filed or lodged with the Registrar by or in relation to a company or of any transparency or reproduction of such document or documents	7.60

Item	Matter	Fee (\$)
	(b) For the supply of an uncertified copy or print of any document where the fee prescribed by paragraph (a) has been paid — for each page of the copy or print	1.30
	(c) For the supply of an uncertified copy or print of a document without inspection having been made — For the first 2 pages of the copy or print	5.25
	For each additional page	1.30
	(d) For every inspection of any document filed or lodged with the Registrar not being an inspection in respect of which paragraph (a) applies	2.35
	(e) For every written inquiry involving a search for any document filed or lodged by or in relation to a company	9.70
	(f) For the supply of an uncertified copy or print of a document where the fee prescribed by paragraph (e) has been paid — for each page of the copy or print	1.20
21.	(a) For certifying a copy of or extract from any document filed or lodged with the Registrar of which a typewritten or printed copy is supplied by an applicant — For one page	6.00
	For each additional page	2.40
	(b) For the supply of a certified copy or print of any document filed or lodged with the Registrar — For one page	8.60
	For each additional page	4.85

Companies (Co-operative) Act 1943

Tenth Schedule Fees to be paid to the Registrar

Item	Matter	Fee (\$)
22.	For the deposit of any book or document under section 288 (provided that the total fees to be paid by a liquidator under section 288 in respect of any one company shall not exceed \$10.00)	3.75

[Tenth Schedule inserted in Gazette 23 Jun 2009 p. 2434-6.]

Eleventh Schedule

[s. 407]

Rules for Proceedings for Winding-up Companies by Order of the Court*

* [See also *Companies (Liquidators' Accounts) Rules 1949* published in *Gazette* dated 24 June 1949.]

Petition

1. Every petition for winding-up a company by order of the Court shall be intituled in the matter of the *Companies (Co-operative) Act 1943*, and of the company to which the petition relates, describing the company by its most usual name or firm.
2. Every such petition shall be advertised 14 clear days before the hearing, as follows: —
 - (a) In the case of a company whose registered office, or if there be no such office, then whose principal, or last known principal, place of business is or was situated within 16 kilometres of the General Post Office in Perth, once at least in the *Government Gazette*, and once at least in one daily Perth newspaper.
 - (b) In the case of any other company, once at least in the *Government Gazette* and a daily Perth newspaper and once at least in one local newspaper circulating in the district in which such office or place of business is or was situated.

The advertisement shall state the day on which the petition was presented, and the name and address of the petitioner, and of his solicitor, and the Perth agent of his solicitor, if any.

3. Subject to the Act every such petition shall, unless presented by the company, be served at the registered office, if any, of the company, and, if there be no registered office, then at the principal or last known principal place of business of the company, if any such can be found, upon any member, officer, or servant of the company there; or, in case no such member, officer, or servant can be found there, then by being left at such registered office or principal place of business or by being served on such member or members of the company as the Court may direct.

4. Every petition for the winding-up of any company by order of the Court shall be verified by an affidavit referring thereto, in the form or to the effect set forth in the table of forms annexed hereto. Such affidavit shall be made by the petitioner, or by one of the petitioners, if there be more than one; or in case the petition is presented by the company, by some director and secretary, or other principal officer thereof, and shall be sworn after and filed within 7 days after the petition is presented, and shall be sufficient *prima facie* evidence of the statements in the petition.
5. Every creditor, contributory, or shareholder shall be entitled to be furnished by the solicitor to the petitioner with a copy of such petition, within 24 hours after requiring the same, on paying at the rate of 5 cents per common law folio for such copy.

[Rule 5 amended by No. 113 of 1965 s. 8(1).]

Order to wind-up a Company

6. Every order made for the winding-up of a company shall, within 14 days after the date thereof, be advertised by the petitioner once in the *Government Gazette*, and shall be served upon such persons (if any) and in such manner as the Court may direct.
7. A Judge's summons shall be taken out to proceed with the winding-up of the company, and be served upon all parties who may have appeared upon the hearing of the petition. Upon the return of such summons a time shall, if the Judge thinks fit, be fixed for the appointment of an official liquidator.

Official Liquidators

8. The Official Liquidator shall, whenever required by a Judge, satisfy the Judge that his sureties are living and resident in Western Australia, and have not become bankrupt, or assigned their estate for the benefit of, or compounded with, their creditors; and in default thereof, may be required to enter into fresh security within such time as shall be directed.
9. Every appointment of an official liquidator shall be advertised in such manner as the Judge shall direct, immediately after the appointment has been made.

10. Where it is desired to appoint provisionally an official liquidator, an application for that purpose may, at any time after the presentation of the petition for an order for winding-up the company, be made by summons, without advertisement or notice to any party, unless the Judge otherwise directs.
11. In the case of the death, removal, or resignation of an official liquidator, another shall be appointed in his place in the same manner as directed in the case of a first appointment; and the proceedings for that purpose may be taken by any party interested.
12. The official liquidator shall, with all convenient speed after he is appointed, proceed to make up, continue, complete, and rectify the books of account of the company, and shall provide and keep such books of account as may be necessary for the purposes aforesaid, and for showing the debts and credits of the company, including a ledger, which shall contain the separate accounts of the contributories, and in which every contributory shall be debited from time to time with the amount payable by him in respect of any call to be made, as provided by the said Act and these rules.

Proof of Debts

13. For the purpose of ascertaining the debts and claims due from the company, and of requiring the creditors to come in and prove their debts or claims an advertisement shall be issued by the official liquidator, and such advertisement shall fix a time for the creditors to send their names and addresses, and the particulars of their debts or claims, and the names and addresses of their solicitors (if any) to the official liquidator, and shall appoint a day for determining as to the allowance of such debts or claims.
14. The creditors need not attend upon the determination, nor prove their debts or claims, unless they are required to do so by notice from the official liquidator, but upon such notice being given, they are to come in and prove their debts, within a time to be therein specified.
15. The official liquidator shall investigate the debts and claims sent to him, and ascertain, as far as he is able, which of such debts and claims are justly due from the company.
16. At the time appointed for determining as to the allowance or otherwise of the debts and claims, or at any adjournment thereof, the official

liquidator may either allow the debts and claims, or may require the same, or any of them, to be proved by the claimants by affidavit, and adjourn the determination thereon to a time to be then fixed, and the official liquidator shall give notice to the creditors whose debts or claims have been so allowed, of such allowance.

17. The official liquidator shall give notice to the creditors whose debts or claims have not been allowed that they are required to prove the same by affidavit by a day to be therein named, being not less than 7 days after such notice, and to attend at a time to be therein named, being the time appointed by the advertisement, or by adjournment (as the case may be), for determining as to the allowance of such debts and claims.
18. The result of the determination upon debts and claims shall be stated in a certificate made by the official liquidator, and certificates as to any of such debts and claims may be made from time to time. All such certificates shall state whether the debts or claims are allowed or disallowed, and whether allowed as against any particular assets, or in any other qualified or special manner, and notice shall be given by the official liquidator to the several creditors who have filed affidavits of the allowance or disallowance of their respective claims.

List of Contributories

19. The official liquidator shall, with all convenient speed after his appointment, make out a list of the contributories of the company, if not a no liability company, and such list shall be verified by the affidavit of the official liquidator, and shall, so far as is practicable, state the respective addresses of, and the number of shares, or extent of interest to be attributed to each contributory, and distinguish the several classes of contributories, and such list may, from time to time, be varied or added to by the official liquidator.
20. When authorised under the Act so to do, the official liquidator shall appoint a time to settle the list of contributories, and shall give notice in writing to every person included in such list of such appointment, stating in what character, and for what number of shares or interest, such person is included in the list, and where any variation or addition to such list is at any time made by the official liquidator, a similar notice shall be given to every person to whom such variation or addition applies. All such notices shall be served 4 clear days before the day appointed to settle such list, or such variation or addition.

21. The result of the settlement of the list of contributories shall be stated in a certificate by the official liquidator, and certificates may be made from time to time, for the purpose of stating the result of such settlement down to any particular time, or as to any particular person, or stating any variation of the list.

Sales of Property

22. The official liquidator may sell any real or personal property belonging to the company either by public auction or private contract, either in one lot or in several lots, and the official liquidator shall do all acts and things necessary for effecting and completing such sale.

Payment in of Moneys and Deposit of Securities

23. If any official liquidator does not pay all moneys received by him into some bank approved by a Judge within 7 days next after the receipt thereof, such official liquidator shall, unless the Judge otherwise directs, be charged in his account with \$2 for any sum amounting to \$200, and a proportionate sum for any larger amount retained in his hands beyond such period, for every 7 days during which the same have been so retained; and the Judge may also, for any such retention, disallow his salary or remuneration or any part thereof.

[Rule 23 amended by No. 113 of 1965 s. 8(1).]

24. All bills, notes, and other securities payable to the company, or to the official liquidator thereof, shall, as soon as they come to the hands of the official liquidator, be deposited by him in some bank as aforesaid for the purpose of being presented by the bank for acceptance and payment, or for payment only, as the case may be.

Investment and Payment out of Moneys

25. All bills, notes, and other securities paid and delivered into a bank shall be delivered out upon a request, signed by the official liquidator; and moneys placed to the account of the official liquidator shall be paid out upon cheques or orders signed by the official liquidator.
26. All or any part of the money for the time being standing to the credit of the account of the official liquidator at any bank and not immediately required for the purposes of the winding-up, may be invested in the name of the official liquidator in the purchase of Government securities,

or in such other manner as trust funds are directed or authorised by statute to be invested.

Direction or Sanction of the Judge

27. Should the official liquidator require the direction or sanction of the Judge for any proceeding or act to be taken or done by him, the same shall be obtained upon summons and an order shall be drawn up thereon unless the Judge shall otherwise direct.
28. When an advertisement is required for any purpose, except where these rules otherwise direct, the advertisement shall be inserted once in the *Government Gazette* and in such other newspaper or newspapers, and for such number of times, as a Judge may direct. A Judge may in such cases, as he thinks fit, dispense with any advertisement required by these rules.

Filing of Documents

29. All orders, exhibits, memorandums, admissions, and office copies of affidavits, examinations, depositions, certificates, and all other documents relating to the winding-up of any company, shall be filed by the official liquidator, as far as may be in one continuous file, and such file shall be kept by the official liquidator or otherwise as the Judge may from time to time direct. Every contributory or shareholder of the company and every creditor thereof whose debt or claim has been allowed, shall be entitled at all reasonable times to inspect such file free of charge and at his own expense to take copies or extracts from any of the documents comprised therein, or to be furnished with such copies or extracts at a rate not exceeding 5 cents per common law folio and such file shall be produced in Court or before the Judge and otherwise as occasion requires.

[Rule 29 amended by No. 113 of 1965 s. 8(1).]

Admission of Documents

30. Any party to any proceeding in Court or chambers relating to the winding-up of a company may, by notice in writing, call on any other party therein competent to admit the same, to admit any document, saving all just exceptions, and, in case of refusal or neglect so to admit, the cost of proving the document shall be paid by the party so neglecting or refusing, unless the Judge is of opinion that the refusal to

admit was reasonable, and no costs of proving any document shall be allowed unless such notice has been given, except in cases where the omission to give notice is, in the opinion of the taxing officer, a saving of expense.

Attendance and Appearance of Parties

31. Every shareholder of the company, and every person for the time being on the list of contributories of the company, and every person having a debt or claim against the company allowed by the official liquidator, shall be at liberty at his own expense to attend the proceedings before the Judge and shall be entitled, upon payment of the costs occasioned thereby, to have notice of all such proceedings as he shall, by written request, desire to have notice of; but if the Judge be of opinion that the attendance of any such person upon any proceeding has occasioned any additional costs, which ought not to be borne by the funds of the company, he may direct such costs, or a gross sum in lieu thereof, to be paid by such person and such person shall not be entitled to attend any further proceedings until he has paid the same.
32. The Judge may from time to time appoint any one or more of the creditors, contributories or shareholders, as he thinks fit, to represent before him at the expense of the company, all or any class of the creditors, contributories, or shareholders upon any question as to a compromise with any of the creditors, contributories or shareholders, or in or about any other proceedings before him relating to the winding-up of the company, and may remove the person or persons so appointed. In case more than one person shall be so appointed they shall, if they desire to appoint a solicitor, unite in employing the same solicitor to represent them.
33. No creditor, contributory, or shareholder shall be entitled to attend any proceedings at the chambers of the Judge unless and until he has entered in a book to be kept there for that purpose, his name and address, and the name and address of his solicitor (if any) and upon any change of his address or of his solicitor, his new address and the name and address of his new solicitor. The address of any such solicitor shall be in Perth.

Provisional Liquidator

34. All the above rules relating to an official liquidator shall, so far as circumstances will permit and subject in each case to the direction of the Judge, apply to a provisional liquidator.

Services of Summonses, Notices, etc.

35. Subject to the Act, services upon creditors, contributories or shareholders may be effected (except when personal service is required) by sending the notice or a copy of the summons or order or other proceeding, through the post in a prepaid letter addressed to the solicitor (if any) of the party to be served or otherwise to the party himself, at the address entered or last entered pursuant to the above Rule No. 33, or if no such entry has been made, then as to a contributory or shareholder, to his last known address or place of abode in the State and such notice or copy of summons, order or other proceeding shall be considered as served at the time the same ought to be delivered in the due course of delivery by the post office, and notwithstanding the same may be returned by the post office.
36. Service on a creditor in a case where the last preceding rule does not apply, or on a contributory or shareholder in any special case, may be effected in such manner as a Judge shall direct.
37. No service under these rules shall be deemed invalid by reason of the christian name or any of the christian names of the person on whom service is sought to be made being omitted, or designated by initial letters in the list of contributories, or in the summons, notice, order or other document wherein the name of any creditor, contributory or shareholder is contained, if the Judge is satisfied that such service has been in other respects sufficient.

Termination of Winding-up

[38-40. Deleted in Gazette 24 Jun 1949 p. 1373.]

41. Where no mode of proceeding is prescribed by these rules for any application authorised under the said Act to be made to the Court, and there is no mode of proceeding defined according to the general practice of the Court, such application may be made by summons in chambers or in such other manner as the Court may direct.

42. The Court shall have power, notwithstanding these rules, to enlarge the time for doing any act, or taking any proceeding although such time may have expired, to abridge any such time, to adjourn or review any proceeding and to give any direction as to the course of proceeding.

Forms

43. The forms set forth or referred to in the Table of Forms annexed to these rules, or forms to the like effect with such variations as the circumstances of each case may require, may be used for the respective purposes mentioned in the titles of such forms.

Forms

No. 1. — Advertisement of Petition.

In the matter of the *Companies (Co-operative) Act 1943*, and of the Company.

Notice is hereby given that a petition for an order for winding-up the abovenamed company was on the day of , 20 , presented to by the said company (or A.B. of), a creditor (or contributory or shareholder of the said company (or as the case may be). And the said petition is directed to be heard on the day of 20 , and any creditor, contributory, or shareholder of the said company desiring to oppose the making of an order for the winding-up of the said company, under the above Act, should appear at the time of hearing, by himself or his counsel, for that purpose; and a copy of the petition will be furnished to any creditor, contributory or shareholder of the said company requiring the same, by the undersigned on payment of the regular charge for the same.

C. and D., of, etc. (agents for E. and F., of, etc.), Solicitors for the petitioner.

No. 2. — Affidavit verifying Petition.

In the Supreme Court

In the matter, etc.

I, A.B., of, etc., make oath and say, that such of the statements in the petition now produced and shown to me, and marked with the letter A, as relate to my own acts and deeds are true, and such of the said statements as relate to the acts and deeds of any other person or persons I believe to be true.

Sworn, etc.

Companies (Co-operative) Act 1943

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Order of the Court

No. 3. — Order by the Court for Winding-up.

In the Supreme Court, day the day of , 20 .

In the matter, etc.

Upon the petition of the abovenamed company (or A.B., of, etc., a creditor (or contributory or shareholder) of the abovenamed company), on the day of , 20 , preferred unto and upon hearing counsel for the petitioner and for , and upon reading the said petition and the affidavit of (the said petitioner) filed, etc., verifying the said petition and the affidavit of L.M., filed the day of , 20 the *Government Gazette* of the day of the newspaper, of the day of (enter any other papers), each containing an advertisement of the said petition (enter any other evidence) His Honour (or this Court) doth order that the said company be wound up under the provisions of the *Companies (Co-operative) Act 1943*.

No. 4. — Advertisement of Order to Wind-up.

In the Supreme Court.

In the matter, etc.

By an order made by in the above matter dated the day of , 20 , on the petition of the abovenamed company (or A.B., of) it was ordered that, etc. (as in order).

C. and D., of, etc.,
Solicitor for the said petitioner.

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No. 7. — Order for Payment of Money or Delivery of
Books, etc., to Official Liquidator.

In the Supreme Court.

In the matter, etc.

Upon the application of, etc., and on reading, etc., His Honour
doth order that A.B. of, etc., do, within 4 days after
service hereof, pay to (or deliver, convey, surrender or transfer to, or into the
hands of) R.P., the official liquidator of the said company, at the office of the
said R.P., situate at, etc., the sum of \$, being the amount of debt appearing
to be due from the said A.B. on his account with the said company (or any sum
or balance books, papers, estate or effects, or specifically describe the property)
now being in the hands of the said A.B., and to which the said company is
prima facie entitled (or otherwise as the case may be).

Dated the day of , 20 .

No. 8. — Advertisement of appointment of Official Liquidator.

In the matter, etc.

His Honour has, by an order dated the day of ,
20 , appointed R.P., of , to be official liquidator of the
abovenamed company.

Dated the day of , 20 .

H.B.T., Associate.

No. 9. — Advertisement for Creditors.

In the matter, etc.

The creditors of the abovenamed company are required, on or before the day of _____, 20____, to send their names and addresses, and the particulars of their debts or claims, and the names and addresses of their solicitors (if any) to R.P., of _____, the official liquidator of the said company, and, if so required by notice in writing from the said official liquidator, are, by their solicitors or otherwise, to prove their said debts or claims at _____, the office of the official liquidator, _____ at such time as shall be specified in such notice, or in default thereof they will be excluded from the benefit of any distribution made before such debts are proved.

_____ day the _____ day of _____, 20____, at _____ o'clock in the _____ noon, at the said office, is appointed for determining as to the allowance of the debts and claims.

Dated this _____ day of _____, 20____, at _____

Official Liquidator.

No. 10. — Notice to Creditor of Allowance of Debt.

In the matter, etc. _____ (Place and date.)

Sir, — The debt claimed by you in this matter has been allowed by me at the sum of \$ _____. (If part only allowed, add, If you claim to have a larger sum allowed, you are hereby required to prove the further amount claimed, etc., as in the next form.)

I am, etc.,
R.P., Official Liquidator.

To Mr. P.R.

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No. 11. — Notice to Creditor to Prove Debt.

In the matter, etc.

You are hereby required to prove the debt claimed by you against the abovenamed company, by filing an affidavit, and giving notice thereof to me on or before the day of next, and you are to attend personally or by your solicitor at , the office of the official liquidator, on the day of , 20 , at o'clock in the noon, being the time appointed for determining as to the allowance of the claim.

Dated this day of , 20 .

To Mr. S.T.

R.P., Official Liquidator.

No. 12. — Affidavit of Creditor in proof of Debts.

In the Supreme Court.

In the matter, etc.

I, S.T., of etc., make oath and say as follows: —

1. The abovenamed company was on the day of 20 , the date of the order of winding-up the same, and still is, justly and truly indebted to me in the sum of \$ for, etc. (describe shortly the nature of the debt and exhibit any security for it; and in the case of a trade debt, exhibit a bill of parcels and verify the reasonableness of the charges, as in proving a debt in a suit).
2. I have not, nor hath, nor have any person or persons by my order or to my knowledge or belief, for my use received the said sum of \$ or any part thereof, or any security or satisfaction for the same or any part thereof (if any security, add) except the said (describe security) hereinbefore mentioned or referred to.

Sworn, etc.

No. 13. — Notice to Creditor of Allowance of Debt on Affidavit.

In the matter, etc. (Place and date.)

Sir, — The debt claimed by you in this matter, and in respect of which you have filed an affidavit, has been allowed by me at the sum of \$ _____ (If part only allowed, add, If you claim to have a larger sum allowed, you must apply to the Supreme Court or a Judge thereof).

To Mr. P.R. I am, etc.,
(Address). R.P., etc.,
Official Liquidator.

No. 14. — Notice to Creditor of Disallowance of
Debt after Affidavit Filed.

In the matter, etc. (Place and date.)

Sir. — The debt claimed by you in this matter, and in respect of which you have filed an affidavit, has been disallowed, by me. If you claim to have the same allowed, you must apply to the Supreme Court or a Judge thereof.

I am, etc.,
Official Liquidator.

To Mr.
(Address).

No. 15. — Certificate of Official Liquidator as to Debts and Claims.

In the Supreme Court.

In the matter, etc.

I hereby certify that the result of my determination upon debts and claims against the abovenamed company, brought in pursuant to the advertisement issued in that behalf, dated the _____ day of _____, 20____, so far as such determination has, up to the date of this certificate, been proceeded with, is as follows: —

The debts and claims which have been allowed are set forth in the First Schedule hereto, and are due to the persons therein named, and amount altogether to \$ _____.

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The claims set forth in the Second Schedule hereto have been brought in by the persons therein named, and have been disallowed.

The First Schedule above Referred to.

Debts and Claims allowed.

No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Debt.	Total Due.
1	J.L.	street, Perth, Stationer Principal Interest at \$ per cent. per annum from 20 , to 20 , date of order for winding-up	On bill of exchange dated, etc. \$ \$	\$ c.
2	W.P.	15 street, Perth, Coal Merchant Principal	Goods Sold – \$ 0	
			Total \$	

The Second Schedule above Referred to.

Claims Disallowed.

No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Claim.	Amount Claimed.

Dated this day of , 20 .

R.P., Official Liquidator.

No. 16. — Notice to Contributories of Appointment to
Settle List of Contributories.

In the matter of, etc.

I, _____, of _____, the official liquidator of the abovenamed company, have appointed the _____ day of _____, 20____, at _____ of the clock in the _____ noon, at _____, to settle the list of the contributories of the abovenamed company, and you are included in such list in the character and for the number of shares (or extent of interest) stated below; and if no sufficient cause is shown by you to the contrary, at the time and place aforesaid, the list will be settled by me, including you therein.

Dated this _____ day of _____, 20____.

R.P., Official Liquidator.

To Mr A.B. (and to Mr. C.D., his solicitor).

No. on List.	Name.	Address.	Description.	In what Character included.	Number of Share (or Extent of Interest).

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Order of the Court

No. 17. — Certificate of Official Liquidator of Settlement of
the List of Contributories.

In the matter, etc.

I, _____, the official liquidator of the above-named company, do hereby certify that the result of the settlement of the list of contributories of the abovenamed company on the _____ day of _____, 20____, so far as the said list has been settled up to the date of this certificate, is as follows: —

1. The several persons whose names are set forth in the second column of the first schedule hereto have been included in the said list of contributories as contributories of the said company in respect of the number of shares (or extent of interest) set opposite the names of such contributories respectively in the said schedule.

I have, in the first part of the said schedule, distinguished such of the said several persons included in the said list as are contributories in their own right.

I have, in the second part of the said schedule, distinguished such of the said several persons included in the said list as are contributories as being representatives of or being liable for the debts of others.

2. The several persons whose names are set forth in the second column of the second schedule hereto have been excluded from the said list of contributories.

3. I have, in the seventh columns of the said first and second schedules respectively, set forth opposite the name of each of the said several persons the date when such person was included in, or excluded from, the said list of contributories.

First Schedule above Referred to.

First Part — Contributories in their own right.

Serial No. in List.	Name.	Address.	Description.	In what Character included.	No. of Shares (or Extent of Interest).	Date when included in the List.

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*Second Part — Contributories as being Representatives of, or
liable for, the Debts of others.*

Serial No. in List.	Name.	Address.	Description.	In what Character included.	No. of Shares (or Extent of Interest).	Date when included in the List.

Second Schedule above Referred to.

Serial No. in List.	Name.	Address.	Description.	In what Character proposed to be included.	No. of Shares (or Extent of Interest).	Date when excluded from the List.

Dated this day of , 20 .

R.P., Official Liquidator.

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Eleventh Schedule Rules for Proceedings for Winding-up Companies by
Order of the Court

No. 18. — Affidavit in support of Application for Order for
Payment of Call due from Contributories.

In the Supreme Court.

In the matter, etc.

I, R.P., of, etc., the official liquidator of the abovenamed company, make oath,
and say as follows: —

1. None of the contributories of the said company whose names are set forth in the schedule hereunto annexed, marked A, have paid or caused to be paid, the respective sums set opposite their respective names in the said schedule, and which sums are the respective amounts now due from them respectively in respect of the call of \$ per share, made herein on the day of , 20 .
2. The respective amounts or sums set opposite the names of such contributories respectively in such schedule are the true amounts due and owing by such contributories respectively in respect of the said call.
3. (State how notice of call was given to each contributory, or show this by a separate affidavit.)

Sworn, etc.

A.

The Schedule above Referred to.

No. on List.	Name.	Address.	Description.	In what Character included.	Amount due.

No. 19. — Order for Payment of Call due from a Contributory.

In the Supreme Court.

In the matter, etc.

Upon the application of the official liquidator of the abovenamed company, and upon reading an affidavit of _____ filed the _____ day of _____, 20____, and an affidavit of the said official liquidator, filed the _____ day of _____, 20____ : His Honour _____ doth order that C.D., of, etc. (or E.F., of, etc., the representative of L.M., late of, etc., deceased), one of the contributories of the said company (or if against several contributories, the several persons named in the second column of the schedule to this order, being respectively contributories of the said company), do on or before the _____ day of _____, 20____, (or within 4 days after service of this order) pay into the Bank of _____ to the account of the official liquidator of the _____ company (or to A.B., the official liquidator of the said company, at his office) _____ the sum of \$ _____ (if against a representative, add, out of the assets of the said L.M., deceased, in his hands as such representative, as aforesaid, to be administered in a due course of administration, if the said E.F. has in his hands so much to be administered, or if against several contributories, the several sums of money set opposite to their respective names in the sixth column of the said schedule hereto) such sum (or sums) being the amount (or amounts) due from the said C.D. (or L.M.) (or the said several persons respectively) in respect of the call of \$ _____ per share, made by the said official liquidator on the _____ day of _____, 20____.

Dated this _____ day of _____, 20____.

Schedule Referred to in the foregoing Order

No. on List.	Name.	Address.	Description.	In what Character included.	Amount due.
					\$ _____ c.

No. 20. — Memorandum of Agreement of Compromise
with a Contributory.

In the matter, etc.

Memorandum of agreement entered into this day of ,
20 , between R.P., of, etc., the official liquidator of the abovenamed
company, of the one part, and S.B., of etc., one of the contributories of the said
company, of the other part.

Whereas the said S.B. has been settled on the list of contributories of the said
company, as a contributory in respect of shares in the said
company, and whereas a call of \$ per share was made on all the
contributories of the said company, and there is now due, from the said S.B. to
the said company, the sum of \$, in respect of the said call. And
whereas the said S.B. has proposed to pay to the said official liquidator the sum
of , by way of compromise, and in satisfaction and discharge
of the said sum of , and of all liability whatsoever as a
contributory of the said company. And whereas the said official liquidator
having investigated the affairs of the said S.B., and believing that such
compromise will be beneficial to the said company, hath, in exercise of the
power for that purpose given to him by the above statute, agreed to accept the
same, subject to the conditions and agreements hereinafter contained: Now it is
hereby agreed, by and between the said parties hereto: —

1st. That the said S.B. shall, within day from this date, pay to the said
official liquidator the said sum of \$ and when thereto required shall do
and execute all such acts and deeds as may be necessary for transferring, or
surrendering and releasing, to the said official liquidator, on behalf of the said
company, or in such manner as the said official liquidator may direct, the said
shares held by the said S.B. in the said company, and all claim and demand
whatsoever which the said S.B. has, or may have, against the said company in
respect of the said shares or the distribution of the assets of the said company or
otherwise howsoever.

2nd. That the said sum of \$, and the transfer or surrender and release of
the said shares and interest of the said A.B., as aforesaid, shall be accepted by
the said official liquidator as, and be deemed and taken to give to the said S.B.,
full and complete discharge from all calls and liabilities, claims and demands
whatsoever which the said company, or the official liquidator thereof, now has
or may hereafter have or be entitled to against the said S.B. in respect of his

being, or having been, the holder of the said shares, or otherwise as a contributory of the said company.

R.P., Official Liquidator.

S.B.

Witness to the signatures of the said
R.P., and S.B., C.D., of, etc.

No. 21. — Appearance Book.

In the matter, etc.

Appearance Book.

Date when Appearance Entered.	Party's Name.	Whether Creditor, Contributory, Shareholder.	If he appears in Person, his address for Service.	If he appears by a Solicitor, his Solicitor's Name.	Solicitor's Address.	Amount of Debt (or Number of Shares).

[Forms 22 and 23 deleted in Gazette 24 Jun 1949 p. 1373.]

Rules for meetings of creditors, contributories, or shareholders of a company under liquidation.

1. The liquidator of the company shall summon any meeting of creditors, contributories or shareholders of the company, by giving not less than 14 days' notice of the time and place thereof in the *Government Gazette*, and in daily newspapers published in Perth. At least 14 days' notice of such meeting shall also be sent by post to every person appearing to be a creditor of the company in the case of a meeting of creditors, and to every contributory or shareholder in the case of a meeting of contributories or shareholders. The notice shall state the object of the meeting unless a Judge otherwise directs.
2. The meeting shall be held at such place as is in the opinion of the liquidator most convenient for the majority of the creditors or contributories or shareholders, as the case may be.

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Eleventh Schedule Rules for Proceedings for Winding-up Companies by
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3. The liquidator, or some person nominated by him or by the Court, shall be the chairman at the meetings.
4. A person shall not be entitled to vote as a creditor unless he has duly proved a debt to be due to him from the company, and the proof has been duly lodged before the time appointed for the meeting.
5. A creditor shall not vote in respect of any unliquidated or contingent debt, or any other debt the value of which is not ascertained.
6. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him after deducting the value of his security. He may, however, give up the security and thereupon he may vote in respect of the whole sum due to him. If he votes in respect of his whole debt he shall be deemed to have surrendered his security unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.
7. A creditor shall not vote in respect of any debt secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the company, and who has not been adjudicated bankrupt or made an assignment for the benefit of or compounded with his creditors, as a security in his hands, and to estimate the value thereof and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.
8. The liquidator may, within 28 days after a proof estimating the value of a security as aforesaid has been made use of in voting at any meeting, require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated, with an addition thereto of 20%: Provided that where a creditor has put a value on such security he may, at any time before he has been required to give up such security as aforesaid, correct such valuation by a new proof and deduct such new value from his debt, but in that case the liquidator may require him to give up the security for the benefit of the creditors generally on payment of such new value only.
9. The chairman of the meeting shall have power to admit or reject a proof for the purpose of voting but his decision shall be subject to appeal to the Court. If he is in doubt whether the proof of a creditor should be admitted

or rejected he shall mark the proof as objected to and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

10. A creditor, contributory or shareholder may vote either in person or by proxy.
11. Every instrument of proxy shall be in the form at the foot of these rules, or in a similar form with variations as required, and shall be issued by the liquidator.
12. An instrument of proxy shall not be used unless it is deposited with the liquidator before the meeting at which it is to be used.
13. A creditor, contributory, or shareholder may appoint the liquidator to act as his proxy.
14. The chairman of the meeting may, with the consent of the meeting, adjourn the meeting from time to time and from place to place.
15. A meeting shall not be competent to act for any purpose, except the election of a chairman, and the adjournment of the meeting, unless there are present or represented thereat at least 3 creditors, contributories, or shareholders or all the creditors, contributories or shareholders if their number does not exceed 3.
16. If within half an hour from the time appointed for the meeting a quorum of creditors, contributories, or shareholders is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other day as the chairman may appoint, not being less than 7 nor more than 28 days.
17. The chairman of the meeting shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for that purpose, and the minutes shall be signed by him, or by the chairman of the next ensuing meeting, or by the liquidator. Such minutes, or the chairman's certificate of the result of the meeting, shall be sufficient evidence of the result as stated in such minutes or certificate.

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Eleventh Schedule

Rules for Proceedings for Winding-up Companies by
Order of the Court

Forms

The following forms, or forms to the like effect, may be used, with such variations as circumstances require: —

**Appointment of Proxy to Vote at Meeting of Creditors,
Contributories, or Shareholders**

In the matter, etc.

I, W.S., of _____, being a creditor (or contributory, or shareholder) of the abovenamed company, hereby appoint _____, of _____, as my proxy, to vote for me and on my behalf at the meeting of the creditors (or contributories, or shareholders) of the said company to be held on the _____ day of _____, and at any adjournment thereof.

As witness my hand this _____ day of _____, 20____.

Signed by the said W.S. in the presence of: — _____ W.S., J.M.,
of, etc.

**Chairman's Certificate of result of Meeting of Creditors, Contributories, or
Shareholders**

In the matter, etc.

I, H.T., chairman of a meeting of the creditors (or contributories or shareholders) of the abovenamed company, summoned by advertisement (or notice), dated the _____ day of _____, 20____, and held on the _____ day of _____, 20____, at _____, do hereby certify the result of such meeting as follows: The said meeting was attended, either personally or by proxy, by _____ creditors, who have proved debts against the said company amounting in the whole to the value of \$ _____ (or by _____ contributories, or shareholders, holding in the whole _____ shares in the said company, and entitled respectively, by the regulations of the company, to the number of votes hereinafter mentioned). The question submitted to the said meeting was whether the creditors (or contributories, or shareholders) of the said company approved by the proposal of the official liquidator of the said company that, etc. (as the case may be), and wished that such proposal should be adopted and carried into effect. The said meeting was unanimously of opinion that the said proposal should (or should not) be adopted and carried into effect; or the result of the voting upon such question was as follows: The

undermentioned creditors (or contributories or shareholders) voted in favour of the said proposal being adopted and carried into effect: —

Name of Creditor (or Contributory or Shareholder).	Address.	Value of Debt (or Number of Shares).	Number of Votes conferred on each Contributory (or Shareholder) by the Regulations of the Company.

The undermentioned creditors (or contributories or shareholders) voted against the said proposal being adopted and carried into effect: —

Name of Creditor (or Contributory or Shareholder).	Address.	Value of Debt (or Number of Shares).	Number of Votes conferred on each Contributory (or Shareholder) by the Regulations of the Company.

Dated this day of , 20 .

(Signed) H.T., Chairman.

*[Eleventh Schedule amended in Gazette 24 Jun 1949 p. 1373;
amended by No. 113 of 1965 s. 8(1).]*

I, _____ (manager or public officer, or by whatever designation the principal officer is styled) do solemnly and sincerely declare: —

That the accompanying statements and balance sheet of the company are, to the best of my knowledge and belief, true in every particular.

That the names, addresses and occupations of persons who are the directors of the company at the date of this statement are: —

That the following is a complete list of all purchases and sales of securities by the company during the period to which the accounts relate together with a statement of the total amount of brokerage paid by the company during that period and the proportion thereof paid to any broker who, or any employee or nominee of whom, is a director, manager or officer of the company: —

That the following is a complete list of all the investments of the company (g): —

And I make this solemn declaration by virtue of the provisions of section 106 of the *Evidence Act 1906*.

Declared at _____, in the State of Western Australia
this _____ day of _____

We, _____ of _____, and _____
being directors of the _____ Company, Limited, do
hereby certify that, in our opinion, the above balance sheet and statements are
true and correct and are drawn up so as to exhibit a correct view of the state of
the company's affairs.

Dated at _____ this _____ day of _____

(a) Items not applicable may be omitted.

Other applicable items required by the *Companies (Co-operative) Act 1943*, to be included in the balance sheet must be included.

(b) The balance sheet must contain a summary of authorised share capital and of issued share capital distinguishing between the various classes of shares issued, showing the amount or amounts called up thereon and the arrears of calls unpaid and specifying what amount of capital has been paid up in money and what amount otherwise than in money.

If the company has issued redeemable preference shares the balance sheet must include a statement specifying what part of the issued capital consists of such shares and the date on or before which they are, or are liable to be redeemed.

If the company has issued shares at a discount the balance sheet must contain particulars of the discount or of so much thereof as has not been written off.

- (c) If more than one, state them separately.
- (d) Where any liability of the company is secured otherwise than by operation of law on any assets of the company, the balance sheet must include a statement that the liability is so secured, but need not specify the assets on which the liability is secured.
- (e) The balance sheet must contain a statement of the aggregate market value of each class of investment.
- (f) Basis of value, whether at cost price, market price or otherwise, to be stated.
- (g) The list must show the names and quantities of the investments.

Note. — In the preparation of the foregoing balance sheet regard should be had to the requirements of the following sections of the Act, namely, section 58 (commissions and discounts), section 59 (outstanding loans), section 60 (statement *re* redeemable preference shares), section 61 (discount on shares), section 68 (*re* interest on share capital), section 92 (*re* re-issued debentures), section 127 (preliminary expenses, etc.), section 129 (subsidiary companies).

[Twelfth Schedule amended by No. 14 of 1996 s. 4.]

Thirteenth Schedule

[s. 409]

Sundry Forms

Form A. — (Sections 23 and 409).

Memorandum of Association of a Limited or
No Liability Company

Memorandum of Association of “The _____ Company, Limited” (or
“The _____ Company, No Liability”).

1. The name of the company is “The _____ Company, Limited” (or “The _____ Company, No Liability”).
2. The objects for which the company is established are (set forth objects).
3. The liability of the members is limited (or the members take no liability, or the liability of ordinary members is limited, but the liability of the directors, or manager, or managing director, is unlimited).
4. * The capital of the company is _____ dollars, divided into _____ shares of _____ dollars each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Dated the _____ day of _____, 20____.

Names, Addresses, and Descriptions of Subscribers.	Number of Shares taken by each Subscriber.	Witness.
Total Shares taken		

* If the company has no capital divided into shares the portion of the statement relating to capital and shares must be omitted.

Form B. — (Sections 23 and 409).

*Memorandum and Articles of Association of an
Unlimited Company having a Share Capital*

Memorandum of Association of “The _____ Company.”

1. The name of the company is “The _____ Company.”
2. The objects for which the company is established are

We, the several persons whose names are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Dated the _____ day of _____, 20____.

Names, Addresses, and Description of Subscribers.	Witness.

Articles of Association of the _____ Company.

1. The capital of the company is _____ dollars, divided into _____ shares of _____ dollars each.
2. All the articles of Table A set out in the Second Schedule to the *Companies (Co-operative) Act 1943*, shall be deemed to be incorporated with these articles, and to apply to the company (or, insert the articles of the company if Table A is not adopted, mentioning such articles of Table A (if any) as are adopted).

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the company set opposite to our respective names.

Dated the _____ day of _____, 20____.

Names, Addresses, and Descriptions of Subscribers.	Number of Shares taken by Subscriber.	Witness.
Total Shares taken		

Form C. — (Sections 140 and 409).

Summons under section 140.

In the matter of the *Companies (Co-operative) Act 1943* —
and

In the matter of

Company, Limited.

To _____ of _____
you are required to attend at _____ on the _____ day of _____,
20____, at _____ o'clock in the _____ noon for the
purpose of answering all questions I may put to you in relation to the
abovenamed company and its business.

And you are required to bring with you and produce to me at the time and place
aforesaid and all other deeds, documents and papers in your custody or power
relating to the said company or business.

Dated the _____ day of _____, 20____.

Inspector.

N.B. — If you fail to attend the place and time aforesaid or to bring with you
the deeds, documents, or papers above-mentioned you will be liable to a penalty
of \$40 for each offence.

[Form C amended by No. 113 of 1965 s. 8(1).]

Form D. — (Sections 329 and 409).

The *Companies (Co-operative) Act 1943*.

I, the undersigned _____ being the duly appointed agent of (here state the name of the company or society) do hereby solemnly and sincerely declare that the said company proposes (is) carrying on business in Western Australia.

The name of the agent of the said company or society is (here state full Christian name and Surname).

I am the person named in the memorandum of appointment dated _____ by the _____ Company, Limited, filed herewith.

The address of the said agent in Western Australia is at (here state the city, town, or place where situate, and the name of street and number of building, if any).

The name of the company or society is (here state name).

The place where the said company or society was formed or incorporated is _____ and the situation of its head office is at (state name of street, etc.).

And I make this solemn declaration under and by virtue of section 106 of the *Evidence Act 1906*.

Signature

Declared at _____ this _____ day of _____, 20____, before me,

A Justice of the Peace.

Form E. — (Sections 331 and 409).

The *Companies (Co-operative) Act 1943*.

Certificate of Registration.

This is to certify that a company called the _____
formed and incorporated in _____ and carrying on business in
Western Australia, did, on the _____ day of _____, 20____, duly register
under Part XI of the *Companies (Co-operative) Act 1943*.

The name and place of abode or business of the person appointed by such
company as agent to carry on its business in Western Australia are: —

The registered office of the said company is situate at _____

Given under my hand this _____ day of _____, 20____.

Registrar.

Form F. — (Sections 350 and 409).

The *Companies (Co-operative) Act 1943*.

Application of Shareholder in Foreign Company to be
placed upon the Local Register

I, _____, of _____ being the person mentioned
in the annexed certificate, as the registered holder of _____ shares,
numbered _____ to _____ inclusive, in the
incorporated in _____, do hereby apply to be placed on the local Register
as proprietor of the said shares.

Dated this _____ day of _____, 20____.

Witness.

Form G. — (Sections 350 and 409).

The *Companies (Co-operative) Act 1943*.

Certificate of Deposit of Shares lodged for
Transfer to the Local Register

This is to certify that _____, of _____ did
on the _____ day of _____, 20____, deposit with me at the
Registered Office, in the State of Western Australia, a certificate of
shares, numbered _____ to _____ inclusive, in the _____, for the
purpose of having the same transferred to the local Register under the above
Act.

As witness my hand, at _____, this _____ day of _____, 20____.

For the Company,
A.B.
(Attorney).

Note. — This Deposit-note must be returned to the Office before a certificate of
the shares under the above Act can be issued, but it is not to be considered as a
guarantee that the shares will be so transferred.

Form H. — (Sections 397 and 409).

Form of Certificate to Documents.

Certificate for Individual Documents.

Correct for the purposes of the *Companies (Co-operative) Act 1943*, relating
to* _____
Companies

Dated the _____ day of _____, 20____.

* Set out the type or class of company to which the certificate relates, such as
“Limited”, “No Liability”, “Proprietary”, “Unlimited”, “Company required to
be registered under Part XI”, “Company applying to be registered under Part X,
as a Company with Limited Liability”, or as the case may be.

Certificate for group of Documents.

The following documents filed herewith, comprising: —

(Set out same identifying by description and date).

are correct, etc., as in form above.

Form I. — (Sections 413 and 409).

The *Companies (Co-operative) Act 1943*.

It is hereby certified that the within-written document has been proved to the satisfaction of _____ to be a true copy of the original (here describe the document as “Memorandum of Association”, “Articles of Association”, or as the case may require) of the Company (Limited) and that the _____ day of _____ is the date upon which the said original was filed with the Registrar.

Dated this _____ day of _____, 20 ____ .

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Notes

¹ This reprint is a compilation as at 7 August 2009 of the *Companies (Co-operative) Act 1943* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Companies Act 1943</i> ¹⁵	36 of 1943 (7 Geo. VI No. 31)	3 Dec 1943	29 Dec 1947 (see s. 1 and <i>Gazette</i> 7 Nov 1947 p. 2062)
<i>Companies Act Amendment Act 1946</i>	31 of 1946 (10 and 11 Geo. VI No. 31)	24 Jan 1947	24 Jan 1947
<i>The Companies Regulations 1947</i> r. 37 published in <i>Gazette</i> 5 Nov 1947 p. 2017-56			5 Nov 1947
<i>Companies Act Amendment Act 1947</i>	32 of 1947 (11 Geo. VI No. 32)	1 Dec 1947	1 Dec 1947
<i>Companies Act Amendment Act (No. 2) 1947</i>	84 of 1947 (11 and 12 Geo. VI No. 84)	14 Jan 1948	14 Jan 1948
<i>Companies (Liquidators' Accounts) Rules 1949</i> r. 2 published in <i>Gazette</i> 24 Jun 1949 p. 1373-6			24 Jun 1949
<i>Companies Act Amendment Act 1949</i>	47 of 1949 (13 Geo. VI No. 133)	26 Oct 1949	26 Oct 1949
<i>Companies Act Amendment Act 1951</i>	21 of 1951 (15 Geo. VI No. 21)	27 Nov 1951	27 Nov 1951
<i>Companies Act Amendment Act 1953</i>	17 of 1953 (2 Eliz. II No. 17)	7 Dec 1953	7 Dec 1953
<i>Companies Act Amendment Act (No. 2) 1953</i>	73 of 1953 (2 Eliz. II No. 73)	9 Jan 1954	9 Jan 1954
<i>Companies Act Amendment Act 1954</i>	2 of 1954 (3 Eliz. II No. 2)	25 Aug 1954	25 Aug 1954

Short title	Number and year	Assent	Commencement
Reprint of the <i>Companies Act 1943</i> approved 16 Dec 1954 in Volume 7 of Reprinted Acts (includes amendments listed above)			
<i>Companies Act Amendment Act 1959</i>	39 of 1959 (8 Eliz. II No. 39)	10 Nov 1959	10 Nov 1959
<i>Companies Act Amendment Act (No. 2) 1960</i>	78 of 1960 (9 Eliz. II No. 78)	12 Dec 1960	23 Feb 1962 (see s. 2 and <i>Gazette</i> 23 Feb 1962 p. 513)
<i>Companies Act Amendment Act 1961</i>	10 of 1961 (10 Eliz. II No. 10)	10 Oct 1961	1 Dec 1961 (see s. 2 and <i>Gazette</i> 10 Nov 1961 p. 3121)
<i>Companies Act 1961</i>	82 of 1961 (10 Eliz. II No. 82)	22 Jan 1962	5 Oct 1962 (see s. 2 and <i>Gazette</i> 5 Oct 1962 p. 3299)
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	Act other than s. 4-9: 21 Dec 1965 (see s. 2(1)); s. 4-9: 14 Feb 1966 (see s. 2(2))
<i>Companies (Co-operative) Act Amendment Act 1976</i>	59 of 1976	16 Sep 1976	16 Sep 1976
<i>Credit Unions (Consequential Provisions) Act 1979 Pt. 3</i>	47 of 1979	7 Nov 1979	1 Jul 1980 (see s. 2 and <i>Gazette</i> 27 Jun 1980 p. 1933)
<i>Companies (Consequential Amendments) Act 1982 s. 28</i>	10 of 1982	14 May 1982	1 Jul 1982 (see s. 2(1) and <i>Gazette</i> 25 Jun 1982 p. 2079)
<i>Companies (Co-operative) Amendment Act 1982</i>	18 of 1982	27 May 1982	1 Sep 1982 (see s. 2 and <i>Gazette</i> 9 Jul 1982 p. 2472)
<i>Companies (Co-operative) Amendment Act 1991</i>	18 of 1991	21 Jun 1991	21 Jun 1991 (see s. 2)
<i>Companies (Co-operative) (Fees) Regulations 1991</i> published in <i>Gazette</i> 8 Nov 1991 p. 5717-19			8 Nov 1991
<i>Criminal Law Amendment Act (No. 2) 1992 s. 16(1)</i>	51 of 1992	9 Dec 1992	6 Jan 1993

Companies (Co-operative) Act 1943

Short title	Number and year	Assent	Commencement
<i>Companies (Co-operative) (Fees) Regulations 1993</i> published in <i>Gazette</i> 31 Aug 1993 p. 4687-9			1 Sep 1993 (see r. 2)
<i>Companies (Co-operative) Amendment Act 1994</i>	56 of 1994	2 Nov 1994	2 Nov 1994 (see s. 2)
<i>Companies (Co-operative) (Fees) Regulations 1995</i> published in <i>Gazette</i> 27 Jun 1995 p. 2540-2			1 Jul 1995 (see r. 2)
<i>Local Government (Consequential Amendments) Act 1996</i> s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Financial Legislation Amendment Act 1996</i> s. 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Trustees Amendment Act 1997</i> s. 18	1 of 1997	6 May 1997	16 Jun 1997 (see s. 2 and <i>Gazette</i> 10 Jun 1997 p. 2661)
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> s. 35	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> s. 76	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<i>Acts Amendment and Repeal (Financial Sector Reform) Act 1999</i> s. 66	26 of 1999	29 Jun 1999	1 Jul 1999 (see s. 2 and <i>Gazette</i> 30 Jun 1999 p. 2905)
Reprint of the Companies (Co-operative) Act 1943 as at 14 Jan 2000 (includes amendments listed above)			
<i>Corporations (Consequential Amendments) Act 2001</i> Pt. 13	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and Cwlth <i>Gazette</i> 13 Jul 2001 No. S285)
<i>Building Societies Amendment Act 2001</i> s. 46 and 51	12 of 2001	13 Jul 2001	13 Jul 2001 (see s. 2)
<i>Companies (Co-operative) (Fees) Regulations 2002</i> published in <i>Gazette</i> 28 Jun 2002 p. 3052-4			1 Jul 2002 (see r. 2)
<i>Acts Amendment (Equality of Status) Act 2003</i> Pt. 6 and s. 117	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)

Short title	Number and year	Assent	Commencement
<i>Companies (Co-operative) (Fees) Regulations 2003</i> published in <i>Gazette</i> 27 Jun 2003 p. 2545-7			1 Jul 2003 (see r. 2)
<i>Sentencing Legislation Amendment and Repeal Act 2003</i> s. 46	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003</i> s. 23	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 37	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Criminal Code Amendment Act 2004</i> s. 58	4 of 2004	23 Apr 2004	21 May 2004 (see s. 2)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Criminal Law Amendment (Simple Offences) Act 2004</i> s. 82	70 of 2004	8 Dec 2004	31 May 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 78, 80 and 82	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Companies (Co-operative) (Fees) Regulations 2005</i> published in <i>Gazette</i> 28 Jun 2005 p. 2903-5			1 Jul 2005 (see r. 2)
Reprint 3: The Companies (Co-operative) Act 1943 as at 19 Aug 2005 (includes amendments listed above)			
<i>Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005</i> s. 63	24 of 2005	2 Dec 2005	1 Jan 2006 (see s. 2(1) and <i>Gazette</i> 23 Dec 2005 p. 6244)
<i>Machinery of Government (Miscellaneous Amendments) Act 2006</i> Pt. 4 Div. 5 ¹⁶	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)

Companies (Co-operative) Act 1943

Short title	Number and year	Assent	Commencement
<i>Companies (Co-operative) (Fees) Regulations 2007</i> published in <i>Gazette</i> 15 Jun 2007 p. 2767-70			r. 1 and 2: 15 Jun 2007 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Jul 2007 (see r. 2(b))
<i>Duties Legislation Amendment Act 2008</i> Sch. 1 cl. 3	12 of 2008	14 Apr 2008	1 Jul 2008 (see s. 2(d))
<i>Legal Profession Act 2008</i> s. 649	21 of 2008	27 May 2008	1 Mar 2009 (see s. 2(b) and <i>Gazette</i> 27 Feb 2009 p. 511)
<i>Companies (Co-operative) (Fees) Regulations 2009</i> published in <i>Gazette</i> 23 Jun 2009 p. 2434-6			r. 1 and 2: 23 Jun 2009 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Jul 2009 (see r. 2(b))
Reprint 4: The Companies (Co-operative) Act 1943 as at 7 Aug 2009 (includes amendments listed above)			

^{1a} On the date as at which this reprint was prepared, provisions referred to in the following table had not come into operation and were therefore not included in compiling the reprint. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Housing Societies Repeal Act 2005</i> s. 21 ¹⁷	17 of 2005	5 Oct 2005	To be proclaimed (see s. 2(3) and (4))

² This refers to the Commonwealth *Bankruptcy Act 1924* which was replaced by the Commonwealth *Bankruptcy Act 1966*.

³ The *Companies Act 1893* was repealed by the *Companies Act 1943*, which was repealed by the *Companies Act 1961*, s. 4 and 382(2), except in relation to Co-operative Companies, in respect of which it may now be cited as the *Companies (Co-operative) Act 1943*.

⁴ Repealed by the *Public Trustee Act 1941* s. 3.

⁵ Repealed by the *Interpretation Act 1984* s. 77.

⁶ Repealed by the *Companies Act 1893* s. 4 (see also note 3).

⁷ Repealed by the *Associations Incorporation Act 1987* s. 47.

- ⁸ Repealed by the *Industrial Relations Legislation Amendment and Repeal Act 1995* s. 67.
- ⁹ Repealed by the *Statute Law Revision Act 1967* s. 2.
- ¹⁰ Repealed by the *Business Names Act 1962* s. 3.
- ¹¹ Under the *Alteration of Statutory Designations Order 2003* a reference in any law to the Department of Mines was to be read and construed as a reference to the Department of Industry and Resources.
- Under the *Public Sector Management Act 1994* the names of departments may be changed. At the time of this reprint the former Department of Industry and Resources is called the Department of Mines and Petroleum.
- ¹² Repealed by the *Commercial Arbitration Act 1985* s. 3.
- ¹³ Repealed by the *Trustees Act 1962* s. 4.
- ¹⁴ Known as The State Reference Library of Western Australia after the coming into operation of the *Library Board of Western Australia Act Amendment Act 1974* on 29 Oct 1974.
- ¹⁵ Now known as the *Companies (Co-operative) Act 1943*; short title changed (see note under s. 1).
- ¹⁶ The *Machinery of Government (Miscellaneous Amendments) Act 2006* Pt. 4 Div. 23 reads as follows:

Division 23 — Transitional provisions

151. Commissioner for Fair Trading

- (1) On commencement, the person holding the office of Commissioner for Fair Trading immediately before commencement is to be taken to have been designated as the Commissioner or Registrar (as the case requires) for the purposes of each of the following enactments —
- (a) the *Associations Incorporation Act 1987*;
 - (b) the *Business Names Act 1962*;
 - (c) the *Chattel Securities Act 1987*;
 - (d) the *Companies (Co-operative) Act 1943*;
 - (e) Part 8 of the *Competition Policy Reform (Western Australia) Act 1996*;
 - (f) the *Consumer Affairs Act 1971*;
 - (g) the *Co-operative and Provident Societies Act 1903*;
 - (h) the *Credit Act 1984*;
 - (i) the *Credit (Administration) Act 1984*;
 - (j) the *Employment Agents Act 1976*;

- (k) the *Hire-Purchase Act 1959*;
 - (l) the *Limited Partnerships Act 1909*;
 - (m) the *Motor Vehicle Dealers Act 1973*;
 - (n) the *Petroleum Products Pricing Act 1983*;
 - (o) the *Petroleum Retailers Rights and Liabilities Act 1982*;
 - (p) the *Residential Tenancies Act 1987*;
 - (q) the *Retirement Villages Act 1992*;
 - (r) the *Travel Agents Act 1985*.
- (2) A thing done or omitted to be done by, to or in relation to, the Commissioner for Fair Trading (including in his or her capacity as the Prices Commissioner) before commencement under a provision of the *Consumer Affairs Act 1971* for the purposes of another enactment listed in subsection (1) has the same effect after commencement, to the extent that it has any force or significance after commencement, as if it had been done or omitted —
- (a) by, to or in relation to, the Commissioner or Registrar (as the case requires) as defined in that other enactment as in force after commencement; and
 - (b) where relevant, under the corresponding provision of that other enactment as in force after commencement.
- (3) To the extent that a thing done or omitted to be done by, to or in relation to, the Commissioner for Fair Trading (including in his or her capacity as the Prices Commissioner) before commencement under, or for the purposes of, an enactment listed in subsection (1) is not covered by subsection (2), it has the same effect after commencement, to the extent that it has any force or significance after commencement, as if it had been done or omitted by, to or in relation to, the Commissioner or Registrar (as the case requires) as defined in that enactment as in force after commencement.
- (4) A thing done or omitted to be done by, to or in relation to, the Commissioner for Fair Trading before commencement under, or for the purposes of, an enactment not listed in subsection (1) has the same effect after commencement, to the extent that it has any force or significance after commencement, as if it had been done or omitted by, to or in relation to, the Commissioner as defined in the *Consumer Affairs Act 1971* as in force after commencement.
- (5) A reference in an enactment to the Commissioner for Fair Trading is to have effect after commencement as if it had been amended to be a reference to —
- (a) in the case of an enactment listed in subsection (1) or subsidiary legislation made under such an enactment —

the Commissioner or Registrar (as the case requires) as defined in the enactment as in force after commencement; or

- (b) in the case of any other enactment or subsidiary legislation — the Commissioner as defined in the *Consumer Affairs Act 1971* as in force after commencement.

152. Commissioner for Corporate Affairs and Registrar of Co-operative and Financial Institutions

- (1) A thing done or omitted to be done by, to or in relation to, the Commissioner for Corporate Affairs before commencement under, or for the purposes of, the *Companies (Co-operative) Act 1943* has the same effect after commencement as if it had been done or omitted by, to or in relation to, the Registrar as defined in that Act as in force after commencement.
- (2) A thing done or omitted to be done by, to or in relation to, the Registrar of Co-operative and Financial Institutions before commencement under, or for the purposes of, the *Co-operative and Provident Societies Act 1903* has the same effect after commencement as if it had been done or omitted by, to or in relation to, the Registrar as defined in that Act as in force after commencement.

153. Consumer Affairs Act 1971

Each office in existence immediately before commencement because of section 15(1) of the *Consumer Affairs Act 1971* does not cease merely because that subsection is repealed by this Act.

154. Petroleum Products Pricing Act 1983

Each office in existence immediately before commencement because of section 5(2)(b) of the *Petroleum Products Pricing Act 1983* does not cease merely because that paragraph is deleted by this Act.

155. Interpretation

In this Division —

commencement means the time at which this Division comes into operation;

Commissioner for Fair Trading means the Commissioner for Fair Trading referred to in section 15 of the *Consumer Affairs Act 1971* as in force before commencement;

Prices Commissioner means the Prices Commissioner referred to in section 5(1) of the *Petroleum Products Pricing Act 1983* as in force before commencement.

¹⁷ On the date as at which this reprint was prepared, the *Housing Societies Repeal Act 2005* s. 21 had not come into operation. It reads as follows:

21. Companies (Co-operative) Act 1943 amended

- (1) The amendments in this section are to the *Companies (Co-operative) Act 1943*.
- (2) Section 46(3a) is amended by deleting paragraph (a) and “or” after it.
- (3) Section 172(1) is amended by deleting paragraph (a) and “or” after it.
- (4) Section 176A(1)(c) is deleted.
- (5) Section 366 is amended in the definition of “Company” by deleting “, or a society registered under the *Housing Societies Act 1976*”.

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
a company limited by shares	12(a)
a members' voluntary winding-up	236(4)
a resolution for voluntary winding-up.....	231(2)
agents	142(4)(b), 143(4)(b)
an unlimited company	12(b)
arrangement.....	158(6)
articles	3
assignee	281(2)
attorney	3
authorised representative.....	371
authorised share broker	371
bankrupt	3
bankruptcy	3
body corporate	11A(4)
books and papers.....	3
books or papers	3
carries on business	328(1)
certified	328(1)
charge.....	3, 362(4)
clerk or servant.....	271(4)
company.....	3, 11A(4), 28(7), 138(1), 158(6), 328(1), 366, 369(3), 416(2), 421(2), Third Sch.
contributory	3
co-operative company	11A(4)
corporation	11A(4)
Court	3
creditor	3
creditors' voluntary winding-up.....	236(4)
debenture.....	3, 366
deed of settlement	3, 325(4)
Department.....	3
director	3, 150(6), 281(5), 366
dissenting shareholder.....	160(4)
dividend	366
document.....	3
emoluments	131(4), 153(4)
employee.....	421(2)
executive officer.....	3A(3)

Defined Terms

existing company	3
expert	50(4)
externally-administered non-cooperative	171A
financial year	47 Pt. C(6)
foreign company	3
fund or scheme	421(2)
goods	277(3)
holding company	138(1)
house	366
information	3C(3)
investment company	380(1)
liabilities	159(4)
liability	3
limited company	3
liquidator	3, 267
local register	3
manager	3
marketable securities	380(1)
memorandum	3
mining purposes	3
new body	171A
no liability company	3
non-cooperative	171A
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officer or servant of the company	138(1)
officers	142(4)(a), 143(4)(a)
official liquidator	267
Official Receiver	148(3)
principal register	3
promoter	50(4)
property	159(4)
proprietary company	37(1)
prospectus	3, 328(1), 366
public company	3
purchase money	47 Pt. C(3)
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registered auditor	3
registered liquidator	3
Registrar	3
registration office	3
representative	3
sale	366
scrip	3
share	3, 366, Second Sch. Table B it. 24
share broker	371

Defined Terms

share certificate	3
shareholder	Second Sch. Table B it. 24
sheriff	277(3)
solicitor	397(3)
special resolution	79(2)
sub-purchaser	47 Pt. C(3)
subsidiary company	130(1)
the Act	Second Sch. Table A r. 1 and Table B r. 1
the Court	281(4)
the expenses	141(3)
the holding company	129(1)
the minimum subscription	53(2)
the principal register	111(1)
the relevant date	198(8)
the repealed Acts	3
the statutory report	115(2)
the transferee company	159(1), 160(1), 240(1)
the transferor company	160(1), 240(1)
to carry on business	328(1)
to sell	366
transfer	87(1)
transferor company	159(1)
unit	366
unlimited company	3
unregistered company	302
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varied	78(6)
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