

**COMPANIES.**13<sup>c</sup> Elizabeth II., No. LXIX.

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**No. 69 of 1964.**


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**AN ACT to amend the Companies Act, 1961-1962.***[Assented to 8th December, 1964.]*

**BE** 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, 1964.*

Reprinted  
approved for  
reprint 9th  
October, 1962.

(2) In this Act the Companies Act, 1961-1962 is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Companies Act, 1961-1964.

Commence-  
ment.

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

3. Section five of the principal Act is amended— S. 5  
amended.

(a) by adding after the interpretation, “books” the following interpretation—

“borrowing corporation” means a corporation that is or will be under a liability, whether or not the liability is present or future, to pay any money received or to be received by it in response to an invitation to the public to subscribe for or purchase debentures of the corporation ; ;

(b) by adding after the word, “not” being the last word in the interpretation, “debenture” the passage, “, and any document deemed by subsection (5) of this section to be a debenture”;

(c) by adding after the interpretation, “foreign company” the following interpretation—

“guarantor corporation” in relation to a borrowing corporation, means a corporation that has guaranteed or has agreed to guarantee the repayment of any money received or to be received by the borrowing corporation in response to an invitation to the public to subscribe for or purchase debentures of the borrowing corporation; ; and

(d) by adding after the word, “corporation” being the last word in subsection (5) the passage, “and any document that is issued or intended or required to be issued by a corporation acknowledging or evidencing, or constituting an acknowledgment of, the indebtedness of the corporation in respect of any money that is or may be deposited with or lent to the corporation in response to such an invitation shall be deemed to be a debenture, but a document that merely acknowledges the receipt of the money in any case where, in respect of that money,

the corporation issues in compliance with section thirty-eight the document prescribed by subsection (2) of that section and complies with the other requirements of that section, shall be deemed not to be a debenture”.

S. 38  
repealed and  
re-enacted.  
As to  
invitations  
to the public  
to lend  
money to or  
to deposit  
money with a  
corporation.

4. Section thirty-eight of the principal Act is repealed and re-enacted as follows—

38. (1) An invitation to the public to deposit money with or lend money to a corporation or proposed corporation shall not be issued circulated or distributed by the corporation or by any other person unless—

- (a) a prospectus in relation to the invitation has been registered by the Registrar;
- (b) the prospectus contains an undertaking by the corporation that it will within two months after the acceptance of any money as a deposit or loan from any person in response to the invitation issue to that person a document that acknowledges or evidences or constitutes an acknowledgment of the indebtedness of the corporation in respect of that deposit or loan; and
- (c) the document is described or referred to in the prospectus and in any other document whether constituting or relating to the invitation as—
  - (i) an unsecured note or an unsecured deposit note;
  - (ii) a mortgage debenture or certificate of mortgage debenture stock; or
  - (iii) a debenture or certificate of debenture stock,

in accordance with the provisions of this section.

(2) Where pursuant to an invitation referred to in subsection (1) of this section a corporation has accepted from any person any money as a deposit or loan the corporation shall within two months after the acceptance of the money issue to that person a document that—

- (a) acknowledges or evidences or constitutes an acknowledgment of the indebtedness of the corporation in respect of that deposit or loan; and
- (b) complies with the other requirements of this section.

(3) The document shall be described or referred to in the prospectus and in any other document whether constituting or relating to the invitation and in the document itself as an unsecured note or an unsecured deposit note unless pursuant to the provisions of either subsection (4) or subsection (5) of this section it is and may be otherwise described.

(4) The document may be described or referred to in the prospectus or in such other document or in the document itself as a mortgage debenture or certificate of mortgage debenture stock if, and only if, there is included in the prospectus the statements and the valuation referred to in paragraph 32 of the Fifth Schedule.

(5) The document may be described or referred to in the prospectus or in such other document or in the document itself as a debenture or certificate of debenture stock if, and only if—

- (a) pursuant to subsection (4) of this section it may be (but is not) described or referred to in that prospectus or document as a mortgage debenture or certificate of mortgage debenture stock;  
or

- (b) there is included in the prospectus the statements and the summary referred to in paragraph 33 of the Fifth Schedule.

(6) Nothing in this section applies to a prescribed corporation and nothing in this Act requires a prospectus to be issued in connection with any invitation to the public to deposit money with a prescribed corporation.

(7) In subsection (6) of this section, "prescribed corporation" means—

- (a) a banking corporation;
- (b) a corporation that is declared by the Governor by notice in the *Government Gazette* to be an authorised dealer in the short term money market; or
- (c) a corporation that—
  - (i) is a pastoral company in respect of which an exemption granted under section eleven of the Banking Act, 1959 of the Commonwealth, or that Act as amended from time to time, is in force;
  - (ii) is registered under the law of the Commonwealth relating to life insurance or is a corporation the whole of the issued shares of which are held beneficially by a corporation so registered; or
  - (iii) is a subsidiary of a banking corporation or of a pastoral company referred to in subparagraph (i) of this paragraph, if the repayment of all existing and future deposits with and loans to the subsidiary are guaranteed by the banking corporation or pastoral company,

and is declared by the Governor by notice in the *Government Gazette* to be a prescribed corporation for the purposes of this section.

(8) The Governor may, by notice in the *Gazette*—

- (a) specify terms and conditions subject to which subsection (6) of this section shall have effect in relation to a corporation specified in paragraph (c) of subsection (7) of this section; or
- (b) vary or revoke any declaration or specification made under this section.

Any declaration made by the Governor pursuant to the section for which this section is in substitution, shall be deemed to have been made under this section and may be varied or revoked under this subsection.

(9) Every corporation or other person that contravenes or fails to comply with any of the provisions of this section and every officer of a corporation who is in default is guilty of an offence against this Act.

Penalty: Imprisonment for six months or One thousand pounds.

(10) (a) The provisions of this section relating to the description of any document acknowledging or evidencing or intended to acknowledge or evidence the indebtedness of a corporation apply to and in relation to every such document issued after the date of the coming into operation of the Companies Act Amendment Act, 1964, notwithstanding anything in any debenture or trust deed issued or executed before that date and for the time being in force and any such document issued after that date shall be described in accordance with the requirements of this section notwithstanding anything in that existing debenture or trust deed.

(b) This subsection applies to any such document issued pursuant to an invitation to the public to deposit money with or lend money to a corporation made before or after the date of the coming into operation of the Companies Act Amendment Act, 1964.

(11) For the purposes of this section a document issued by a borrowing corporation certifying that a person named therein is in respect of any deposit with or loan to the corporation the registered holder of a specified number or value—

- (a) of unsecured notes or unsecured deposit notes;
- (b) of mortgage debentures or certificates of mortgage debenture stock; or
- (c) of debentures or certificates of debenture stock,

issued by the corporation upon or subject to the terms and conditions contained in a trust deed referred to or identified in the certificate, shall be deemed to be a document evidencing the indebtedness of that corporation in respect of that deposit or loan. .

S. 41  
amended.

5. Subsection (2) of section forty-one of the principal Act is amended by substituting for the word, "Where" in line one, the passage, "Subject to the provisions contained in the Fifth Schedule, where".

S. 74  
repealed and  
re-enacted.

6. Section seventy-four of the principal Act is repealed and re-enacted as follows—

Qualifications  
of trustee for  
debenture  
holders.

74. (1) Subject to this section, every corporation that offers debentures to the public for subscription or purchase in the State after the coming into operation of the Companies Act Amendment Act, 1964, shall make provision in those debentures or in a trust deed relating to

those debentures for the appointment, as trustee for the holders of the debentures, of a corporation (in this section called the "trustee corporation") being a person constituted as the Public Trustee or Public Curator in any State or Territory of the Commonwealth or a company within the meaning of Division 5 of this Part that is—

- (a) a corporation authorised by the law of any State or Territory of the Commonwealth to take in its own name a grant of probate or of letters of administration of the estate of a deceased person;
- (b) a corporation registered under the law of the Commonwealth relating to life insurance;
- (c) a banking corporation;
- (d) a corporation (in this paragraph called "the subsidiary") the whole of the issued shares of which are held beneficially by a corporation or corporations of a kind referred to in subparagraphs (a), (b) or (c) of this subsection (in this paragraph called "the holding company") if—
  - (i) the holding company is liable for all liabilities incurred or to be incurred by the subsidiary as trustee for the holders of the debentures; or
  - (ii) the holding company has subscribed for and beneficially holds shares in the subsidiary in respect of which shares there is a liability of not less than Two hundred and fifty thousand pounds which has not been called up and which the subsidiary has resolved by special resolution shall not be capable of being called up except in the



event, and for the purposes of the subsidiary being wound up; or

- (e) a corporation approved by the Minister for the purposes of this subsection.

(2) The approval of a corporation by the Minister pursuant to paragraph (e) of subsection (1) of this section shall be given by notice in the *Gazette* and may be—

- (a) general or in relation to a particular borrowing corporation or to a particular class of borrowing corporations or in relation to a particular trust deed;
- (b) subject to such terms and conditions as the Minister thinks fit and as are specified in the notice; and
- (c) varied or revoked by notice in the *Gazette*,

but any such revocation does not operate to prevent the corporation from continuing to act as the trustee corporation in accordance with this Act in relation to any moneys borrowed by a borrowing corporation before the date of the revocation.

(3) Where a borrowing corporation is required to appoint a trustee for the holders of any debentures in accordance with subsection (1) of this section it shall not allot any of those debentures until the appointment has been made and the trustee corporation has consented to act as trustee.

(4) Without leave of the Court, a trustee corporation shall not be appointed, hold office or act as trustee for the holders of debentures of a borrowing corporation if that trustee corporation is—

- (a) a director of the borrowing corporation;

- (b) a shareholder that beneficially holds shares in the borrowing corporation;
- (c) beneficially entitled to moneys owed by the borrowing corporation to it;
- (d) a corporation that has entered into a guarantee in respect of the principal debt secured by those debentures or in respect of interest thereon; or
- (e) a corporation that is by virtue of subsection (5) of section six deemed to be related to—
  - (i) any corporation of a kind referred to in paragraphs (a) to (d) inclusive of this subsection; or
  - (ii) the borrowing corporation.

(5) Notwithstanding anything contained in subsection (4) of this section, that subsection does not prevent a trustee corporation from being appointed, holding office or acting as trustee for the holders of debentures of a borrowing corporation by reason only that—

- (a) the borrowing corporation owes to the trustee corporation or to a corporation that is deemed by virtue of subsection (5) of section six to be related to the trustee corporation any moneys so long as such moneys are—
  - (i) moneys that (not taking into account any moneys referred to in subparagraphs (ii) and (iii) of this paragraph) do not, at the time of the appointment or at any time within a period of three months after the debentures are first offered to the public, exceed one-tenth of the amount of the debentures proposed to be offered to the public within that period and do not, at any time after the expiration of that period, exceed

one-tenth of the amount owed by the borrowing corporation to the holders of the debentures;

- (ii) moneys that are secured by, and only by, a first mortgage over land of the borrowing corporation, or by any debentures issued by the borrowing corporation to the public or by any debentures not issued to the public that are issued pursuant to the same trust deed as that creating other debentures issued at any time by the borrowing corporation to the public or by any debentures to which the trustee corporation, or a corporation that is by virtue of subsection (5) of section six deemed to be related to the trustee corporation, is not beneficially entitled; or
  - (iii) moneys to which the trustee corporation, or a corporation that is by virtue of subsection (5) of section six deemed to be related to the trustee corporation, is entitled as trustee for holders of any debentures of the borrowing corporation in accordance with the terms of the debentures or of the relevant trust deed; or
- (b) the trustee corporation, or a corporation that is deemed by virtue of subsection (5) of section six to be related to the trustee corporation, is a shareholder of the borrowing corporation in respect of shares that it beneficially holds, so long as the shares in the borrowing corporation beneficially held by the trustee corporation and by all other corporations that are

deemed by virtue of subsection (5) of section six to be related to it, do not carry the right to exercise more than one-tenth of the voting power at any general meeting of the borrowing corporation.

(6) Nothing in subsection (4) of this section shall—

- (a) affect the operation of any debentures or trust deed issued or executed before the date of the coming into operation of the Companies Act Amendment Act, 1964; or
- (b) apply to or in relation to the trustee for the holders of any of those debentures,

unless pursuant to any of those debentures or the trust deed a further offer of debentures is made to the public after that date.

(7) If default is made in complying with any provision of this section, the corporation and every officer of the corporation who is in default is guilty of an offence against this Act.

Penalty: Two hundred pounds. Default penalty.

7. The principal Act is amended by adding after section seventy-four the following section—

S. 74A  
added.

74A. (1) Notwithstanding anything contained in any Act or in the relevant debentures or trust deed a trustee for the holders of debentures shall not cease to be the trustee until a corporation qualified pursuant to section seventy-four for appointment as trustee for the holders of the debentures has been appointed to be the trustee for the holders of the debentures and has taken office as such but the foregoing provisions of this subsection are not applicable to a trustee appointed prior to the coming into operation of the Companies Act Amendment Act, 1964, until the first day of January, nineteen hundred and sixty-six.

Retirement  
of Trustees.

(2) Where provision has been made in the debentures or in the relevant trust deed for the appointment of a successor to a trustee for the holders of the debentures upon retirement or otherwise, the successor may subject to section seventy-four, be appointed in accordance with that provision.

(3) Where no provision has been made in the debentures or in the relevant trust deed for the appointment of a successor to a retiring trustee the borrowing corporation may appoint a successor which is qualified for appointment pursuant to section seventy-four.

(4) Notwithstanding anything in this Act or in any debentures or trust deed a borrowing corporation may, with the consent of an existing trustee for the holders of the debentures, appoint as successor to the existing trustee any corporation that is qualified for appointment pursuant to section seventy-four and which is deemed by virtue of subsection (5) of section six to be related to the existing trustee.

(5) Where the trustee for the holders of the debentures has ceased to exist or to be qualified under section seventy-four or fails or refuses to act or is disqualified under that section the Court may on the application of the borrowing corporation or the trustee for the holders of the debentures or the holder of any of the debentures or the Minister appoint any corporation qualified pursuant to section seventy-four to be the trustee for the holders of the debentures in place of the trustee which has ceased to exist or to be qualified or which has failed or refused to act as trustee or is disqualified under section seventy-four.

(6) Where a successor is appointed to be a trustee in place of any trustee the successor shall within one month after the appointment lodge with the Registrar notice in the prescribed form of the appointment.

Penalty: Fifty pounds. Default penalty.

8. The principal Act is amended by adding after section seventy-four A, as added by this Act, the following section—

S. 74B  
added.

74B. (1) Where a corporation offers debentures to the public for subscription in the State the debentures or the relevant trust deed shall contain a limitation on the amount that the borrowing corporation may pursuant to those debentures or that deed borrow and shall contain covenants by the borrowing corporation, or if the debentures do not or the trust deed does not expressly contain those covenants they or it shall be deemed to contain covenants by the borrowing corporation, to the following effect—

Contents of  
Trust Deed.

- (a) that the borrowing corporation will use its best endeavours to carry on and conduct its business in a proper and efficient manner;
- (b) that, to the same extent as if the trustee for the holders of the debentures or any registered company auditor appointed by the trustee were a director of the corporation, the borrowing corporation will—
  - (i) make available for its or his inspection the whole of the accounting or other records of the borrowing corporation; and
  - (ii) give to it or him such information as it or he requires with respect to all matters relating to the accounting or other records of the borrowing corporation; and
- (c) that the borrowing corporation will, on the application of persons holding not less than one-tenth in nominal value

of the issued debentures to which the covenant relates delivered to its registered office, by giving notice—

- (i) to each of the holders of those debentures (other than debentures payable to bearer) at his address as specified in the register of debentures; and
- (ii) by an advertisement in a daily newspaper circulating generally throughout the State addressed to all holders of those debentures,

summon a meeting of the holders of those debentures to consider the accounts and balance-sheet that were laid before the last preceding annual general meeting of the borrowing corporation and to give to the trustee directions in relation to the exercise of the trustee's powers, the meeting of the holders of the debentures to be held at a time and place specified in the notice and advertisement under the chairmanship of a person nominated by the trustee or such other person as is appointed in that behalf by the holders of those debentures present at the meeting.

(2) Where after the date of the coming into operation of the Companies Act Amendment Act, 1964, any debenture (other than a debenture lawfully issued pursuant to a trust deed executed before that date) is issued in pursuance of an offer to the public and neither the debenture nor the trust deed relating to the issue of the debenture expressly contains the limitation on the amount that the borrowing corporation may borrow and the covenants referred to in subsection (1) of this section, the corporation that issued the debenture and every officer of the corporation who is in default is guilty of an offence against this Act.

Penalty: One hundred pounds.

(3) The provisions of subsections (3) and (4) of section seventy-four, as enacted immediately before the date of the coming into operation of the Companies Act Amendment Act, 1964, continue to apply to debentures lawfully issued before that date or issued after that date pursuant to a trust deed executed before that date.

9. The principal Act is amended by adding after section seventy-four B as added by this Act, the following section—

S. 74C  
added.

74C. (1) Notwithstanding anything in any debenture or trust deed the security for any debentures that are irredeemable or redeemable only on the happening of a contingency shall, if the Court so orders, be enforceable, forthwith or at such other time as the Court directs if, on the application of the trustee for the holders of the debentures or (where there is no trustee) on the application of the holder of any of the debentures, the Court is satisfied that—

Power of  
Court in  
relation to  
certain irre-  
deemable  
debentures.

- (a) at the time of the issue of the debentures the assets of the corporation that constituted or were intended to constitute the security therefor were sufficient or likely to become sufficient to discharge the principal debt and any interest thereon;
- (b) the security, if realised under the circumstances existing at the time of the application, would be likely to bring not more than sixty per centum of the principal sum of moneys outstanding (regard being had to all prior charges and charges ranking *pari passu* if any); and
- (c) the assets covered by the security, on a fair valuation on the basis of a going concern after allowing a reasonable amount for depreciation are worth less than the principal sum and the



borrowing corporation is not making sufficient profit to pay the interest due on the principal sum or (where no definite rate of interest is payable) interest thereon at such rate as the Court considers would be a fair rate to expect from a similar investment.

(2) Subsection (1) of this section does not affect any power to vary rights or accept any compromise or arrangement created by the terms of the debentures or the relevant trust deed or under a compromise or arrangement between the borrowing corporation and creditors.

S. 74D  
added.

10. The principal Act is amended by adding after section seventy-four C as added by this Act, the following section—

Duties of  
trustees.

74D. (1) A trustee for the holders of debentures—

- (a) shall exercise reasonable diligence to ascertain whether or not the assets of the borrowing corporation and of each of its guarantor corporations that are or may be available whether by way of security or otherwise are sufficient or are likely to be or become sufficient to discharge the principal debt as and when it becomes due;
- (b) shall satisfy itself that each prospectus relating to the debentures does not contain any matter that is inconsistent with the terms of the debentures or with the relevant trust deed;
- (c) shall ensure that the borrowing corporation and each of its guarantor corporations comply with the provisions of Division 7 of this Part so far as they relate to the debentures and are applicable;

- (d) shall exercise reasonable diligence to ascertain whether or not the borrowing corporation and each of its guarantor corporations have committed any breach of the covenants terms and provisions of the debentures or the trust deed;
- (e) except where it is satisfied that the breach will not materially prejudice the security (if any) for the debentures or the interests of those holders, shall take all steps and do all such things as it is empowered to do to cause the borrowing corporation and any of its guarantor corporations to remedy any breach of those covenants terms and provisions;
- (f) where the borrowing corporation or any of its guarantor corporations fails when so required by the trustee to remedy any breach of the covenants terms and provisions of the debentures or the trust deed, may place the matter before a meeting of holders of the debentures, submit such proposals for the protection of their investment as the trustee considers necessary or appropriate and obtain the directions of the holders in relation thereto; and
- (g) where the borrowing corporation submits to those holders a compromise or arrangement, shall give to them a statement explaining the effect of the compromise or arrangement and, if it thinks fit, recommend to them an appropriate course of action to be taken by them in relation thereto.

(2) (a) Where, after due inquiry, the trustee for the holders of the debentures at any time is of the opinion that the assets of the borrowing corporation and of any of its guarantor corporations that are or should be available whether by way of security or otherwise, are

insufficient, or likely to become insufficient, to discharge the principal debt as and when it becomes due, the trustee may apply to the Minister for an order under this subsection.

(b) The Minister, on such application, after giving the borrowing corporation an opportunity of making representations in relation to that application, may—

(i) by order in writing served on the corporation at its registered office in the State, impose such restriction on the activities of the corporation, including restrictions on advertising for deposits or loans and on borrowing by the corporation as the Minister thinks necessary for the protection of the interests of the holders of the debentures; or

(ii) if the borrowing corporation so requires, direct the trustee to apply to the Court for an order under subsection (4) of this section and the trustee shall apply accordingly.

(3) Where—

(a) after due inquiry, the trustee at any time is of the opinion that the assets of the borrowing corporation and of any of its guarantor corporations that are or should be available, whether by way of security or otherwise, are insufficient or likely to become insufficient, to discharge the principal debt as and when it becomes due; or

(b) the corporation has contravened or failed to comply with an order made by the Minister under subsection (2) of this section,

the trustee may, and where the borrowing corporation has requested the trustee to do so the trustee shall, apply to the Court for an order under subsection (4) of this section.

(4) Where an application is made to the Court under subsection (2) or subsection (3) of this section, the Court may, after giving the borrowing corporation an opportunity of being heard, by order, do all or any of the following things, namely—

- (a) direct the trustee to convene a meeting of the holders of the debentures for the purpose of placing before them such information relating to their interests and such proposals for the protection of their interests as the trustee considers necessary or appropriate and of obtaining their directions in relation thereto, and give such directions in relation to the conduct of the meeting as the Court thinks fit;
- (b) stay all or any actions or proceedings before any court by or against the borrowing corporation;
- (c) restrain the payment of any moneys by the borrowing corporation to the holders of debentures of the corporation or to any class of those holders;
- (d) appoint a receiver of such of the property as constitutes the security (if any) for the debentures;
- (e) give such further directions from time to time as may be necessary to protect the interests of the holders of the debentures, the members of the borrowing corporation or of any of its guarantor corporations or the public,

but in making any such order the Court shall have regard to the rights of all creditors of the borrowing corporation.

(5) The Court may vary or rescind any order made under subsection (4) of this section as the Court thinks fit.

(6) A trustee in making any application to the Minister or to the Court shall have regard to the nature and kind of the security given when the debentures were offered to the public, and if no security was given shall have regard to the position of the holders of the debentures as unsecured creditors of the borrowing corporation.

(7) A trustee may rely upon any certificate or report given or statement made by any solicitor, auditor or officer of the borrowing corporation or guarantor corporation if it has reasonable grounds for believing that the solicitor, auditor or officer was competent to give or make the certificate, report or statement.

S. 74E  
added.

11. The principal Act is amended by adding after section seventy-four D as added by this Act, the following section—

74E. (1) The trustee for the holders of debentures may apply to the Court—

- (a) for directions in relation to any matter arising in connection with the performance of the functions of the trustee; or
- (b) to determine any question in relation to the interests of the holders of debentures,

and the Court may—

- (c) give such directions to the trustee as the Court deems fit; and
- (d) if satisfied that the determination of the question will be just and beneficial, accede wholly or partially to any such application on such terms and conditions as the Court thinks fit or make such other order on the application as the Court thinks just.

(2) The Court may on an application under this section order a meeting of all or any of the holders of debentures to be called to consider

Powers of trustee to apply to the Court for directions, etc.

any matters in which they are concerned and to advise the trustee thereon and may give such ancillary or consequential directions as the Court thinks fit.

(3) The meeting shall be held and conducted in such manner as the Court directs, under the chairmanship of a person nominated by the trustee or such other person as the meeting appoints.

12. The principal Act is amended by adding after section seventy-four E as added by this Act, the following section—

S. 74F  
added.

74F. (1) Where there is a trustee for the holders of any debentures of a borrowing corporation the directors of the borrowing corporation shall—

Obligations  
of borrowing  
corporation.

- (a) at the end of a period not exceeding three months ending on a day (not later than six months after the coming into operation of the Companies Act Amendment Act, 1964, or after the date of the relevant prospectus, whichever is the later) which the trustee is hereby required to notify to the borrowing corporation in writing; and
- (b) at the end of each succeeding period thereafter, being a period of three months or such shorter time as the trustee may, in any special circumstances, allow,

prepare a report that relates to that period and complies with the requirements of subsection (2) of this section and within one month after the end of each such period lodge a copy of the report relating to that period with the Registrar and with the trustee.

Penalty: Two hundred pounds. Default penalty: Fifty pounds.

(2) The report referred to in subsection (1) of this section shall be signed by not less than two of the directors on behalf of all of them and shall set out in detail any matters adversely affecting the security or the interests of the holders of the debentures and, without affecting the generality of the foregoing, shall state—

- (a) whether or not the limitations on the amount that the corporation may borrow have been exceeded;
- (b) whether or not the borrowing corporation and each of its guarantor corporations have observed and performed all the covenants and provisions binding upon them respectively by or pursuant to the debentures or any trust deed;
- (c) whether or not any event has happened that has caused or could cause the debentures or any provision of the relevant trust deed to become enforceable and if so, particulars of that event;
- (d) whether or not any circumstances affecting the borrowing corporation, its subsidiaries or its guarantor corporations or any of them have occurred that materially affect any security or charge included in or created by the debentures or any trust deed and if so, particulars of those circumstances;
- (e) whether or not there has been any substantial change in the nature of the business of the borrowing corporation or any of its subsidiaries or any of its guarantor corporations since the debentures were first issued to the public that has not previously been reported upon as required by this section and if so, particulars of that change; and

(f) where the borrowing corporation has deposited money with or lent money to or assumed any liability of a corporation which pursuant to subsection (5) of section six is deemed to be related to the borrowing corporation, particulars with respect to each corporation that is so deemed, of—

(i) the total amounts so deposited or loaned and the extent of any liability so assumed during the period covered by the report; and

(ii) the total amounts owing to the borrowing corporation in respect of money so deposited or loaned and the extent of any liability so assumed as at the end of the period covered by the report—

distinguishing between deposits loans and assumptions of liability that are secured and those that are unsecured, but not including any deposit with or loan to or any liability assumed on behalf of a corporation if that corporation has guaranteed the repayment of the debentures of the borrowing corporation and has secured the guarantee by a charge over its assets in favour of the trustee for the holders of the debentures of the borrowing corporation.

(3) Where there is a trustee for the holders of any debentures issued by a borrowing corporation, the borrowing corporation and each of its guarantor corporations that has guaranteed the repayment of the moneys raised by the issue of those debentures shall (within twenty-one days after the creation of the charge) in writing furnish the trustee for the holders of the debentures, whether or not any demand therefor has been made, with particulars of any charge created by the corporation or the guarantor corporation, as the case



requires, and when the amount to be advanced on the security of the charge is indeterminate (within seven days after the advance) with particulars of the amount or amounts in fact advanced but where any such advances are merged in a current account with bankers or trade creditors it shall be sufficient for particulars of the net amount outstanding in respect of any such advances to be furnished every three months.

(4) (a) The directors of every borrowing corporation,

that has issued debentures (other than debentures of a kind that if issued after the coming into operation of the Companies Act Amendment Act, 1964, could be lawfully described pursuant to section thirty-eight as mortgage debentures or certificates of mortgage debenture stock) and of every guarantor corporation that has guaranteed the repayment of the moneys raised by the issue of the debentures,

shall at some date not later than ten months or, in the case of any particular corporation, not later than the expiration of such other period as is for the time being fixed by the Registrar with the consent of the trustee for the debenture holders for that corporation, after the expiration of each financial year of that corporation, cause to be made out and lodged with the Registrar and with the trustee for the holders of the debentures, if any, a profit and loss account for the period from the end of that financial year until the expiration of six months after the end of that financial year and a balance-sheet as at the end of the period to which the profit and loss account relates.

Penalty: Fifty pounds. Default penalty.

(b) This subsection shall not be construed as requiring the directors of a borrowing corporation or a guarantor corporation to make out and lodge with the Registrar or with the

trustee for the holders of debentures a profit and loss account or a balance sheet relating to any period that has expired before the coming into operation of the Companies Act Amendment Act, 1964.

(c) Nothing in paragraph (a) of this subsection applies to the directors of a pastoral company in respect of which an exemption granted under section eleven of the Banking Act, 1959 of the Commonwealth, or that Act as amended from time to time, is in force and which company is declared by the Governor by notice in the *Gazette* to be a corporation to which paragraph (a) of this subsection does not apply and the Governor may by notice in the *Gazette*—

- (i) specify terms and conditions subject to which this paragraph shall have effect in relation to such a pastoral company; and
- (ii) vary or revoke any declaration or specification made by him pursuant to this paragraph.

(5) Subject to the provisions of subsection (7) of this section, the provisions of subsections (4) to (13), both inclusive, of section one hundred and sixty-two and of subsections (1), (2) and (4) of section one hundred and sixty-seven are with such adaptations as are necessary applicable to every profit and loss account and balance-sheet made out and lodged pursuant to subsection (4) of this section as if that profit and loss account and balance-sheet were a profit and loss account and balance-sheet referred to in those sections but notwithstanding the foregoing provisions of this subsection where any guarantor corporation, being a corporation that is incorporated in the United Kingdom or in any State or Territory of the United States of America, has deposited with the Board of Trade in the United Kingdom or the Securities and Exchange Commission of the United States of America a profit and loss account and balance-sheet for the relevant period it is sufficient

compliance with the requirements of subsection (4) of this section if there is (with the consent of the trustee for the debenture holders) lodged with the Registrar and the trustee for the debenture holders certified copies of the profit and loss account and balance-sheet so deposited.

(6) Where the directors of a borrowing corporation do not lodge with the trustee for the holders of debentures a report as required by subsection (1) of this section or where the directors of a borrowing corporation or the directors of a guarantor corporation do not lodge with the trustee the balance-sheets, profit and loss accounts and reports as required by subsection (4) of this section within the time prescribed the trustee shall forthwith lodge notice of that fact with the Registrar.

(7) (a) The audit of a profit and loss account and balance-sheet of a borrowing corporation or its guarantor corporation, required to be made out and lodged pursuant to subsection (4) of this section, may be dispensed with or the audit may be of a limited nature or extent, if the trustee for the holders of debentures of the borrowing corporation has, by notice in writing, consented to the audit being dispensed with or being of a limited nature or extent, as the case may be.

(b) Where the trustee has, by notice in writing, so consented, the directors of the corporation in respect of whose profit and loss account and balance-sheet the notice was given, shall lodge with the Registrar a copy of the notice at the time the profit and loss account and balance-sheet to which the notice relates are so lodged.

S. 74G  
added.

13. The principal Act is amended by adding after section seventy-four F as added by this Act, the following section—

Obligation  
of guarantor  
corporation  
to furnish  
information.

74G. (1) For the purpose of the preparation of a report that, by this Act is required to be signed by or on behalf of the directors of a

borrowing corporation or any of them, that corporation may, by notice in writing require any of its guarantor corporations to furnish it with any information relating to the guarantor corporation that is, by this Act, required to be contained in the report, and the guarantor corporation shall furnish the borrowing corporation with that information before such date, being a date not earlier than fourteen days after the notice is given, as may be specified in that behalf in the notice.

(2) A corporation that fails to comply with a requirement contained in a notice given pursuant to subsection (1) of this section and every officer of that corporation who is in default is guilty of an offence against this Act.

Penalty: Two hundred pounds. Default penalty.

14. The principal Act is amended by adding after section seventy-four G as added by this Act, the following section—

S. 74H  
added.

74H. (1) Where in any prospectus issued in connection with an invitation to the public to subscribe for or to purchase debentures of a corporation there is a statement as to any particular purpose or project for which the moneys received by the corporation in response to the invitation are to be applied the corporation shall, from time to time, make reports to the trustee for the holders of those debentures as to the progress that has been made towards achieving such purpose or completing such project.

Loans and  
deposits to be  
immediately  
repayable  
on certain  
events.

(2) Each such report shall be included in the report required to be furnished to the trustee for the holders of the debentures under subsection (1) of section seventy-four F.

(3) When it appears to the trustee for the holders of the debentures that the purpose or project has not been achieved or completed

within the time stated in the prospectus within which the purpose or project is to be achieved or completed or, where no such time was stated, within a reasonable time, the trustee may and, if in his opinion it is necessary for the protection of the interests of the holders of the debentures, shall give notice in writing to the corporation requiring it to repay the moneys so received by the corporation and, within one month after such notice is given, lodge with the Registrar a copy thereof.

(4) The trustee shall not give a notice pursuant to the provisions of subsection (3) of this section if it is satisfied—

- (a) that the purpose or project has been substantially achieved or completed;
- (b) that the interests of the holders of the debentures have not been materially prejudiced by the failure to achieve or complete the purpose or project within the time stated in the prospectus or within a reasonable time; or
- (c) that the failure to achieve the purpose or project was due to circumstances beyond the control of the corporation that could not reasonably have been foreseen by the corporation at the time that the prospectus was issued.

(5) Upon receipt by the corporation of a notice referred to in subsection (3) of this section, the corporation is liable to repay, and on demand in writing by him shall immediately repay, to any person entitled thereto, any money owing to him as the result of a loan or deposit made in response to the invitation unless—

- (a) before the moneys were accepted by the corporation the corporation had given notice in writing to the persons from whom the moneys were received specifying the purpose or project for

which the moneys would in fact be used and the moneys were accepted by the corporation accordingly; or

- (b) the corporation by notice in writing served on the holders of the debentures—
- (i) had specified the purpose or project for which the moneys would in fact be applied by the corporation; and
  - (ii) had offered to repay the moneys to the holders of the debentures, and that person had not within fourteen days after the receipt of the notice, or such longer time as was specified in the notice, in writing demanded from the corporation repayment of the money.

(6) Where the corporation has given a notice in writing as provided in subsection (5) of this section, specifying the purpose or project for which the moneys will in fact be applied by the corporation, the provisions of this section apply and have effect as if the purpose or project so specified in the notice was the particular purpose or project specified in the prospectus as the purpose or project for which the moneys were to be applied. .

15. The principal Act is amended by adding after section seventy-four H as added by this Act, the following section—

S. 74I  
added.

74I. Notwithstanding any other provision of this Act an invitation to the public by a prescribed corporation as defined in subsection (7) of section thirty-eight to deposit money with that corporation shall, for the purposes of this Division, be deemed not to be an invitation or offer to the public to subscribe for or purchase debentures of the corporation. .

Invitation by  
prescribed  
corporation  
deemed not  
to be an  
invitation or  
offer to  
the public.

S. 99  
amended.

16. Subsection (1) of section ninety-nine of the principal Act is amended by substituting for the words, "unless the conditions of issue of the shares or debentures otherwise provide" in lines ten and eleven the words, "unless in the case of shares the conditions of the issue otherwise provide".

S. 161A  
added.

17. The principal Act is amended by adding after section one hundred and sixty-one the following section—

As to  
accounting  
periods of  
companies  
with the  
same group.

161A. (1) Subject to the provisions of subsections (11) and (12) of this section the directors of every holding company that is not a foreign company shall take such steps as are necessary to ensure that—

- (a) within twelve months after the coming into operation of the Companies Act Amendment Act, 1964, the financial years of each of its subsidiaries coincide with the financial year of the holding company; and
- (b) within twelve months after any corporation becomes a subsidiary of the holding company, the financial year of that corporation coincides with the financial year of the holding company.

(2) Where the financial year of the holding company that is not a foreign company and that of each of its subsidiaries coincide the directors of the holding company shall at all times take such steps as are necessary to ensure that without the consent of the Registrar the financial year of the holding company or any of its subsidiaries is not altered so that all such financial years do not coincide.

(3) Where the directors of the holding company are of the opinion that there is good reason why the financial year of any of its subsidiaries should not coincide with the financial year of the holding company the directors may apply in writing to the Registrar for an

order authorising any subsidiary to continue to have or to adopt (as the case requires) a financial year that does not coincide with that of the holding company.

(4) The application shall be supported by a statement by the directors of the holding company of their reasons for seeking the order.

(5) The Registrar may require the directors who make an application under this section to supply such information relating to the operation of the holding company and of any corporation that is deemed by virtue of subsection (5) of section six to be related to the holding company as he thinks necessary for the purpose of determining the application.

(6) The Registrar may at the expense of the holding company of which the applicants are directors request any registered company auditor to investigate and report on the application.

(7) The Registrar may rely upon any report obtained pursuant to subsection (6) of this section from the registered company auditor.

(8) The Registrar may make an order granting or refusing the application or granting the application subject to such limitations, terms or conditions as he thinks fit and shall serve the order on the holding company.

(9) Where the applicants are aggrieved by any order made by the Registrar, the applicants may within two months after the service of the order upon the holding company appeal against the order to the Board.

(10) The Board shall determine the appeal and in determining the appeal may make any order that the Registrar had power to make on the original application and may exercise any of the powers that the Registrar might have exercised in relation to the original application.



(11) Where the directors of a holding company have applied to the Registrar for an order authorising any subsidiary to continue to have a financial year that does not coincide with that of the holding company, the operation of subsection (1) of this section shall be suspended in relation to that subsidiary until the determination of the application and of any appeal arising out of the application.

(12) Where an order is made authorising any subsidiary to have a financial year that does not coincide with that of the holding company, compliance with the terms of the order of the Registrar or where there has been an appeal, compliance with the terms of any order made on the determination of the appeal shall be deemed to be a compliance with the provisions of subsection (1) of this section in relation to that subsidiary but where an application for such an order and the appeal (if any) arising out of that application are refused the time within which the directors of the holding company are required to comply with the provisions of subsection (1) of this section in relation to that subsidiary shall be deemed to be the period of twelve months after the date upon which the order of the Registrar is served on the holding company or the period of twelve months after the determination of the appeal, as the case may be.

(13) Where the directors of a holding company have applied to the Registrar for an order authorising any of its subsidiaries to continue to have or to adopt a financial year that does not coincide with that of the holding company and the application and the appeal, if any, arising out of that application, have been refused, the directors of the holding company shall not make a similar application with respect to that subsidiary within three years after the refusal of the application or where there is an appeal after the determination of that appeal unless the Registrar is satisfied that there has

been a substantial change in the relevant facts or circumstances since the refusal of the former application or the determination of the appeal as the case may be.

18. Section one hundred and sixty-two of the principal Act is amended by— S. 162 amended.

- (a) substituting for the words, “period of eighteen months” in line four of subsection (2), the words, “periods of eighteen months and fifteen months”;
- (b) adding after the word, “state” in line two of subsection (6), the words, “with appropriate detail”; and
- (c) adding after paragraph (b) of subsection (6), the following paragraphs—
  - (ba) whether or not in the opinion of the directors any circumstances have arisen that render adherence to the existing method of valuation of assets or liabilities of the company misleading or inappropriate;
  - (bb) whether any contingent liabilities have been undertaken by the company since the end of the period covered by the last report and, if so, the amount thereof; and whether or not any contingent liability that will materially affect the company in its ability to meet its obligations as and when they fall due has become enforceable or in the opinion of the directors is likely to become enforceable within the succeeding period of twelve months; .

19. The principal Act is amended by inserting after section one hundred and sixty-seven, the following section— S. 167A added.

167A. (1) The auditor of a borrowing corporation shall within seven days after furnishing the corporation or its members with Duties of auditors to trustee for debenture holders.

any report relating to the balance-sheet or profit and loss account or any report, certificate or other document that he is required by this Act or by the debentures or trust deed to give to the corporation or its members, send by post to every trustee for the holders of debentures of the borrowing corporation a copy thereof, together with a copy of each document accompanying the report, certificate or document so furnished.

(2) Where in the performance of his duties as auditor of a borrowing corporation or a guarantor corporation the auditor becomes aware of any matter that is in his opinion relevant to the exercise and performance of the powers and duties imposed by this Act or by any trust deed upon any trustee for the holders of debentures of the borrowing corporation he shall within seven days after so becoming aware of the matter send by post a report in writing on the matter to that corporation and a copy thereof to the trustee.

Penalty: Fifty pounds. Default penalty.

S. 170  
amended.

20. Section one hundred and seventy of the principal Act is amended by—

- (a) adding after the word, “company” in line one of subsection (1), the passage, “(not being a company to which Division 4 of this Part applies)”;
- (b) adding after subsection (2) the following subsection—

(3) Upon the publication in the *Gazette* of a Proclamation under section one hundred and seventy-two declaring the company to be a company to which Division 4 of this Part applies the appointment of an inspector or inspectors pursuant to section one hundred and sixty-nine or this section terminates and he or they (as the case may be) thereupon ceases or cease to have, and shall not exercise any of, the powers and authorities of an inspector or inspectors under this Division. .

21. Section one hundred and seventy-one of the principal Act is amended by adding after subsection (3) the following subsection—

S. 171  
amended.

(3a) An inspector who pursuant to this section requires the production of books and documents in the custody or power or under the control of an officer or agent of any corporation whose affairs are being investigated under or pursuant to this Division—

- (a) may take possession of all those books and documents;
- (b) may retain all those books and documents for such time as he considers to be necessary for the purpose of the investigation; and
- (c) shall permit the corporation to have access at all reasonable times to all those books and documents so long as they are in his possession.

22. Section one hundred and seventy-two of the principal Act is amended by adding after paragraph (a) of subsection (3), the following paragraphs—

S. 172  
amended.

- (aa) the Governor is satisfied that it is in the public interest that allegations of fraud, misfeasance or other misconduct by persons who are or have been concerned with the formation or management of the company or foreign company should be investigated under this Division; or
- (ab) the Governor is satisfied for any other reason that it is in the public interest that the affairs of the company or foreign company should be investigated under this Division; or .

23. Section one hundred and seventy-three of the principal Act is amended by—

S. 173  
amended.

- (a) adding after the word, “defrayed” in line two of paragraph (b) of subsection (2), the words “in the first instance”; and

- (b) substituting for subsection (3) the following subsections—

(3) Where the Governor is of the opinion that the whole or any part of the expenses of and incidental to the investigation should be paid by the company or by any person who requested the appointment of the investigator the Governor may by Order in Council direct that the expenses be so paid.

(3a) An Order under subsection (3) of this section may specify the time or times and the manner in which the payment of the expenses shall be made.

(3b) Where an Order has been made by the Governor under subsection (3) of this section the company and the persons named in the Order to the extent therein specified are liable to reimburse the Crown in respect of those expenses.

(3c) Any expenses in respect of which a company or any person is liable under subsection (3b) of this section to reimburse the Crown are recoverable as a debt due to the Crown in any court of competent jurisdiction.

(3d) Where an Order under subsection (3) has been made for the payment of the whole or part of the expenses by a company and the company is in liquidation or subsequently goes into liquidation the expenses directed by the Order to be paid by the company shall be deemed to be part of the costs and expenses of the winding up for the purposes of paragraph (a) of subsection (1) of section two hundred and ninety-two.

(3e) The report of the inspector may if he thinks fit, and shall, if the Minister so directs, include a recommendation as to the terms of the Order which he thinks proper in the light of his investigation to be made by the Governor under subsection (3) of this section. .

24. Subsection (1) of section one hundred and seventy-four of the principal Act is amended by adding after the word, "Minister" in line six the passage, "(which may be given generally or in a particular case and which may be subject to such conditions and limitations as the Minister thinks fit)".

S. 174  
amended.

25. Section one hundred and seventy-seven of the principal Act is amended by substituting for the word, "company"—

S. 177  
amended.

- (a) in lines four, six, nine and eleven of subsection (1);
- (b) in lines three and four of subsection (3); and
- (c) in lines four, eleven, thirteen, eighteen and twenty-one of subsection (5),

the word, "corporation".

26. The principal Act is amended by repealing section one hundred and seventy-eight and re-enacting it as follows—

S. 178  
repealed and  
re-enacted.

178. (1) Where it appears to the Minister that there is good reason so to do he may appoint one or more inspectors to investigate and report on the ownership of any shares in or debentures of a corporation or on the circumstances under which a person acquired or disposed of or became entitled to acquire or dispose of any shares in or debentures of a corporation.

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

(2) Any inspector appointed under subsection (1) of this section may, by notice in writing, require any person whom he has reasonable cause to believe to be capable of giving any information in connection with an investigation conducted under that subsection to appear for examination before, and to give to, the inspector any information in connection with the investigation which that person has or can reasonably be expected to obtain.

(3) (a) A notice under subsection (2) of this section may require the production of all books and documents relevant to the investigation that are in the custody or under the control of the person to whom the notice is addressed.

(b) Any of those books and documents may be retained by any such inspector until the completion of the investigation.

(c) Any inspector so appointed may permit the person to whom the notice was given or the corporation in which the shares or debentures are held, to have access at all reasonable times to all those books and documents so long as they are in the possession of the inspector.

(4) Any person who fails to comply with the requirements of any notice issued under subsection (2) of this section or who fails to give any information required of him under this section, or who in giving any such information makes any statement that he knows to be false in a material particular, or recklessly makes any statement that is false in a material particular, is guilty of an offence against this Act.

Penalty: Imprisonment for six months or Five hundred pounds or both.

(5) A person to whom a notice is given under subsection (2) of this section is not entitled to refuse to answer any question that is relevant or material to the investigation on the ground that his answer might tend to incriminate him, but if he claims that the answer to any question might incriminate him and but for this subsection he would have been entitled to refuse to answer the question, the answer to the question shall not be used in any subsequent criminal proceedings, except in the case of a charge against him for an offence against this section committed by him in answer to that question.

(6) Except as expressly provided in subsection (5) of this section any person is entitled to refuse to answer a question on the ground that the answer might tend to incriminate him. .

27. Subsection (1) of section one hundred and seventy-nine of the principal Act is amended by adding after the word, "shares" in line one of paragraph (a), the words, "or any exercise of the right to acquire or dispose of those shares".

S. 179  
amended.

28. Paragraph (g) of subsection (1) of section two hundred and twenty-two of the principal Act is amended by adding after the word, "seventy" in line three the passage, "or section one hundred and seventy-three".

S. 222  
amended.

29. Subsection (3) of section three hundred and three of the principal Act is amended by substituting for the words, "three months or One hundred pounds" in lines ten and eleven, the words, "six months or One thousand pounds".

S. 303  
amended.

30. Section three hundred and four of the principal Act is amended—

S. 304  
amended.

(a) by adding after subsection (1) the following subsection—

(1a) Where a person has been convicted of an offence under subsection (3) of section three hundred and three in relation to the contracting of such a debt as is referred to in that subsection, the Court on the application of the liquidator or any creditor or contributory of the company, may, if it thinks proper so to do, declare that the person is personally responsible without any limitation of liability for the payment of the whole or any part of that debt in accordance with the direction of the Court. ; and

(b) by adding after the subsection designation "(1)" in line two of subsection (2), the passage, "or subsection (1a)".



S. 374  
amended.

31. Subparagraph (ii) of paragraph (c) of subsection (4) of section three hundred and seventy-four of the principal Act is amended by substituting for the subsection designation, "(4)" in line two, the subsection designation, "(6)".

S. 383  
amended.

32. Paragraph (b) of section three hundred and eighty-three of the principal Act is amended by adding after the word, "rules" in line three, the words, "or with respect to any matter or thing that is necessary or convenient to be prescribed under the provisions of this Act".

Second  
Schedule  
amended.

33. The Second Schedule to the principal Act is amended—

(a) by adding after the word, "payable" in lines four and six in item 3, the words, "under this Act";

(b) by adding after item 29 the following items—

29A. On lodging any applica-  
tion to the Registrar  
under section 161A 10 0 0

29B. On lodging any appeal  
against the decision  
of the Registrar  
under section 161A 10 0 0

and

(c) by substituting for the word, "company" in line two of items 36 and 37, the word, "corporation".

Fifth  
Schedule  
amended.

34. The Fifth Schedule to the principal Act is amended—

(a) by repealing paragraph (5);

(b) by substituting for the words, "guarantor company" in line two of paragraph (a) of subparagraph (1) of paragraph 20, the words, "guarantor corporation";

- (c) by substituting for the words, "guarantor companies" wherever occurring in subparagraph (2) of paragraph 20, the words, "guarantor corporations";
- (d) by adding after the words, "accounts of the company" in lines five and six of paragraph (a) of subparagraph (2) of paragraph 20, the words, "or the guarantor corporations";
- (e) by substituting for the word, "companies" in line four of paragraph (b) of subparagraph (2) of paragraph 20, the words, "company and of the guarantor corporations";
- (f) by substituting for the words, "guarantor companies" wherever occurring in subparagraph (3) of paragraph 20, the words, "guarantor corporations";
- (g) by substituting for the passage, "guarantor companies' " wherever occurring in subparagraph (3) of paragraph 20, the passage, "guarantor corporations'";
- (h) by adding after subparagraph (3) of paragraph 20, the following subparagraph—

(4) If the prospectus relates to shares in or debentures of a borrowing corporation the report shall state separately estimates of the amounts of moneys owing and payable to the company and the amounts of all liabilities payable by the company—

- (a) not later than two years;
- (b) later than two years but not later than five years; and
- (c) later than five years,

calculated from the last date to which the accounts of the company were made up. ;  
and

- (i) by adding at the end of that Schedule the following Part:—

PART IV.

*Additional Matters to be included in Prospectus relating to Invitation to the Public to Deposit Money with or Lend Money to a Corporation.*

32. Where subsection (4) of section thirty-eight applies there shall be included—

- (a) a statement to the effect that the repayment of all moneys that have been or may be deposited with or lent to the corporation in response to the invitation is secured by a first mortgage, given to the trustee for the holders of the debentures to be issued in relation to the deposit or loan, over land vested in the corporation or in any of its guarantor corporations and that the mortgage has been duly registered, or is a registrable mortgage which has been lodged for registration, in accordance with the law relating to the registration of mortgages of land in the place where the land is situated and that the aggregate amount of such moneys and of all other liabilities, if any, secured by the mortgage of that land, ranking *pari passu* with the liability to repay such moneys, does not exceed sixty per centum of the value of the corporation's interest in that land as shown in the valuation included in the prospectus; and
- (b) a copy of a written valuation of the corporation's interest in the land so mortgaged, showing the

nature and extent of the corporation's interest, made not more than six months before the date of the prospectus by a person competent and qualified to make the valuation in the place where the land is situated, who is not an officer or employee of the corporation or of any of corporations.

its guarantor corporations or of any corporation that, by virtue of subsection (5) of section six, is deemed to be related to either the firstmentioned corporation or any of its guarantor

33. (1) Where subsection (5) of section thirty-eight applies there shall be included—

(a) a statement to the effect—

(i) that the repayment of all moneys, that have been or may be deposited with or lent to the corporation in response to the invitation, has been secured by a charge in favour of the trustee for the holders of the debentures over the whole or any part of the tangible assets of the corporation and of its guarantor corporations or of any of them; and

(ii) that having regard to the particulars in the summary made in accordance with subparagraph (b) of this paragraph the tangible assets which constitute the security for the

charge are sufficient and are reasonably likely to be sufficient to meet the liability for the repayment of all such moneys and all other liabilities ranking in priority thereto or *pari passu* therewith that have been or may be incurred; and

- (b) a summary made by the registered company auditor who has made for inclusion in the prospectus the report required by Part II of this Schedule with respect to the assets and liabilities of the borrowing corporation showing in tabular form the aggregate values (based upon amounts as disclosed in the statements of the assets and liabilities of the borrowing corporation and its guarantor corporations which have been prepared for the purposes of paragraphs 20 and 31 of this Schedule) of the tangible assets of the borrowing corporation and of its guarantor corporations which have been charged to secure the repayment of all moneys referred to in subclause (i) of clause (a) of subparagraph (1) of this paragraph, after making such adjustments as are proper to give a true and fair view of the tangible assets available as security for the charge and, in particular, after making adjustments—

- (i) to exclude from those aggregate values such part of the value of any shares in or advances to

a corporation as is reflected in or depends upon the tangible assets of that corporation which are otherwise included in the summary;

(ii) to exclude from those aggregate values such part of the value of any shares in a corporation which is by virtue of subsection (5) of section six deemed to be related to the borrowing corporation or the guarantor corporation (as the case requires) as is properly attributable to intangible assets of that firstmentioned corporation; and

(iii) to add to those aggregate values the amount to be raised under the prospectus including the maximum amount of oversubscriptions which the prospectus in accordance with section forty-one specifies may be retained.

(2) In such summary the registered company auditor—

(a) shall show the amounts outstanding out of the aggregate amounts borrowed respectively by the borrowing corporation and by its guarantor corporations distinguishing between those which will rank for repayment in priority to the proposed issue and those which will rank *pari passu* with that proposed issue;

- (b) shall state by way of note or otherwise the total amount of the values of intangible assets excluded in making the adjustments required under subclause (ii) of clause (b) of subparagraph (1) of this paragraph;
- (c) may, where a corporation has given a charge over its assets to secure a liability the amount of which may vary from time to time, take into account the actual amount of the liability as at the date at which the summary is made up but (in that event) shall show by way of note the further amount which may be advanced under that charge;
- (d) may explain or qualify by way of note or otherwise any of the matters set out in the summary;
- (e) shall disclose by way of note or otherwise the amount of advances by the borrowing corporation to any corporation which is by virtue of subsection (5) of section six deemed to be related to the borrowing corporation distinguishing between advances which are secured and advances which are unsecured.

34. In every prospectus that relates to debentures there shall be included—

- (a) particulars of the limitations on the amount that the corporation may borrow;
- (b) a statement as to the amount of subscriptions that are being sought;

- (c) a statement as to whether or not the corporation reserves the right to accept or retain over-subscriptions and, if the corporation reserves such a right, the limit on the right so reserved expressed as a sum of money; and
- (d) where applicable, a statement as to whether or not the corporation has any right to create additional charges over any of the assets charged to secure the repayment of the deposits or loans which will rank in priority to or *pari passu* with that charge and if there is such a right particulars of its nature and extent. .

35. The Ninth Schedule to the principal Act is amended by adding at the end of clause 2 the following subclause—

**Ninth  
Schedule  
amended.**

(4) There shall be shown by way of note or otherwise on the balance-sheet of every company which is a borrowing corporation or a guarantor corporation a schedule setting out separately estimates of the amounts of the liabilities payable by and the debts payable to the company—

- (a) not later than two years;
- (b) later than two years but not later than five years; and
- (c) later than five years,

calculated from the date to which the balance-sheet of the company was made up. .