

## COMPANIES.

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No. 40 of 1966.

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### AN ACT to amend the Companies Act, 1961-1965.

[Assented to 31st October, 1966.]

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title  
and citation.

1. (1) This Act may be cited as the *Companies Act Amendment Act, 1966*.

(2) In this Act the Companies Act, 1961-1965, is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Companies Act, 1961-1966.

Commence-  
ment.

2. This Act shall come into operation on a date to be fixed by proclamation.

S. 3  
amended.

3. Section three of the principal Act is amended by substituting for the passage, "PART IX—OFFICIAL MANAGEMENT—ss. 198-215.", the passage, "PART IX.—OFFICIAL MANAGEMENT—ss. 197A-215." .

S. 5  
amended.

4. Subsection (1) of section five of the principal Act is amended by substituting for the word, "and" between paragraph (b) and paragraph (c) of the interpretation "officer" the following passage—

"(ba) any official manager or deputy official manager of a company appointed under the provisions of Part IX; and" .

S. 14  
amended.

5. Section fourteen of the principal Act is amended—

(a) by substituting for the word, "No" being the first word in subsection (3), the passage, "Except as provided in subsection (4) of this section, no"; and

(b) by adding a subsection as follows—

(4) Where the association or partnership to be formed is for the purpose of carrying on any profession or calling declared by proclamation to be a profession or calling that is not customarily carried on in the Commonwealth by a corporation, subsection (3) of this section shall apply to that association or calling as though the word "twenty" therein were the word, "fifty".

6. Subsection (2) of section forty-two of the principal Act is amended— S. 42  
amended.

(a) by deleting the word, “and” immediately following paragraph (b); and

(b) by adding after the word, “prescribed” being the last word in paragraph (c), a passage as follows— “ ;

(d) the Registrar is of opinion that the prospectus does not contain any statement or matter that is misleading in the form or context in which it is included, but this paragraph does not apply to a prospectus of a corporation that is a foreign company incorporated or to be incorporated in another State or Territory of the Commonwealth, and the prospectus has been registered or is acceptable for registration by the Registrar of Companies in that other State or Territory; and

(e) in the case of a prospectus pursuant to which the public is to be invited to deposit money with or lend money to a corporation that is a subsidiary of another corporation—

(i) the prospectus contains a statement as to whether or not that other corporation is under any liability to repay those moneys or to pay any interest thereon; and

(ii) if the prospectus contains a statement that the corporation is under such a liability, the prospectus also contains full particulars of the nature and extent of the liability of that other corporation, of the circumstances under which the liability arose and the manner in which it is to be discharged”.

S. 64  
amended.

7. Section sixty-four of the principal Act is amended by adding after subsection (11) subsections as follow—

Granting of  
certain rights  
not to be  
reduction of  
share capital.

(12) The granting before the coming into operation of the Companies Act Amendment Act, 1966, by a company to a shareholder of the company of a right to occupy or use any land, building or part of a building owned or held under lease by the company, whether for consideration or not and whether by virtue of his being a shareholder of the company or not, shall not be regarded as having been or as being a reduction of the share capital of the company.

(13) The granting after the coming into operation of the Companies Act Amendment Act, 1966, by a company to a shareholder of the company of a right referred to in subsection (12) of this section shall not be regarded as being a reduction of the share capital of the company if it is made in pursuance of a provision of the memorandum or articles of the company under which a shareholder of the company, by virtue of his being such a shareholder, may be granted such a right, whether the provision provides for consideration to be given for it or not. .

S. 74F  
amended.

8. Subsection (7) of section seventy-four F of the principal Act is amended—

(a) by adding a paragraph as follows—

(c) Notwithstanding anything in this section, a profit and loss account and balance sheet of a borrowing corporation and a guarantor corporation required to be made out and lodged in accordance with subsection (4) of this section may, unless the trustee for the holders of the debentures of the borrowing corporation otherwise requires in writing, be based upon the value of the stock in trade of the corporation, as reasonably estimated

by the directors thereof on the basis of the values of the stock in trade as adopted for the purpose of the profit and loss account and balance sheet of that corporation laid before the corporation at its last preceding annual general meeting and certified in writing by the directors to be so estimated on that basis. ; and

(b) by adding a paragraph as follows—

(d) This subsection shall be deemed to have come into operation on the first day of January, nineteen hundred and sixty-five.

9. Subsection (1) of section one hundred and seventy-two of the principal Act is amended by deleting the words, “by Order in Council” in line four.

S. 172  
amended.

10. The principal Act is amended by adding after the heading, “PART IX.—OFFICIAL MANAGEMENT.” a section as follows—

S. 197A  
added.

197A. (1) Where on the date of the coming into operation of the Companies Act Amendment Act, 1966, a company is under official management, the company shall, subject to this Act, continue under official management—

Transition.

- (a) for a period of two years from the date on which it was placed under official management; or
- (b) for a period of six months from the first mentioned date,

whichever period later expires, unless the period of official management is sooner terminated or is extended under section two hundred and three C.

(2) For the purposes of subsection (1) of this section, the date on which a company is placed under official management shall be the date on which a meeting of creditors of the company called for the purpose of placing the company under official management and appointing an official manager passed a special resolution under the provisions of section two hundred and one as in force immediately before the date of the coming into operation of the Companies Act Amendment Act, 1966, determining that the company shall be under the sole management of an official manager.

(3) Where before the date of the coming into operation of the Companies Act Amendment Act, 1966, a meeting of creditors of a company has been called for the purpose of placing the company under official management and appointing an official manager, and before that date a special resolution under the provisions of section two hundred and one as in force immediately before that date determining that the company shall be under the sole management of an official manager has not been passed by the creditors of the company, the meeting shall be deemed not to have been duly called.

(4) The purported appointment of a person to a committee of management under Part IX as in force immediately before the date of the coming into operation of the Companies Act Amendment Act, 1966, shall be and shall be deemed always to have been a valid and effective appointment if the appointment would be a valid and effective appointment under Part IX as amended by that Act.

(5) All persons appointed under or by virtue of Part IX as enacted immediately before the date of the coming into operation of the Companies Act Amendment Act, 1966 and holding office immediately before that date shall be deemed to have been appointed and to hold office under and by virtue of Part IX

as amended by that Act, if they could have been appointed and could have held office had Part IX as so amended been in force at the time of the appointment.

(6) Any matter or thing done under and in accordance with Part IX as in force immediately before the date of the coming into operation of the Companies Act Amendment Act, 1966, shall be deemed to have been done and to have force and effect under and in accordance with this Act as amended by that Act, if it could have been done had this Act as so amended, been in force at the time that matter or thing was done.

(7) Except where otherwise expressly provided the provisions of this Act as amended by the Companies Act Amendment Act, 1966, apply to and in relation to a company placed under official management before or after the coming into operation of that Act. .

11. The principal Act is amended by repealing section one hundred and ninety-eight and substituting a section as follows—

S. 198  
repealed  
and new  
section  
substituted.

198. (1) In this Part—

Interpre-  
tation.

“special notice”, in relation to a meeting of creditors of a company, means notice of the meeting posted to each of the creditors not less than fourteen days nor more than twenty-one days before the date of the meeting.

“special resolution”, in relation to a meeting of creditors of a company, means a resolution passed by a majority of the creditors voting either in person or by proxy on the resolution, being a majority consisting of creditors representing at least three-fourths in value and one-half in number of creditors entitled to vote and so voting

on the resolution, every creditor to whom the company owes a debt of less than twenty dollars being reckoned in value only for the purpose of calculating that majority.

(2) For the purposes of any special resolution required under this Part to be passed at a meeting of creditors of a company no corporation that is deemed by virtue of subsection (5) of section six to be related to the company is entitled to vote on the resolution.

(3) Subject to the provisions of subsection (2) of this section nothing in this Part prejudices or otherwise affects the rights of any secured creditor of the company. .

S. 199  
repealed and  
section  
substituted.

12. The principal Act is amended by repealing section one hundred and ninety-nine and substituting a section as follows—

Power  
of company  
to call  
meeting of  
creditors  
to appoint  
official  
manager.

199. (1) Where it is resolved by the majority of the directors of a company present at a meeting of the directors specially called for the purpose, that the company is unable to pay its debts as and when they become due and payable, the company may, and where the company is requested in writing by a creditor of the company, who has a judgment against the company unsatisfied to the extent of not less than five hundred dollars, so to do, the company shall call a meeting of its creditors for the purpose of placing the company under official management and appointing an official manager of the company.

(2) The meeting of creditors referred to in subsection (1) of this section shall be called by the company giving notice thereof in accordance with subsection (10) of this section within—

(a) forty-two days of the passing of the resolution of the directors or the receipt by the company of the request by the judgment creditor under subsection (1) of this section; or



- (b) such further period as the Registrar allows where, in the opinion of the Registrar the company would not be able to duly comply with the requirements of this section.

(3) If default is made in complying with subsection (1) or (2) of this section the company and every officer of the company that is in default is guilty of an offence against this Act.

Penalty: \$400. Default penalty: \$100.

(4) The company shall prepare a statement of the affairs of the company in the prescribed form made up to a date not earlier than the date of the passing of the resolution of the directors or the receipt by the company of the request by the judgment creditor under subsection (1) of this section.

(5) Subject to subsection (8) of this section, a company shall be deemed not to have prepared a statement of its affairs in accordance with subsection (4) of this section, unless each director of the company has furnished to the company a certificate under his hand certifying whether the statement of affairs does or does not, to the best of his knowledge, information and belief, give a true and fair view of the state of affairs of the company as at the date to which it is made up.

(6) Where a director certifies that the statement does not give a true and fair view of the state of affairs of the company, he shall also state in the certificate the grounds on which he formed that opinion.

(7) A director of a company shall not furnish a certificate concerning a statement of the affairs of a company for the purpose of subsection (5) of this section unless he has made such inquiries as are reasonably necessary to

determine whether the statement does or does not give a true and fair view of the state of affairs of the company as at the date to which the certificate is made up.

(8) Where the Registrar is satisfied that it is impracticable for a company to obtain the certificate of a director of the company as required by this section, the Registrar may exempt the company from obtaining the certificate from that director.

(9) A company and every director that fails to comply with, or to take all reasonable steps to secure compliance with, any provision of subsection (4), (5), (6) or (7) of this section, is guilty of an offence against this Act.

Penalty: \$400. Default penalty: \$100.

(10) Notice of the meeting of creditors referred to in subsection (1) of this section shall be given to the creditors of the company by means of a notice in the prescribed form—

- (a) posted to each of the creditors; and
- (b) published at least once in a daily newspaper circulating generally throughout the State,

not less than ten days nor more than twenty-one days before the day fixed for the holding of the meeting.

(11) The company shall attach to every notice posted to the creditors under subsection (10) of this section—

- (a) a summary of the affairs of the company in the prescribed form;
- (b) a notice that the statement required to be prepared by the company under subsection (4) of this section is available at the registered office of the company and that a copy of the statement will be posted by return mail to

any creditor who requests in writing the statement, or will be handed to any creditor who calls at the office and requests it; and

- (c) a copy of the certificate furnished by each director of the company in accordance with subsection (5) of this section.

(12) If default is made in complying with subsection (11) of this section, or with any request made under paragraph (b) thereof, the company and every officer of the company that is in default is guilty of an offence against this Act.

Penalty: \$400. Default penalty.

(13) Notwithstanding subsection (11) of this section, the company may attach to every notice posted to the creditors under subsection (10) of this section a complete copy of the statement of affairs of the company required to be prepared by the company under subsection (4) of this section and if the company does so the company is not required to comply with paragraphs (a) and (b) of subsection (11) of this section.

(14) The meeting of creditors called under subsection (1) of this section shall be called for a time and place convenient to the majority in value of the creditors.

(15) (a) The chairman of the meeting of creditors of the company called under subsection (1) of this section shall be appointed by a resolution of the creditors of the company present at the meeting who are entitled to vote on a special resolution as provided in section one hundred and ninety-eight.

(b) The chairman so appointed shall at the meeting determine whether the time and place of the meeting are convenient to the majority in value of the creditors and his decision is final.

(c) If the chairman decides that the time and place of the meeting are not convenient to that majority, the meeting lapses.

(16) Within seven days after the first notice calling the meeting of creditors under subsection (1) of this section is posted to any creditor, the company shall lodge with the Registrar a copy of that notice and shall attach thereto a certified copy of the statement of affairs of the company required to be prepared by the company under subsection (4) of this section and certified copies of the certificates furnished by the directors under subsection (5) of this section. .

S. 200  
repealed and  
section  
substituted.

13. The principal Act is amended by repealing section two hundred and substituting a section as follows—

Statement  
of affairs of  
company  
to be  
submitted to  
meeting of  
creditors of  
company.

200. (1) At the meeting of creditors of the company called under subsection (1) of section one hundred and ninety-nine, the directors of the company shall submit to the meeting the statement of affairs of the company required to be prepared by the company under subsection (4) of that section.

(2) The directors of the company shall appoint one of their number to attend the meeting.

(3) The director so appointed shall attend the meeting and disclose to the meeting the company's affairs and the circumstances leading up to the proposed official management.

(4) If default is made in complying with any provision of this section the company and every director that is in default is guilty of an offence against this Act.

Penalty: \$400. .

14. The principal Act is amended by repealing section two hundred and one and substituting a section as follows—

S. 201  
repealed and  
section  
substituted.

201. (1) A meeting of creditors of a company called under subsection (1) of section one hundred and ninety-nine, may by resolution be adjourned from time to time to a time and date specified in the resolution but shall not be adjourned to a date later than thirty days after the date for which the meeting was called.

Power  
to adjourn  
meeting.

(2) Where the meeting is so adjourned, the adjourned meeting shall, unless it is otherwise provided by the resolution by which it is adjourned, be held at the same place as the original meeting.

(3) Where the meeting is so adjourned to a date later than eight days after the passing of the resolution by which it is so adjourned the company shall cause notice of the time and place of the resumption thereof to be published at least once in a daily newspaper circulating generally throughout the State at least seven days before the date of the resumption. .

15. The principal Act is amended by repealing section two hundred and two and substituting a section as follows—

S. 202  
repealed and  
section  
substituted.

202. (1) Where at a meeting of creditors of a company called under subsection (1) of section one hundred and ninety-nine the creditors have passed a resolution to the effect that in their opinion the company is unable to pay its debts as and when they become due and payable but that if the company were placed under official management there would in their opinion be a reasonable probability that it would be able to pay its debts, the creditors may at the meeting by special resolution—

Power  
of creditors  
to place  
company  
under official  
management.

(a) determine that the company shall be placed under official management for such period commencing on the date

of the passing of the resolution and not exceeding two years from that date, as is specified in the resolution;

(b) appoint a person named in the resolution who—

(i) has consented in writing to act as official manager of the company;

(ii) is not the auditor of the company; and

(iii) has furnished to the company a certificate under his own hand that he is neither an undischarged bankrupt nor a person who has made any arrangement or composition with his creditors generally, and has not been released from his indebtedness to them,

to be the official manager of the company during the period of the official management; and

(c) determine the amount of the salary or remuneration of the official manager or delegate the fixing of the amount to a committee of management appointed under this Part.

(2) Within seven days of the passing of the resolutions referred to in subsection (1) of this section the company shall—

(a) cause a notice in the prescribed form of the passing of the resolutions to be lodged with the Registrar;

(b) cause notice of the fact that the company has been placed under official management and of the full name of the official manager to be published in a daily newspaper circulating generally throughout the State; and

(c) send by post to each of the creditors and members of the company a notice in the prescribed form of—

- (i) the special resolution; and
- (ii) the right to apply to the Court under section two hundred and eleven.

(3) If default is made in complying with subsection (2) of this section the company and every officer of the company that is in default is guilty of an offence against this Act.

Penalty: \$100. Default penalty.

(4) A creditor to whom the company owes, or a representative of a group of creditors to whom the company owes collectively, more than ten per centum of the total unsecured debts of the company, may within fourteen days of the appointment of a person as official manager of the company under subsection (1) of this section or subsection (3) of section two hundred and four apply to the Court for the termination of that appointment and if in the opinion of the Court the person so appointed is not suitable to be the official manager of the company the Court may make an order terminating the appointment and appointing as official manager a registered company auditor who has consented in writing to act as official manager and is not the auditor of the company.

(5) Where under subsection (4) of this section the Court has made an order appointing a person to be the official manager of a company the provisions of this Part apply to that person as if he had been appointed official manager of the company at a meeting of creditors under subsection (1) of this section as at the date of that order.

(6) Where the Court makes an order under subsection (4) of this section the person obtaining the order shall within seven days after the making thereof lodge with the Registrar an office copy of the order.

(7) A person who fails to comply with the provisions of subsection (6) of this section is guilty of an offence against this Act.

Penalty: \$100. Default penalty. .

S. 202A  
added.

16. The principal Act is amended by adding a section as follows—

Appointment  
of committee  
of manage-  
ment.

202A. (1) At any meeting of the creditors of a company held under this Part the creditors may determine that a committee of management of the company be appointed for the purposes of this Part.

(2) A committee of management of a company shall consist of five natural persons, of whom three shall be appointed by the creditors of the company by special resolution and two shall be appointed by the members of the company at a general meeting of the company.

(3) A person shall not be eligible to be appointed a member of a committee of management of a company—

(a) by the creditors of the company—  
unless he is—

- (i) a creditor of the company;
- (ii) the attorney of a creditor of the company by virtue of a general power of attorney given by the creditor; or
- (iii) a person authorised in writing by a creditor of the company to be a member of the committee of management; or

(b) by the members of the company—  
unless he is—

- (i) a member of the company;
- (ii) the attorney of a member of the company by virtue of a general power of attorney given by the member; or



- (iii) a person authorised in writing by a member of the company to be a member of the committee of management. .

17. The principal Act is amended by adding a section as follows—

S. 202B  
added.

202B. (1) A person who has been appointed official manager of a company shall, within fourteen days thereafter lodge with the Registrar notice in the prescribed form of his appointment as official manager and of the situation of his office and, in the event of any change in the situation of his office, shall, within fourteen days after the change, lodge with the Registrar notice thereof in the prescribed form.

Notice of  
appointment  
and address  
of official  
manager.

(2) A person shall, within fourteen days after his resignation or removal from office as official manager of a company, lodge with the Registrar notice thereof in the prescribed form.

(3) A person who fails to comply with any of the provisions of this section is guilty of an offence against this Act.

Penalty: \$100. Default penalty. .

18. The principal Act is amended by repealing section two hundred and three and substituting a section as follows—

S. 203  
repealed and  
section  
substituted.

203. (1) Where a special resolution placing a company under official management has been duly passed by the creditors of the company under subsection (1) of section two hundred and two—

Effect of  
special  
resolution.

- (a) the company shall be under official management for the period specified in the special resolution unless the official management is extended or earlier terminated under this Part;

- (b) the directors of the company shall cease to hold office;
- (c) the person appointed official manager of the company shall assume and be responsible for the management of the company and shall perform all of the duties and may perform any of the functions and exercise any of the powers of the directors of the company; and
- (d) the affairs of the company shall be conducted subject to the provisions of this Part.

(2) The official manager shall be chairman of any meeting or adjourned meeting of the company or its creditors that takes place while he holds office as official manager. .

S. 203A  
added.

19. The principal Act is amended by adding a section as follows—

Six-monthly  
meetings  
of creditors  
and members.

203A. (1) Subject to subsection (2) of this section, within two months after the expiration of the period of six months commencing on the date of his appointment as official manager and of each subsequent period of six months, or, if the Registrar, at any time before the expiration of any such period requires or permits the official manager to do so in respect of a lesser period specified by the Registrar, within two months after the expiration of the six month period or any period specified by the Registrar, the official manager of a company shall—

- (a) prepare a statement showing the assets and liabilities of the company as at the last day of the period and a report containing such other information as he thinks necessary to enable the creditors and members of the company to assess the financial position of the company as at the last day of the period; and

(b) call a meeting of the creditors and members of the company to consider the statement and report so prepared.

(2) Where under subsection (1) of this section the Registrar has required or permitted the preparation of a statement and report at the end of a period of less than six months the next period of six months shall commence at the expiration of that lesser period.

(3) With each statement referred to in subsection (1) of this section the official manager shall furnish statements signed by him and, where the company is required under this Act to appoint a person to be its auditor, by that auditor, stating whether or not in his or their opinion, as the case requires, the statement is drawn up so as to give a true and fair view of the affairs of the company.

(4) Notice of a meeting called under subsection (1) of this section shall be given to the creditors and the members of the company by advertisement published at least once in a daily newspaper circulating generally throughout the State and the advertisement shall specify the time, being a time not less than fourteen days after the date of publication of the advertisement, place and object of the meeting and the address at which and the hours between which the statements and report referred to in this section may be inspected.

(5) Copies of the statements and report referred to in this section shall be kept by the official manager of the company and shall be open to the inspection of any creditor or member of the company at the registered office of the company.

(6) The official manager shall—

(a) give written notice that the statement referred to in subsection (1) of this section has been made up to every

creditor and member of the company when next forwarding to him any report, notice of meeting, notice of call or dividend relating to the company; and

- (b) in the notice inform creditors and members of the company at what address and between what hours the statement may be inspected.

(7) Within seven days after a meeting is held under subsection (1) of this section the official manager shall lodge with the Registrar a notice in the prescribed form of the holding of the meeting and of its date with copies of the statements and report referred to in this section.

(8) Where the statement referred to in subsection (1) of this section is not accompanied by a statement signed by a registered company auditor, the Registrar may cause the statement referred to in subsection (1) to be audited by a registered company auditor appointed by the Registrar, and, for the purposes of the audit, the official manager shall furnish that auditor with such books, vouchers and information as that auditor may require.

(9) The costs of an audit under subsection (8) of this section shall be fixed by the Board and shall be part of the costs of the official management.

(10) An official manager who fails to comply with any provision of this section and any auditor of a company who fails to supply to the official manager at his request the statement that auditor is required to provide under subsection (3) of this section is guilty of an offence against this Act.

Penalty: \$100. Default penalty.

20. The principal Act is amended by adding a section as follows—

S. 203B  
added.

203B. (1) Where a company is under official management, no action or proceedings in any court shall, except with the leave of the Court and in accordance with such terms and conditions as the Court may impose, be commenced or proceeded with against the company until the company ceases to be under official management.

Stay of  
proceedings.

(2) Where a foreign company incorporated in any other State or Territory of the Commonwealth is registered in this State and is placed under official management in the State or Territory of its incorporation no action or proceedings in any court shall, except with the leave of the Court and in accordance with such terms and conditions as the Court may impose, be commenced or proceeded with against the company until the company ceases to be under official management in the State or Territory of its incorporation.

(3) At any time—

- (a) after a company has, in accordance with section one hundred and ninety-nine, called a meeting of its creditors for the purpose of placing the company under official management; and
- (b) before the passing of a special resolution by the creditors under subsection (1) of section two hundred and two determining that the company be placed under official management,

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

S. 203C  
added.

21. The principal Act is amended by adding a section as follows—

Power  
to extend  
period of  
official  
management.

203C. (1) Before the period of official management of a company is due to expire, the official manager shall call a meeting of creditors of the company to be held on a day not earlier than three months and not later than one month before the day on which the period is due to expire to consider and, if thought fit, pass a special resolution extending the official management for such further period, not exceeding twelve months, as is specified in the resolution.

(2) Where a special resolution extending the period of official management of a company is passed at a meeting called in accordance with this section, the company shall continue under official management during the period specified in the resolution unless the official management is extended or earlier terminated under this Part.

(3) The meeting referred to in subsection (2) of this section shall be called by the official manager—

- (a) by posting to each of the creditors a notice stating the place, date, time and purpose of the meeting; and
- (b) by publishing a copy of the notice at least once in a daily newspaper circulating generally throughout the State,

not less than seven days nor more than fourteen days before the day of the meeting.

(4) The official manager shall within seven days after the passing of a special resolution under subsection (1) of this section lodge with the Registrar a copy of that resolution. .

22. The principal Act is amended by repealing section two hundred and four and substituting a section as follows—

S. 204  
repealed  
and section  
substituted.

204. (1) The appointment of a person as official manager of a company may be determined—

Termination  
of appoint-  
ment of  
official  
manager.

(a) by his resignation in writing signed by him and tendered to either—

(i) the committee of management appointed pursuant to this Part; or

(ii) a meeting of creditors of the company;

(b) by special resolution of the creditors passed at a meeting of creditors of which special notice stating the purpose of the meeting has been given; or

(c) by an order of the Court.

(2) The appointment of a person as official manager of a company shall be determined by the committee of management or, if there is no committee of management, by the Court on the application of any creditor or member of the company if—

(a) the official manager is bankrupt or has made any arrangement or composition with his creditors generally; or

(b) the official manager is of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health; or

(c) having been appointed official manager by an order of the Court under subsection (4) of section two hundred and two he ceases to be a registered company auditor or becomes the auditor of the company.

(3) Where a vacancy occurs in the office of official manager of a company the committee of management may appoint, or, if there is no committee of management, a meeting of creditors of the company called for that purpose by any two of their number may by special resolution appoint, as official manager a person who is qualified for appointment as such.

(4) The provisions of paragraph (c) of subsection (1) of section two hundred and three shall apply to a person appointed official manager under subsection (3) of this section. .

S. 205  
repealed and  
section  
substituted.

23. The principal Act is amended by repealing section two hundred and five and substituting a section as follows—

Appointment  
of official  
manager  
does not  
affect  
appointment  
and duties  
of auditor.

205. Notwithstanding the appointment of an official manager of a company and for so long as the company is under official management, the provisions of this Act relating to the appointment and re-appointment of auditors and the rights and duties of auditors continue to apply to and in relation to the company, and in the application of those provisions to and in relation to the company any reference therein to the directors of a company shall be read as a reference to the official manager of the company. .

S. 206  
repealed and  
section  
substituted.

24. The principal Act is amended by repealing section two hundred and six and substituting a section as follows—

Duties of  
official  
manager.

206. (1) Subject to this Act, the official manager of a company shall—

- (a) as soon as may be after his appointment as such 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;



- (b) subject to any direction given pursuant to paragraph (c) of this subsection conduct the business and management of the company in such manner as he may think most economical and most beneficial to the interests of the members and creditors of the company;
- (c) comply with any directions of the creditors of the company that are agreed to by special resolution at any meeting of creditors of which the creditors of the company have been given special notice;
- (d) comply with all requirements of this Act applicable to the company or the directors of the company relating to the keeping of accounts and the lodging of annual returns and perform all such other duties as are so applicable and are imposed on a company or on the directors of a company by or under this Act;
- (e) if so directed by the committee of management of the company acting under subsection (4) of section two hundred and fourteen or by a creditor or creditors of the company to whom the company owes or owes collectively not less than twenty per centum in value of the total unsecured debts of the company, by notice posted to each of the creditors, call a meeting of creditors of the company;
- (f) if a meeting of creditors held under subsection (1) of section two hundred and three C fails to resolve to extend the period of the official management, within seven days of such failure to extend the period, by notice posted to each of the members of the company, call a meeting of the members to be

held on a date not later than twenty-one days after the meeting of creditors under subsection (1) of section two hundred and three C for the purpose of—

- (i) reporting to the members accordingly; and
- (ii) enabling the members if they think fit to elect directors of the company to take office upon the termination of the period of official management.

(2) A meeting of members of the company called under paragraph (f) of subsection (1) of this section shall be deemed to have been properly called and empowered under the memorandum and articles of the company to appoint or elect directors, and directors so appointed or elected shall take office on the termination of the period of official management of the company.

(3) If at any time the official manager is of the opinion that the continuance of the official management of the company will not enable the company to pay its debts he shall call a meeting of the members of the company for the purpose of considering and, if thought fit, passing a special resolution that the company be wound up voluntarily.

(4) Upon determining to call a meeting of members under subsection (3) of this section the official manager shall—

- (a) call a meeting of the creditors of the company for the day, or the day next following the day on which the meeting of members is proposed to be held;
- (b) cause the notice of the meeting of creditors to be sent by post to the creditors of the company simultaneously with the sending of the notices of the meeting of the members;

- (c) call the meeting of creditors for a time and place convenient to the majority in value of the creditors and give the creditors at least seven clear days' notice by post of the meeting; and
- (d) cause notice of the meeting of the creditors to be advertised at least seven days before the date of the meeting in the *Government Gazette* and in a daily newspaper circulating generally throughout the State.

(5) At the meeting of creditors of the company called under subsection (4) of this section the official manager shall lay before the meeting a full statement of the company's affairs showing in respect of assets the method and manner in which the valuation of the assets was arrived at, together with a list of the creditors of the company and the estimated amount of their claims.

(6) Where a meeting of members called under subsection (3) of this section has passed a special resolution to the effect that the company be wound up voluntarily the company shall, and the creditors of the company may, at their respective meetings called under subsections (3) and (4) of this section, nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons the person nominated by the creditors shall be liquidator, but if no person is nominated by the creditors the person nominated by the company shall be liquidator.

(7) Notwithstanding the provisions of subsection (6) of this section, where different persons are nominated any member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the Court for an order

directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors.

(8) On the appointment of a liquidator the company shall cease to be under official management.

(9) The person who immediately prior to the appointment of the liquidator was the official manager shall within seven days after the holding of the meetings referred to in subsections (3) and (4) of this section lodge with the Registrar a notice in the prescribed form of the holding of the meetings and the dates thereof with a copy of the statement referred to in subsection (5) of this section attached to such notice.

(10) Every person who fails to comply with any of the provisions of subsection (1), (3), (4), (5) or (9) of this section is guilty of an offence against this Act.

Penalty: \$400. Default penalty: \$100. .

S. 207  
repealed and  
section  
substituted.

25. The principal Act is amended by repealing section two hundred and seven and substituting a section as follows—

Undue  
preferences  
in case of  
official  
management.

207. (1) A transfer, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company which, had it been made or done by or against an individual, would in his bankruptcy be void or voidable is, in the event of the company being placed under official management, void or voidable in like manner.

(2) For the purposes of this section the date that corresponds with the date of presentation of the bankruptcy petition in the case of an individual is the date of the commencement of the official management of the company. .

26. The principal Act is amended by repealing section two hundred and eight and substituting a section as follows—

S. 208  
repealed and  
section  
substituted.

208. (1) The official manager of a company may sell or otherwise dispose of any assets of the company if the sale or disposition is in the ordinary course of the business of the company.

Application  
and disposal  
of assets  
during  
official  
management.

(2) The official manager of a company may sell or otherwise dispose of any assets of the company otherwise than in the ordinary course of the business of the company if the value of the assets in question together with the sale price of any other assets previously sold or disposed of otherwise than in the ordinary course of the business of the company during the period of official management does not exceed in the aggregate four hundred dollars.

(3) The official manager of a company may with the consent of the committee of management of the company sell or otherwise dispose of any assets of the company otherwise than in the ordinary course of the business of the company if the value of the assets in question together with the sale price of any other assets previously sold or disposed of otherwise than in the ordinary course of the business of the company during the period of official management does not exceed in the aggregate two thousand dollars.

(4) The official manager of a company may with the leave of the Court sell or otherwise dispose of any assets of the company.

(5) The moneys of the company that become available to its official manager during the official management of the company shall be applied by him in the following order—

(a) firstly, in payment of the costs of the official management including his remuneration, the remuneration of the

deputy official manager (if any) and that of an auditor (if any) appointed in accordance with the provisions of Division 2 of Part VI. ;

- (b) secondly, in payment of the liabilities of the company incurred in the course of the official management thereof; and
- (c) thirdly, in payment of any other liabilities of the company.

(6) Subject to subsection (5) of this section, the claims of the creditors of the company referred to in paragraph (c) of subsection (5) of this section shall be paid in accordance with Part X., as if those claims were claims against a company being wound up and the provisions of that Part with necessary adaptations apply to and in relation to those claims accordingly. .

S. 208A  
added.

27. The principal Act is amended by adding a section as follows—

Power of  
official  
manager  
to apply to  
Court for  
directions.

208A. The official manager may apply to the Court for directions in relation to any particular matter, arising out of the exercise of his powers or functions as official manager. .

S. 209  
repealed and  
section  
substituted.

28. The principal Act is amended by repealing section two hundred and nine and substituting a section as follows—

Application  
of certain  
provisions in  
winding up  
to official  
management.

209. Where a company is under official management, the provisions of paragraph (g) of subsection (1) of section two hundred and eighteen and of sections two hundred and forty-eight, two hundred and forty-nine, three hundred and four, three hundred and five and three hundred and six apply as if the company under official management were a company being wound up and the official manager were the liquidator and any reference in those sections to contributories shall be read as a reference to members. .

29. The principal Act is amended by repealing section two hundred and ten and substituting a section as follows—

S. 210  
repealed and  
section  
substituted.

210. (1) If at any time, on the application of the official manager or of any creditor or member of a company, it appears to the Court that the purpose for which the company was placed under official management has been fulfilled, or for any reason it is undesirable that the company should continue to be under official management, the Court may by order terminate the official management on the date specified in the order and upon that date the official manager shall cease to be the official manager of the company.

Power of  
Court to  
terminate  
official  
management  
and give  
directions.

(2) On making an order under subsection (1) of this section, the Court may also give such directions as it deems fit for the resumption of the management and control of the company by its officers, including directions for the calling of a general meeting of members of the company to elect directors of the company to take office upon the termination of the official management.

(3) The costs of any proceeding before the Court under this section and the costs incurred in calling a meeting of members of the company pursuant to an order of the Court under this section shall, if the Court so directs, be part of the costs of the official management of the company. .

30. The principal Act is amended by repealing section two hundred and eleven and substituting a section as follows—

S. 211  
repealed and  
section  
substituted.

211. (1) Notwithstanding that a resolution has been passed under subsection (1) of section two hundred and two determining that a company shall be placed under official management,

Resolution  
to place  
company  
under official  
management  
effective,  
subject to  
appeal.

and notwithstanding anything contained in subsection (1) of section two hundred and three—

- (a) any creditor to whom the company owes, or any representative of a group of creditors to whom the company owes collectively, more than ten per centum of the total unsecured debts of the company; or
- (b) any member holding, or any representative of a group of members holding collectively, not less than ten per centum of the paid up capital of the company; or
- (c) in the case of a company not having a share capital, any member holding, or any representative of a group of members holding collectively, not less than ten per centum of the total voting rights of all members having a right to vote at all general meetings,

may apply to the Court for the variation or cancellation of the resolution at any time within a period of fourteen days after the passing thereof and the Court may, if it is of the opinion that there is no reasonable prospect of the company being rehabilitated or that the resolution is not in the interests of the creditors and the members of the company, vary or cancel the resolution.

(2) Where the Court makes an order cancelling the resolution under subsection (1) of this section the Court may give such directions as it considers necessary for the resumption of the management and control of the company by the persons who were officers of the company immediately prior to its being placed under official management.

(3) Upon cancellation of the resolution by the Court under subsection (1) of this section, the company ceases to be under official



management and the person appointed official manager of the company ceases to be the official manager and upon any variation of the resolution by the Court under this section, the resolution has effect as so varied; but notwithstanding that the resolution may be so varied or cancelled by the Court, the acts of an official manager prior to any such variation or cancellation are valid and binding on the company and on the members and creditors thereof. .

31. The principal Act is amended by adding a section as follows—

S. 211A  
added.

211A. (1) Where the Court makes an order under section two hundred and ten or section two hundred and eleven, the person obtaining the order shall within seven days after the order is made lodge with the Registrar an office copy of the order.

Lodgment of  
office copy  
of order of  
the Court.

(2) Where the Court makes an order under section two hundred and ten or section two hundred and eleven terminating the official management of a company, the person obtaining the order shall within seven days after the making of the order publish a copy of the order at least once in a daily newspaper circulating generally throughout the State.

(3) A person who fails to comply with any of the provisions of this section is guilty of an offence against this Act.

Penalty: \$100. Default penalty. .

32. The principal Act is amended by repealing section two hundred and twelve and substituting a section as follows—

S. 212  
repealed and  
section  
substituted.

212. (1) Where the appointment of a person as official manager of a company is terminated under this Part, the person shall notwithstanding that his appointment has been so terminated, within fourteen days thereafter, prepare

Release of  
official  
manager.

a report showing how the official management was conducted by him and for this purpose the person has a right of access to the records and books of the company.

(2) A person shall within twenty-eight days of the termination of his appointment as official manager of a company call a meeting of the creditors of the company.

(3) Notice of the meeting referred to in subsection (2) of this section shall be given to the creditors of the company by—

- (a) posting to each of the creditors a notice and a copy of the report referred to in subsection (1) of this section; and
- (b) publishing a copy of the notice at least once in a daily newspaper circulating generally throughout the State,

not less than seven days nor more than fourteen days before the day of the meeting.

(4) At the meeting of creditors called under subsection (2) of this section the person who was official manager shall present his report to the meeting and shall give such explanations thereof as may be reasonably requested by any creditor of the company.

(5) Within seven days after the holding of the meeting referred to in subsection (4) of this section, the person who was official manager shall lodge with the Registrar notice of the holding of the meeting and of its date with a copy of the report prepared by him under subsection (1) of this section.

Penalty: \$100. Default penalty.

(6) The expenses incurred by the person who was official manager in connection with the preparation of the report referred to in subsection (1) of this section and in relation to the calling and holding of the meeting referred to in subsection (2) of this section shall be part of the costs of the official management.

(7) Subject to subsection (8) of this section where a person ceases to be the official manager of a company, the adoption by the meeting of creditors of the company of the report prepared by him under subsection (1) of this section and of his explanations shall discharge him from all liability in respect of any act or omission by him in the management of the company or otherwise in relation to his conduct as official manager.

(8) The adoption of the report referred to in subsection (1) of this section and the explanations thereof referred to in subsection (4) of this section does not so discharge the person who was official manager if the adoption was obtained by fraud or by suppression or concealment of any material fact or discharge him from any liability that by virtue of any enactment or 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.

(9) If the report referred to in subsection (1) of this section and the explanations thereof referred to in subsection (4) of this section are not, within two months after being presented to the meeting of creditors of the company, adopted by a meeting of creditors the person who was official manager may apply to the Court for an order of release.

(10) The Court may grant or refuse the application and may direct that court costs incurred by the person who was official manager in connection with his application for release following the termination of his appointment shall be part of the costs of the official management and the order, if granted, has effect as if the report referred to in subsection (1) of this section and explanations referred to in subsection (4) of this section had been adopted by a meeting of creditors of the company. .

S. 213  
repealed and  
section  
substituted.

33. The principal Act is amended by repealing section two hundred and thirteen and substituting a section as follows—

Documents  
of company  
under official  
management  
to state that  
fact.

213. (1) Where a company is under official management, every invoice, order for goods or business letter issued by or on behalf of the company or the official manager thereof, being a document on or in which the name of the company appears, shall have the words "Under Official Management" immediately following the name of the company where it first appears therein.

Vide s. 380  
(3).

(2) If default is made in complying with subsection (1) of this section, the company and every officer of the company that is in default is guilty of an offence against this Act.

Penalty: \$100. .

S. 214  
repealed and  
section  
substituted.

34. The principal Act is amended by repealing section two hundred and fourteen and substituting a section as follows—

Functions of  
committee of  
management  
and appoint-  
ment of  
deputy  
official  
manager.

214. (1) A committee of management appointed pursuant to this Part shall assist and advise the official manager on any matters relating to the management of the company on which he requests their advice and assistance.

(2) Either a committee of management or a meeting of creditors convened by the official manager—

(a) may appoint a person who—

(i) has consented in writing to act as deputy official manager of the company;

(ii) is not the auditor of the company; and

(iii) has certified in writing that he is neither an undischarged bankrupt nor a person who has made any arrangement or composition with his creditors generally, and has not been released from his indebtedness to them,

to be a deputy official manager who, in the absence of the official manager, shall, subject to any written directions given to him by the official manager, act as the official manager and, while so acting, has the powers, duties and functions of the official manager;

- (b) may remove the deputy official manager and may, if the committee of management or the meeting of creditors, as the case may be, feels it is necessary, appoint another person to be deputy official manager in his place;
- (c) may determine the amount of the salary or the remuneration of the deputy official manager.

(3) Within fourteen days of a person being appointed to be a deputy official manager or of a person ceasing to be a deputy official manager that person shall lodge notice in the prescribed form of his appointment or cessation, as the case requires, with the Registrar.

(4) A committee of management may at any time and from time to time direct the official manager of the company to call a meeting of the creditors of the company or the members thereof or of both and the official manager shall give effect to the direction.

(5) Subject to this section and to the regulations, the provisions of subsections (2) to (9), both inclusive, of section two hundred and forty-two apply to and with respect to a

committee of management and the proceedings of and vacancies in a committee of management and to and with respect to the removal of members thereof any reference in those provisions to the committee of inspection being read as a reference to the committee of management, any reference therein to the liquidator being read as a reference to the official manager, and any reference therein to a contributory being read as a reference to a member of the company. .

S. 215  
repealed and  
section  
substituted.

35. The principal Act is amended by repealing section two hundred and fifteen and substituting a section as follows—

Accidental  
omission  
to give  
notice.

215. The accidental omission to give notice of a meeting held for the purposes of this Part to, or the non-receipt of a notice of the meeting by, any person shall not invalidate the meeting or the proceedings at the meeting unless the Court, on the application of a creditor or member of the company or the official manager of the company concerned, otherwise declares. .

S. 292  
amended.

36. Section two hundred and ninety-two of the principal Act is amended—

(a) by adding after paragraph (a) of subsection (1) paragraphs as follow—

(aa) secondly, where the winding up of the company commences within two months after the determination of a period of official management of the company the costs of the official management properly and reasonably incurred by the official manager during the period of official management, including the remuneration of the official manager, the deputy official manager, if any, and that of an auditor, if any, appointed in accordance with the provisions of Division 2 of Part VI;

- (ab) thirdly, where the winding up of a company commences within two months after the determination of a period of official management of that company the debts of the company properly and reasonably incurred by the official manager in the conduct by him of the business of the company during the period of official management; ; and
- (b) by substituting for the word, "secondly", "thirdly", "fourthly" and "fifthly" being the first word in paragraphs (b), (c), (d) and (e) respectively, the word, "fourthly", "fifthly", "sixthly" and "seventhly" respectively.

37. Subsection (2) of section two hundred and ninety-three of the principal Act is repealed and re-enacted as follows—

S. 293  
amended.

(2) For the purposes of this section, the date that corresponds with the date of presentation of the petition in any proceedings in bankruptcy in the case of an individual shall be—

- (a) in the case of a winding up by the Court—
- (i) where before the presentation of the petition for the winding up a resolution has been passed by the company for winding up the company voluntarily, the date upon which the resolution to wind up the company voluntarily is passed; or
- (ii) where on the presentation of the petition for the winding up the company is under official management or has been under official management at any time

within six months prior to the presentation of the petition, the date of the commencement of the official management; or

- (iii) the date of the presentation of the petition for the winding up,

whichever date is the earliest; and

- (b) in the case of a voluntary winding up—

- (i) the date upon which the resolution to wind up the company voluntarily is passed; or

- (ii) where on the date of the passing of that resolution the company is under official management or had been under official management at any time within six months prior to the passing of that resolution, the date of the commencement of the official management,

whichever date is the earlier. .

S. 350  
amended.

38. Section three hundred and fifty of the principal Act is amended—

- (a) by adding after the section number, “350.” the subsection designation, “(1)”; and

- (b) by adding subsections as follow—

(2) Where a foreign company incorporated under the law of another State or Territory of the Commonwealth—

- (a) is placed under official management in the place of its incorporation by any law or enactment corresponding to Part IX; or

- (b) is being wound up,



every invoice, order for goods or business letter being a document on or in which the name of the company appears that is issued by or on behalf of the company, or an official manager or liquidator of the company, or a receiver or manager of the property of the company, shall have the words "under official management" or "in liquidation", whichever is appropriate, added after the name of the company where it first appears therein.

(3) If default is made in complying with subsection (2) of this section, the company and every officer of the company that is in default is guilty of an offence against this Act.

Penalty: \$40. .

39. Section three hundred and fifty-two of the principal Act is amended by adding after subsection (2) a subsection as follows—

S. 352  
amended.

(2a) Where a foreign company incorporated under the law of another State or Territory of the Commonwealth is placed under official management in the place of its incorporation by any law or enactment corresponding to Part IX or if the official management is terminated the company shall, within one month after the commencement or termination of the official management or within such further time as the Registrar in special circumstances allows, lodge or cause to be lodged with the Registrar notice in the prescribed form of the fact. .

40. Subsection (3) of section three hundred and sixty-six is amended—

S. 366  
amended

(a) by adding after the word "directors" in line six, the words, "of the company or of the creditors of the company or at a joint meeting of the creditors and members of the company"; and

- (b) by substituting for the word, "thereof", in line thirteen the words, "of the company or of the creditors of the company or at a joint meeting of the creditors and members of the company".

S. 384  
amended.

41. Section three hundred and eighty-four of the principal Act is amended—

- (a) by adding after the section number "384." the subsection designation "(1)";
- (b) by adding after the word, "registration" being the last word in paragraph (a), the words, "and the requirements with which documents lodged or to be lodged with the Registrar shall comply";
- (c) by adding after paragraph (c) paragraphs as follow—
  - (ca) prescribing the manner in which, and the persons by whom, and the directions or requirements in accordance with which, the forms prescribed for the purposes of this Act, or any of them, shall or may be signed, prepared, or completed, and generally regulating the signing, preparation, and completion of those forms, or any of them;
  - (cb) the summoning of, conduct of, and procedure and voting at, meetings of creditors, contributories, and holders of debentures, respectively, and at joint meetings of creditors and members of companies, the number of persons who shall constitute a quorum at any such meeting, the sending of notices of meetings to persons entitled to attend thereat, and the lodging with the Registrar of copies of notices of meetings and of resolutions passed thereat, and generally regulating the conduct of, and procedure at, any such meeting;

(cc) prescribing the persons by whom, and the cases and manner in which, proxies may be appointed, and generally regulating the appointment and powers of proxies; ; and

(d) by adding subsections as follow—

(2) The regulations may require—

(a) where documents required by or under this Act to be lodged in accordance with this Act are required to be verified or certified and no manner of verification or certification is prescribed by or under this Act, that the documents or any of them shall be verified or certified by statutory declaration or affidavit made by such persons as may be prescribed;

(b) where no express provision is made in this Act for verification or certification of documents that such documents as may be prescribed shall be verified or certified by statutory declaration or affidavit made by such persons as may be prescribed.

(3) A person shall not in respect of a document be proceeded against for an offence in consequence of a regulation made pursuant to subsection (2) of this section as well as for an offence against subsection (2) of section three hundred and seventy-five.

(4) The regulations may provide, in such cases as may be prescribed, that if a document that is required by or under this Act to be lodged with the Registrar

(cc) prescribing the persons by whom, and the cases and manner in which, proxies may be appointed, and generally regulating the appointment and powers of proxies; ; and

(d) by adding subsections as follow—

(2) The regulations may require—

(a) where documents required by or under this Act to be lodged in accordance with this Act are required to be verified or certified and no manner of verification or certification is prescribed by or under this Act, that the documents or any of them shall be verified or certified by statutory declaration or affidavit made by such persons as may be prescribed;

(b) where no express provision is made in this Act for verification or certification of documents that such documents as may be prescribed shall be verified or certified by statutory declaration or affidavit made by such persons as may be prescribed.

(3) A person shall not in respect of a document be proceeded against for an offence in consequence of a regulation made pursuant to subsection (2) of this section as well as for an offence against subsection (2) of section three hundred and seventy-five.

(4) The regulations may provide, in such cases as may be prescribed, that if a document that is required by or under this Act to be lodged with the Registrar