

COMPANIES (No. 2).

No. 100 of 1975.

AN ACT to give effect to an arrangement made under the Interstate Corporate Affairs Agreement for the reconciliation of differences in the Companies Acts of the States that are parties to that Agreement, and for that purpose to amend the Companies Act, 1961-1975, and for incidental and other purposes.

[Assented to 1st December, 1975.]

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:—

1. (1) This Act may be cited as the *Companies Act Amendment Act (No. 2), 1975.*

Short title
and citation.

(2) In this Act the Companies Act, 1961-1975 is referred to as the principal Act.

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approved for
reprint, 1st
July, 1975.

(3) The principal Act as amended by this Act may be cited as the Companies Act, 1961-1975.

Commence-
ment.

2. The provisions of this Act shall come into operation on such date or dates as is or are, respectively, fixed by proclamation.

Section 5
amended.

3. Section 5 of the principal Act is amended—

(a) by deleting the words “in relation to” in line one of paragraph (c) of the interpretation “branch register” in subsection (1);

(b) by deleting the passage “, and any document deemed by subsection (5) of this section to be a debenture” in lines four, five and six of the interpretation “debenture” in subsection (1);

(c) by deleting the words “and if that law is amended that law as amended from time to time” appearing at the end of the interpretation “declared law” in subsection (1);

(d) by adding after the interpretation “declared law” in subsection (1) the following interpretation—

“deed” includes an instrument having the effect of a deed under any Act; ;

(e) by deleting the words “body or association” in line six of paragraph (b) of the interpretation “foreign company” in subsection (1) and substituting the words “society association or body”;

(f) by adding after the interpretation “lodged” in subsection (1) the following interpretation—

“machine copy” has the meaning ascribed to that expression in section seventy-three A of the Evidence Act, 1906; ;

(g) by deleting the word “includes” in line six of the interpretation “marketable securities” in subsection (1);

(h) by deleting the word “voluntary” in line two of the interpretation “members voluntary winding up” in subsection (1);

- (i) by deleting the word “a” in line two of paragraph (ba) of the interpretation “officer” in subsection (1) and substituting the word “the”;
- (j) by deleting the word “eleven” in line three of the interpretation “official liquidator” in subsection (1) and substituting the words “two hundred and thirty-one”;
- (k) by deleting the words “by the company” in line three of the interpretation “principal register” in subsection (1);
- (l) by adding after the interpretation “repealed Act” in subsection (1) the following interpretation—
 - “reproduction” in relation to a document has the same meaning as is ascribed to that expression in section seventy-three A of the Evidence Act, 1906; ;
- (m) by adding after the interpretation “Table B” in subsection (1) the following interpretation—
 - “transparency” in relation to a document means—
 - (a) a developed negative or positive photograph of that document (in this interpretation referred to as an original photograph) made, on a transparent base, by means of light reflected from, or transmitted through, the document;
 - (b) a copy of an original photograph made by the use of photo-sensitive material (being photo-sensitive material on a transparent base) placed in surface contact with the original photograph; or

- (c) any one of a series of copies of an original photograph, the first of the series being made by the use of photo-sensitive material (being photo-sensitive material on a transparent base) placed in surface contact with a copy referred to in paragraph (b) of this interpretation, and each succeeding copy in the series being made, in the same manner, from any preceding copy in the series; ;
- (n) by deleting paragraph (b) of subsection (1a) and substituting the following—
- (b) any law of that State or Territory to be a declared law for the purposes of this Act,
- and may by Order vary or revoke a declaration made under paragraph (b) of this subsection. ;
- (o) by deleting the passage commencing with the passage “, but” in line twelve of subsection (5) and ending with the word “debenture” in the last line of that subsection and substituting the passage “(but not including a document which merely acknowledges the receipt of the money in any case where, in respect of the 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)”;
- (p) by deleting paragraph (d) of subsection (6) and substituting the following paragraph—
- (d) made to a dissenting offeree within the meaning of section one hundred and eighty X or, within the meaning of section one hundred and eighty-five, to existing members of a

transferor company with respect to shares in a transferee company or within the meaning of section two hundred and seventy, to existing members of a company and relates to shares in that company. ; and

(q) by repealing subsection (9).

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

Section 6A
repealed
and
re-enacted.

6A. (1) Subject to this section, a person has a relevant interest in a share in a body corporate—

Relevant
interests.

- (a) for the purposes of Division 3A of Part IV, if that share is a voting share and that person has power—
 - (i) to exercise, or to control the exercise of, the right to vote attached to that share; or
 - (ii) to dispose of, or to exercise control over the disposal of, that share;
- (b) for the purposes of sections one hundred and twenty-six and one hundred and twenty-seven, if that person has power to dispose of, or to exercise control over the disposal of, that share; and
- (c) for the purposes of Part VIB, if that person has power—
 - (i) where the share is a voting share, to exercise, or to control the exercise of, the right to vote attached to that share; or
 - (ii) to dispose of, or to exercise control over the disposal of, that share, whether or not it is a voting share.

(2) It is immaterial for the purposes of this section whether the power of a person—

- (a) to exercise, or to control the exercise of, the right to vote attached to a voting share in a body corporate; or

- (b) to dispose of, or exercise control over the disposal of, a share,

is express or implied or formal or informal, is exercisable alone or jointly with another person or other persons, cannot be related to a particular share, or is, or is capable of being made, subject to restraint or restriction and any such power exercisable jointly with another person or other persons shall, for those purposes, be deemed to be exercisable by either or any of those persons.

(3) A reference in this section to power or control includes a reference to power or control that is direct or indirect or is, or is capable of being, exercised as a result of, or by means of, or in breach of, trusts, agreements, arrangements, understandings and practices, or any of them, whether or not they are enforceable, and a reference in this section to a controlling interest includes a reference to such an interest as gives control.

(4) For the purposes of this section, where a body corporate has power—

- (a) to exercise, or to control the exercise of, the right to vote attached to a voting share; or
(b) to dispose of, or to exercise control over the disposal of a share,

and—

- (c) the body corporate is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person in relation to the exercise of the power;
(d) a person has a controlling interest in the body corporate; or
(e) a person has, the associates of a person have, or a person and his associates have power to exercise, or to control the exercise of, not less than fifteen per centum of the votes that may be exercised pursuant to rights to vote attached to the voting shares of the body corporate,

that person shall be deemed to have the same power in relation to that share as the body corporate has.

(5) For the purposes of subsection (4) of this section, a person is an associate of another person if the first-mentioned person is—

- (a) a corporation that, by virtue of subsection (5) of section six, is deemed to be related to that other person;
 - (b) a person in accordance with whose directions, instructions or wishes that other person is accustomed or is under an obligation, whether formal or informal, to act in relation to the exercise of a power referred to in subsection (4) of this section;
 - (c) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to the exercise of that power;
 - (d) a body corporate that is, or the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to the exercise of that power; or
 - (e) a body corporate in accordance with the directions, instructions or wishes of which, or of the directors of which, that other person is accustomed or under an obligation, whether formal or informal, to act in relation to the exercise of that power.
- (6) Where a person—
- (a) has entered into an agreement with respect to a share;
 - (b) has a right relating to a share, whether the right is enforceable presently or in the future and whether on the fulfilment of a condition or not; or
 - (c) has an option with respect to a share,

and, on fulfilment of the agreement, enforcement of the right or exercise of the option that person would have a relevant interest in the share he shall, for the purposes of this section, be deemed to have that relevant interest in the share.

(7) A relevant interest in a share shall be disregarded—

(a) for the purposes of Division 3A of Part IV, sections one hundred and twenty-six and one hundred and twenty-seven and Part VIB—

- (i) if the ordinary business of the person who has the relevant interest includes the lending of money and he has authority to exercise his powers as the holder of the relevant interest only by reason of a security given for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;
- (ii) if the relevant interest is that of a person who has it by reason of his holding a prescribed office;
- (iii) if the ordinary business of the person who has the relevant interest includes dealing in securities within the meaning of the Securities Industry Act, 1975, and he has authority to exercise his powers as the holder of the relevant interest only by reason of instructions given to him by or on behalf of another person to dispose of that share on behalf of that person in the ordinary course of business; or
- (iv) if the share is subject to a trust, the relevant interest is that of a trustee and a beneficiary is deemed, by subsection (6) of this section, to have

that relevant interest by virtue of a presently enforceable and unconditional right referred to in paragraph (b) of that subsection; and

- (b) for the purposes of Division 3A of Part IV and of Part VIB, if the relevant interest is that of a person who has it by reason of his having been appointed as a proxy or representative to vote at a meeting of members or a class of members, of a corporation.

(8) A relevant interest in a share shall not be disregarded by reason only of—

- (a) its remoteness; or
- (b) the manner in which it arose. .

5. Section 7 of the principal Act is amended by repealing subsections (5), (6), (6a), (7), (7a), (8), (9), (10) and (11) and substituting the following subsections—

Section 7
amended.

(6) For the purpose of ascertaining whether the provisions of this Act or of a corresponding previous enactment have been or are being complied with the Commissioner or a person authorized by him—

- (a) may inspect any books required by or under this Act or a corresponding previous enactment to be kept by, or by a person in respect of, a corporation (whether or not the corporation has been dissolved); and
- (b) may, where the Commissioner considers it necessary to inspect books kept by a banker who acts or has acted as banker to the corporation, inspect books kept by that banker that relate to the corporation (whether or not the corporation has been dissolved).

(7) No person shall make an inspection in pursuance of subsection (6) or subsection (7c) of this section unless he has made a declaration in the prescribed form.

(7a) The Commissioner or a person authorized by him shall not make an inspection in pursuance of subsection (6) of this section of books kept by a banker relating to a corporation unless the Commissioner or other person has served on the banker notice in writing to the effect that he intends to inspect books kept by the banker that relate to the corporation named in the notice.

(7b) Where under a provision of a declared law corresponding to subsection (6) of this section, a person is authorized to inspect any book required by or under that declared law to be kept by a corporation or a book kept by a banker who acts as banker to a corporation, the person—

- (a) shall have the same powers in Western Australia in relation to any such book in Western Australia as he would have had if he had been authorized under subsection (6), the reference in that subsection to this Act were a reference to that declared law and the book were a book referred to in that subsection; and
- (b) shall not exercise those powers in Western Australia unless he has made a declaration under a provision of a declared law corresponding to subsection (7) of this section and, in relation to books kept by a banker, has given a notice under a provision of a declared law corresponding to subsection (7a) of this section.

(7c) The powers that a person has under the declared law of a participating State that, by reason of subsection (7b) of this section, may be exercised in Western Australia, may be exercised by the Commissioner or a person authorized by him where, in any particular case, the corresponding interstate officer of the participating State has authorized the Commissioner or person so to do.

(8) A person—

- (a) who makes an inspection in pursuance of subsection (6) or subsection (7b) of this

section before he has made a declaration referred to in subsection (7) of this section or a declaration referred to in a corresponding provision of a declared law of the participating State concerned; or

- (b) who, except for the purposes of this Act, or in the course of any criminal proceedings or proceedings under this Act, after making such a declaration makes a record of or divulges or communicates to any other person any information which he has acquired by reason of such an inspection,

shall be guilty of an offence against this Act.

Penalty: Two hundred dollars.

(8a) Where the regulations prescribe for the purposes of this section an office held under the law of the State or of the Commonwealth or of another State or of a Territory of the Commonwealth it shall not be a contravention of subsection (8) of this section to divulge or communicate to the holder of that office information connected with the duties of the office.

(9) An officer of a corporation, person required to keep any books in respect of a corporation or a banker, on being required by the Commissioner or a person authorized by him shall produce any book to which the requirement relates.

Penalty: Two hundred dollars.

(9a) An officer of a corporation, person required by or under a declared law to keep any books in respect of a corporation or a banker on being required in Western Australia by a person authorized under a provision of a declared law corresponding to subsection (6) of this section or a person authorized under subsection (7c) of this section, shall produce any book to which the requirement relates.

Penalty: Two hundred dollars.

(9b) An officer of a corporation, person required to keep any books in respect of a corporation or a banker, on being required by the Commissioner or a person authorized by him shall state where, to the best of his knowledge and belief, a book is at the time the request is made.

Penalty: Two hundred dollars.

(9c) An officer of a corporation, person required by or under a declared law to keep any books in respect of a corporation or a banker on being required in Western Australia by a person authorized under a provision of a declared law corresponding to subsection (6) of this section or a person authorized under subsection (7c) of this section, shall state where, to the best of his knowledge and belief, a book is at the time the request is made.

Penalty: Two hundred dollars.

(10) A corporation, officer of a corporation, person required to keep any books in respect of a corporation or a banker shall not obstruct or hinder the Commissioner or a person authorized by him while exercising a power under subsection (6) of this section.

Penalty: Two hundred dollars.

(10a) A corporation, officer of a corporation, person required by or under a declared law to keep any books in respect of a corporation or a banker shall not in Western Australia obstruct or hinder a person authorized under a provision of a declared law corresponding to subsection (6) of this section or a person authorized under subsection (7c) of this section while exercising a power under subsection (7b) of this section.

Penalty: Two hundred dollars.

(11) There shall be paid to the Commissioner—

- (a) the fees specified in the Second Schedule; and
- (b) such other fees as are prescribed.

(11a) The Governor may from time to time make regulations varying the Second Schedule or revoking the Second Schedule and substituting a new Second Schedule in place thereof, and the Second Schedule as so amended or substituted shall be the Second Schedule to this Act.

(12) Where a fee is payable to the Commissioner for or in respect of the lodging of a document with the Commissioner and the document is submitted without payment of the fee, the document shall be deemed not to have been lodged until the fee has been paid to the Commissioner.

(13) There may be paid out of the Consolidated Revenue Fund such amounts as are necessary to give effect to any agreement between the participating States relating to the apportionment of any fees or payments made with respect to refunds of fees specified therein and the Consolidated Revenue Fund is hereby appropriated accordingly. .

6. Section 9 of the principal Act is repealed and re-enacted as follows—

Section 9
repealed and
re-enacted.

9. (1) Subject to subsection (2) of this section, a person—

Company
auditors
and
liquidators.

- (a) who was registered as a company auditor under the repealed Act;
- (b) who is a member of the Institute of Chartered Accountants in Australia or the Australian Society of Accountants or any other body established outside Australia prescribed on the recommendation of the Board as a body for the purposes of this subsection;

- (c) who is a registered company auditor in any State or Territory of the Commonwealth;
- (d) who holds a degree or a diploma from any University in the Commonwealth and who has passed examinations in the course for the degree or diploma in such subjects, under whatever name, as the appropriate authority of the University certifies to the Board to represent a course of study in accountancy or auditing of three years and in commercial law (including company law) of two years duration;
- (e) who holds the certificate in accountancy of a prescribed Institute of Technology or Technical College; or
- (f) who has satisfied the Board that he has a thorough knowledge of accounts and auditing and of the provisions of this Act and of such other subjects as are prescribed,

is, if the Board is satisfied with his general conduct and character and is satisfied that he has sufficient practical experience in accountancy and has the ability to act as a company auditor, entitled on payment of the prescribed fee to be registered as a company auditor.

(2) The Board may refuse to register as a company auditor a person who is not resident in a State or Territory of the Commonwealth.

(3) A registered company auditor may apply to the Board for registration as a liquidator and, subject to subsection (4) of this section, the Board, if satisfied as to his experience and ability shall, on payment of the prescribed fee, register that person as a liquidator.

(4) The Board may refuse to register as a liquidator a person who is not resident in a State or Territory of the Commonwealth.

(5) A person qualified to be appointed as a registered company auditor may apply to the Board for registration as a liquidator in respect of the winding up of a specified corporation and, subject to subsection (4) of this section, the Board if satisfied—

- (a) as to the experience and ability of that person;
- (b) that the nature of the property or business of the corporation or the interests of the creditors or contributories generally so require; and
- (c) that the prescribed fee has been paid,

shall register that person as a liquidator in respect of that corporation.

(6) Subject to subsection (7) of this section, a person who is a registered company auditor or registered liquidator shall, on payment of the prescribed fee, be entitled to renewal of his registration.

(7) The Board may refuse to renew the registration of a registered company auditor or registered liquidator who—

- (a) is not resident in a State or Territory of the Commonwealth ; or
- (b) does not at least three months before his registration ceases to be in force apply to the Board for renewal of his registration and pay to the Board the prescribed fee.

(8) A registration and a renewal of registration of a registered company auditor or registered liquidator shall be in force until the 31st day of March in the year following the year in which the registration or renewal is effected.

(9) The Board after giving notice to a person who is a registered company auditor or a registered

liquidator may inquire into the conduct, character and ability of that person, subject to his being given an opportunity of being heard.

(10) For the purposes of an inquiry under subsection (9) of this section, the Chairman of the Board may by notice in the prescribed form require a person to appear at the inquiry and give evidence on oath or affirmation (which the Chairman is hereby authorised to administer) as to a matter in relation to the subject-matter of the inquiry and the notice may require the production of books in the custody or under the control of that person.

(11) If, at an inquiry under subsection (9) of this section, a person who is a registered company auditor or a registered liquidator is found to have been guilty of conduct discreditable to an auditor or liquidator, as the case may be, or is found to be incapable of performing the duties of a registered company auditor or registered liquidator, as the case may be, the Board may, as it thinks fit, punish or deal with him in any one or more of the following ways—

- (a) cancel his registration and order the removal of his name from the register;
- (b) suspend his registration for a period not exceeding one year;
- (c) impose on him a fine not exceeding one thousand dollars;
- (d) admonish or reprimand him;
- (e) require him to give an undertaking to abstain from some specific conduct;
- (f) require him to pay within a specified time the costs of and incidental to the inquiry by the Board.

(12) The Board shall give to the registered company auditor or registered liquidator to whom a decision of the Board under subsection (11) of this section relates, notice of that decision.

(13) The Board may, in an inquiry under subsection (9) of this section, find—

- (a) that a failure to pay costs required to be paid under paragraph (f) of subsection (11) of this section or a fine imposed under paragraph (c) of that subsection; or
- (b) that a failure to honour an undertaking referred to in paragraph (e) of that subsection,

is conduct discreditable to an auditor or liquidator, whether or not, in a case referred to in paragraph (a) of this subsection, the amount payable has been recovered under subsection (15) of this section.

(14) In addition to its other powers under this section the Board may, where it is satisfied in relation to a registered company auditor or registered liquidator—

- (a) that his registration has been cancelled and his name removed from the register or his registration has been suspended in another State or in a Territory of the Commonwealth; and
- (b) that either an appeal against the cancellation or suspension has been disallowed or the time for appealing against the cancellation or suspension has expired without an appeal having been made,

cancel his registration and order the removal of his name from the register or suspend his registration in the State for a period not exceeding one year.

(15) The amount of a fine or costs imposed under subsection (11) of this section may be recovered in a court of competent jurisdiction as a debt due to the Crown.

(16) A person aggrieved by a decision of the Board under this section may within one month from the date of his receiving notice of the decision

or from the expiration of one week after the decision was made, whichever first occurs, appeal to the Court from the decision and the Court may, upon the hearing of the appeal, if it thinks fit, confirm, vary or reverse the decision and, if it thinks fit, may direct the Board to register or renew the registration of a person whom the Board has refused to register or whose registration the Board has refused to renew.

(17) A decision of the Board cancelling, suspending or refusing to renew the registration of a registered company auditor or registered liquidator takes effect upon his being notified of the decision or after seven days after the decision is made, whichever first occurs.

(18) Where the registration of a person has been cancelled under this section that person shall not again be registered as a company auditor or liquidator without the express direction of the Board or of the Court.

(19) A person who is, or is for the time being exercising the powers and performing the duties of, the Auditor-General of the Commonwealth or of a State or Territory of the Commonwealth shall be deemed to be a registered company auditor for the purposes of this and any other Act. .

Section 12
amended.

7. Section 12 of the principal Act is amended—

(a) by repealing subsection (2) and substituting the following subsections—

(2) A person may, on payment of the prescribed fee—

(a) inspect any document filed or lodged with the Commissioner;

- (b) require a certificate of the incorporation of any company or any other certificate issued under this Act to be given by the Commissioner; or
- (c) require a copy of or extract from any document kept by the Commissioner to be given or given and certified by the Commissioner.

(2a) If a transparency or reproduction of a document is produced for inspection, a person shall not be entitled pursuant to paragraph (a) of subsection (2) of this section to require the production of the original of that document.

(2b) The reference in paragraph (c) of subsection (2) of this section to a document includes, where a reproduction or transparency of that document has been incorporated with a register kept by the Commissioner, a reference to that reproduction or transparency and where such a reproduction or transparency has been so incorporated a person shall not be entitled pursuant to that paragraph to a copy of or extract from the original of that document. ;

- (b) by deleting the word "kept" in line one of subsection (3) and substituting the words "filed or lodged";
- (c) by adding after the word "copy" in line three of subsection (3) the words "or extract";

- (d) by deleting the passage “registered.” in line four of paragraph (b) of subsection (7) and substituting the passage “registered; or” ;
and
- (e) by adding at the end of subsection (7) the following paragraph—
 - (c) any document a transparency of which has been incorporated with a register kept by the Commissioner. .

Section 13
amended.

8. Section 13 of the principal Act is amended—

- (a) by deleting the passage “or destroyed,” in line five of subsection (1) and substituting the passage “, or has been destroyed otherwise than pursuant to paragraph (c) of subsection (7) of section twelve,” ; and
- (b) by adding at the end thereof the following subsection—

(7) Where a transparency of a document referred to in subsection (1) of this section has been incorporated with a register kept by the Commissioner and is lost or destroyed as referred to in that subsection, the foregoing provisions of this section shall have effect as if the document of which it is a transparency had been so lost or destroyed. .

Section 14
amended.

9. Subsection (3) of section 14 of the principal Act is amended by deleting paragraphs (a), (b) and (c) and substituting the following paragraphs—

(a) in the case of—

- (i) an association or partnership formed for the purpose of carrying on the profession or calling of accountancy;
or
- (ii) an association or partnership formed for the purpose of carrying on any other profession or calling declared by proclamation to be a profession

or calling that is not customarily carried on in the Commonwealth by a corporation,

of more than one hundred persons; or

- (b) in any other case, of more than twenty persons, .

10. Subsection (1) of section 18 of the principal Act is amended by adding the word "and" immediately after paragraph (h).

Section 18
amended.

11. Section 22 of the principal Act is amended—

Section 22
amended.

- (a) by repealing subsection (1a);
- (b) by deleting the words "the company" in lines three and four of subsection (7a) and substituting the words "a company";
- (c) by deleting the passage "Within twelve months of the commencement of section 8 of the Companies Act (Interstate Corporate Affairs Commission) Amendment Act, 1975, or such longer period as is prescribed (whether before or after the expiry of that twelve months), a" in lines one, two, three, four, five and six of subsection (7b) and substituting the word "A";
- (d) by deleting the passage "(being a company which was incorporated before that commencement)" in lines nine, ten and eleven of subsection (7b);
- (e) by adding after subsection (8a) the following subsections—

(8aa) Notwithstanding that a name could be reserved in respect of an intended company or company under subsection (8) of this section, if the application in respect of that intended company or company under subsection (7) of this section specifies in accordance with subsection (8a) of this section that the intended company or company intends to carry on business or carries on business in a

participating State the name shall not be reserved unless the corresponding interstate officer informs the Commissioner that the name is acceptable in that State.

(8ab) Where an application is made in a participating State for the reservation of a name under a provision of a declared law which corresponds to subsection (7) of this section and the applicant has specified in accordance with a provision of the declared law corresponding to subsection (8a) of this section that the company intends to carry on or carries on business in this State and the application is referred to the Commissioner by the corresponding interstate officer for advice as to whether the name is acceptable in this State, the Commissioner shall inform the corresponding interstate officer that the name is acceptable in this State if—

(a) the name—

(i) is not, in the opinion of the Commissioner undesirable; and

(ii) is not a name or a name of a kind that the Minister has directed the Commissioner not to accept under subsection (1) of this section; or

(b) the Minister has consented to the name being acceptable in this State. ;

(f) by adding after the word “shall” in line five of subsection (8b) the words “on payment of the prescribed fee”;

(g) by repealing and re-enacting subsections (8c) and (8d) as follows—

(8c) Where the name of a company has been reserved in a participating State pursuant to the provisions of a declared law

corresponding to subsection (8e) of this section as the result of a notification having been sent to the corresponding interstate officer under subsection (8b) of this section and—

- (a) the name subsequently ceases to be reserved in this State; and
- (b) the intended company is not incorporated or is incorporated under a name other than the name notified under subsection (8b) of this section (as the case may be),

the Commissioner shall so notify the corresponding interstate officer.

(8d) Where the name of a company has been reserved in a participating State pursuant to the provisions of a declared law corresponding to subsection (8e) of this section as the result of a notification having been sent to the corresponding interstate officer under subsection (7b) or subsection (8b) of this section and the company concerned—

- (a) is dissolved; or
- (b) changes its name to a name other than the name which was so notified,

the Commissioner shall notify the corresponding interstate officer of the dissolution of the company or that the company has so changed its name. ;

- (h) by adding after subsection (8d) the following subsection—

(8da) A company which is not carrying on business in a participating State in which its name has been reserved pursuant to a provision of a declared law corresponding to subsection (8e) of this section may notify the Commissioner that it no longer desires that its name be reserved in that State and the Commissioner shall so notify the corresponding interstate officer of that State. ;

- (i) by adding after the passage "or (8d)" in the last line of subsection (8e) the passage "or (8da)";
- (j) by adding after subsection (8e) the following subsection—

(8ea) Where the Commissioner has not reserved a name of a recognized company under subsection (8e) of this section prior to the commencement of section eleven of the Companies Act Amendment Act (No. 2), 1975, the name of that company shall be deemed to be reserved under subsection (8e) of this section for the purposes of this Act from the commencement of that section if—

- (a) the name of the company was approved under subsection (1) or subsection (3) of section three hundred and forty-three E as in force prior to that commencement; or
 - (b) the company immediately before it became a recognized company was a registered foreign company. ; and
- (k) by adding at the end thereof the following subsection—

(12) Where an applicant for the reservation of a name under subsection (7) of this section has paid a fee in respect of the notification of a name under subsection (8b) of this section and during the period for which that name is reserved the Commissioner is notified by the applicant that it is not intended to proceed with the incorporation of the intended company or that it is not intended that the company will change its name the applicant shall be entitled to a refund of half the amount of that fee and the name shall cease to be reserved. .

12. Subsection (4a) of section 24 of the principal Act is repealed and re-enacted as follows—

Section 24
amended.

(4a) The Minister may, in a license issued to a company under this section or by notice in writing served on a company in respect of which a license under this section or under a corresponding previous enactment is in force, exempt the company from complying with such of the provisions of this Act as are specified in the license or notice relating to the lodging of annual returns and of returns of particulars of directors, managers and secretaries.

13. Section 27 of the principal Act is amended—

Section 27
amended.

- (a) by deleting the word “Minister” in line one of subsection (1) and substituting the word “Commissioner”; and
- (b) by deleting the word “the” in line one of paragraph (a) of subsection (2) and substituting the word “a”.

14. Section 38 of the principal Act is amended—

Section 38
amended.

- (a) by deleting the words “or proposed corporation” in lines two and three of subsection (1);
- (b) by deleting the word “statements” in line two of paragraph (b) of subsection (5) and substituting the word “statement”;
- (c) by deleting the word “Governor” in line two of paragraph (b) of subsection (7) and substituting the word “Minister”;
- (d) by deleting the word “Governor” in line twenty-nine of subsection (7) and substituting the word “Commissioner”;
- (e) by adding after subsection (7) the following subsection—

(7a) The Minister may by notice in the *Government Gazette* vary or revoke a declaration made under paragraph (b) of subsection (7) of this section. ;

- (f) by deleting the word "Governor" in line one of subsection (8) and substituting the word "Commissioner";
- (g) by deleting paragraph (b) of subsection (8) and substituting the following paragraph—
 - (b) vary or revoke any declaration or specification made under paragraph (c) of subsection (7) of this section or under this subsection. ;
- (h) by deleting the paragraph commencing with the word "Any" and ending with the passage "subsection." appearing at the end of subsection (8);
- (i) by repealing and re-enacting subsection (10) as follows—

(10) 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 shall apply to and in relation to every such document issued after the commencement of the Companies Act Amendment Act, 1964, notwithstanding anything in any debenture or trust deed issued or executed before that commencement and for the time being in force and any such document issued after that commencement shall be described in accordance with the requirements of this section notwithstanding anything in any such debenture or trust deed. ; and

- (j) by adding at the end thereof the following subsection—

(12) The prospectus and a document issued in connection with or in relation to the prospectus, shall describe or refer to the document mentioned in subsection (11) of this section in the manner required or authorized by the Commissioner and shall so describe or refer to the document without any addition to or qualification of the

description or reference other than any addition that the Commissioner may approve or require in order to indicate the priority of the indebtedness that the document is to evidence.

15. The principal Act is amended by repealing section 40 and substituting the following sections—

Section 40 repealed and sections 40, 40A, and 40B substituted.

40. (1) In this section—

“notice” includes a circular and an advertisement but does not include a registered prospectus or a report, statement, notice, circular or advertisement the publication of which is permitted under section forty A;

Certain notices, etc., not to be published.

“publish” includes issue, circulate, disseminate and distribute and cognate expressions have a corresponding meaning;

“registered prospectus” includes a prospectus registered under a declared law of a participating State;

“statement” includes matter that is not writing but by reason of the form or context in which it appears conveys a message.

(2) A reference in this section to the publishing of a notice is a reference to the publishing in the State of the notice by any means, including the publishing in a newspaper or periodical, by broadcasting or televising or in a film.

(3) Subject to subsection (4) of this section, a person shall not publish a notice that—

- (a) offers to the public for subscription or purchase shares in, or debentures of, a corporation or proposed corporation;
- (b) invites the public to subscribe for or purchase shares in, or debentures of, a corporation or proposed corporation; or
- (c) refers or calls attention, whether directly or indirectly to—

(i) a prospectus;

- (ii) an offer or intended offer to the public for subscription or purchase of shares in or debentures of a corporation;
- (iii) an invitation or intended invitation to the public to subscribe for or purchase shares in or debentures of a corporation; or
- (iv) another notice that refers or calls attention, whether directly or indirectly to a prospectus or such an offer, intended offer, invitation or intended invitation, not being a notice referred to in subsection (4) of this section.

(4) Subsection (3) of this section does not apply to or with respect to the publishing of a notice that refers to a registered prospectus and—

- (a) states that allotments of or contracts for the subscription for or purchase of shares or debentures to which the prospectus relates will be made only on receipt of a form of application referred to in and attached to a copy of the prospectus but contains no other statements other than statements as to any or all of the following—
 - (i) particulars of the shares in or debentures of the corporation or proposed corporation to which the prospectus relates;
 - (ii) the name of the corporation or proposed corporation, the date of its incorporation and the amount of its paid-up capital;
 - (iii) the general nature of the main business of the corporation or proposed corporation;
 - (iv) the names, addresses and occupations of the directors of the corporation or proposed corporation;

- (v) the name and address of each broker and underwriter to the issue and the name of the Stock Exchange of which each broker or underwriter is a member;
 - (vi) where the prospectus relates to debentures, the name and address of the trustee for the debenture holders;
 - (vii) the time and place at which copies of the prospectus and forms of applications for the shares or debentures to which it relates may be obtained;
 - (viii) the period during which the invitation contained in the prospectus is open;
- (b) is published by the holder of a dealers licence or an investment advisers licence or by a recognized dealer or recognized investment adviser within the meaning of the Securities Industry Act, 1975 but contains no other statements other than statements as to any or all of the matters referred to in paragraph (a) of this subsection and a statement as to—
- (i) whether or not the person publishing the notice recommends acceptance of the invitation to which the prospectus relates; and
 - (ii) the interest (if any) that the person publishing the notice has in the success of the invitation to which the prospectus relates being an interest the person has as underwriter or sub-underwriter to the issue of the shares or debentures to which the prospectus relates or an interest, within the meaning of section five of the Securities Industry Act, 1975, in those shares or debentures; or

(c) is published by the holder of a dealers licence or an investment advisers licence or by a recognized dealer or recognized investment adviser within the meaning of the Securities Industry Act, 1975 and is accompanied by a copy of the prospectus.

(5) The inclusion in a notice of a statement required by this or any other Act or law to be included in the notice does not affect the operation of subsection (4) of this section.

(6) A person shall not contravene or authorize or permit an act that constitutes a contravention of this section.

Penalty: Two thousand dollars.

(7) Where a notice relating to a corporation is published in contravention of this section by or with the authority or permission of an officer of the corporation, the corporation is guilty of an offence under this Act.

Penalty: Two thousand dollars.

Certain reports referring to prospectuses not to be published.

40A. (1) In this section, unless the contrary intention appears—

“publish” and cognate expressions have the same meaning as in section forty;

“registered prospectus” has the same meaning as in section forty;

“report” includes a statement, notice, circular and an advertisement, whether or not in writing but does not include a notice, circular or advertisement the publication of which is permitted under section forty.

(2) A reference in this section to the publishing of a report is a reference to the publishing in the State of the report by any means, including the publishing in a newspaper or periodical, by broadcasting or televising or in a film.

(3) Subject to subsection (4) of this section, a person who is aware that a prospectus relating to an issue of shares or debentures—

- (a) is in course of preparation by or on behalf of a corporation or in respect of a proposed corporation, for registration in a State or in a Territory of the Commonwealth ; or
- (b) has been issued by or on behalf of a corporation or in respect of a proposed corporation,

shall not publish a report that is reasonably likely to induce persons to apply for those shares or debentures.

(4) Subsection (3) of this section does not apply to or with respect to the publishing of a report that—

- (a) relates to the affairs of a corporation listed on a prescribed Stock Exchange and—
 - (i) is published only to that Stock Exchange or an officer of that Stock Exchange on behalf of the corporation or by or on behalf of one or more of the directors of the corporation ; or
 - (ii) has been so published ;
- (b) is a report of the whole or part of the proceedings at a general meeting of a corporation listed on a prescribed Stock Exchange and contains no other matter other than matters laid before that meeting ;
- (c) relates to a corporation and is published by or on behalf of a corporation or by or on behalf of one or more of the directors of the corporation and—
 - (i) does not contain matter that materially affects the affairs of the corporation other than matter

previously made available in a registered prospectus, annual report or a report referred to in paragraph (a) or (b) of this subsection ;

- (ii) does not contain a reference, whether directly or indirectly, to an invitation to the public to subscribe for or purchase shares or debentures that when the report is published, is open or is intended to be made, not being a reference to the principal business of the corporation in a case where the principal business of the corporation is the borrowing of money and the provision of finance ; and
 - (iii) is not accompanied by a registered prospectus or a notice described in subsection (3) of section forty and the corporation and its directors have taken all reasonable steps to ensure that the report is not published in a form or manner in which it might be associated with a notice described in subsection (3) of section forty;
- (d) is published on behalf of a corporation by or on behalf of the directors of a corporation or of a proposed corporation with the consent of the Commissioner ;
- (e) is news report (whether or not with other comment) or is *bona fide* comment published in a newspaper or periodical or by broadcasting or televising by a person relating to—
- (i) a registered prospectus or information contained in a registered prospectus ; or
 - (ii) a report referred to in paragraph (a), (b), (c) or (d) of this subsection,

if none of the following—

- (iii) that person ;
- (iv) an agent or employee of that person ;
- (v) where the report or comment is published in a newspaper or periodical, the publisher of the newspaper or periodical ; or
- (vi) where the report or comment is published by broadcasting or televising, the licensee of the broadcasting or television station by which it is published,

receives or is entitled to receive any consideration or other benefit from a person who has an interest in the success of the issue of shares or debentures to which the report or comment relates as an inducement for or as the result of the publication of the report or comment;

(f) is not published by a person—

- (i) by or on behalf of a corporation to which the report relates or whether directly or indirectly at the instigation of or by arrangement with the corporation or the directors of the corporation;
- (ii) by or on behalf of the directors or promoters of a proposed corporation to which the report relates; or
- (iii) by or on behalf of a person who has an interest in the success of the issue of shares or debentures to which the report relates,

and the first-mentioned person does not receive and is not entitled to receive any consideration or other benefit from the corporation or any of the directors of the corporation or any of the directors or

promoters of the proposed corporation, or from a person mentioned in sub-paragraph (iii) of this paragraph as an inducement for or as the result of the publication of the report; or

- (g) contains only matter that is prescribed matter for the purpose of this subsection or that relates only to a corporation that is, or is included in a class that is, prescribed for the purposes of this subsection.

(5) A person shall not contravene or authorize or permit an act that constitutes a contravention of this section.

Penalty: Two thousand dollars.

(6) Where a report relating to a corporation is published in contravention of this section by or with the authority or permission of an officer of the corporation, the corporation is guilty of an offence under this Act.

Penalty: Two thousand dollars.

Evidentiary
provisions,
etc.

40B. (1) In this section—

“notice” means a notice within the meaning of section forty or a report within the meaning of section forty A;

“publish” and cognate expressions have the same meaning as in section forty.

(2) A person who publishes a notice relating to a corporation or proposed corporation after he has received a certificate that—

- (a) specifies the names of two directors of the corporation or two proposed directors of the proposed corporation and is signed by those directors or proposed directors; and

- (b) is to the effect that, by reason of subsection (4) of section forty or subsection (4) of

section forty A, section forty or section forty A, as the case may be, does not apply to the notice,

is not guilty of an offence under section forty or forty A, as the case may be.

(3) Where a notice to which a certificate under subsection (2) of this section relates is published, each director or proposed director who signed that certificate shall, for the purposes of sections forty and forty A, be deemed to have published the notice.

(4) A person who publishes a notice to which a certificate under subsection (2) of this section relates shall, if the Commissioner requires him to do so, forthwith deliver the certificate to the Commissioner.

Penalty: One thousand dollars.

(5) In proceedings for an offence under section forty or forty A, a certificate relating to a notice that purports to be a certificate under this section is *prima facie* evidence that—

- (a) when the certificate was issued, the persons named as such in the certificate were directors of the corporation or proposed directors of the proposed corporation, as the case may be;
- (b) the signatures in the certificate purporting to be the signatures of the directors or proposed directors, as the case may be, are those signatures; and
- (c) the publication of the notice was authorized by those directors or proposed directors, as the case may be.

(6) Nothing in section forty, forty A or this section limits or diminishes the liability that a person may incur, otherwise than under section forty, forty A or this section, under any rule of law or under any other enactment. .

Section 42
amended.

16. Subsection (2) of section 42 of the principal Act is amended by deleting subparagraph (ii) of paragraph (e) and substituting the following subparagraph—

- (ii) where that other corporation is so stated to be under any such liability, the prospectus also gives full particulars of the nature and extent of that liability, of the circumstance under which that liability arose and the manner in which that liability is to be discharged. .

Section 54
amended.

17. Subsection (4) of section 54 of the principal Act is amended by deleting the words “if the Commissioner so requests” in lines two and three.

Section 64
amended.

18. Section 64 of the principal Act is amended—

- (a) by deleting the passage commencing with the words “and may by order” in line eight of subsection (4) and ending with the word “reduction” being the last word in the subsection;
- (b) by repealing and re-enacting subsection (6) as follows—

(6) Upon the registration by the Commissioner of an office copy of the order the resolution for reducing share capital as confirmed by the order shall take effect. ;

- (c) by deleting the word “lodging” in line one of subsection (8) and substituting the word “registration”;
- (d) by deleting the passage “and any addition ordered by the Court to be made to the name of the company shall (in the case of any addition to the name, for such period as is specified in the order of the Court) be deemed to be alterations” in subsection (8) and substituting the words “shall be deemed to be an alteration”;

- (e) by deleting the word “lodging” in line two of paragraph (a) of subsection (9) and substituting the word “registration”;
- (f) by deleting the word “shareholder” occurring—
 - (i) in line three and in line seven of subsection (12); and
 - (ii) in line three, in lines eight and nine and in line ten of subsection (13),
 and substituting the word “member” in each case; and
- (g) by adding at the end thereof the following subsection—

(14) Where land under the provisions of the Transfer of Land Act, 1893 is comprised in a strata plan registered under the Strata Titles Act, 1966 and at the time of registration of the strata plan the registered proprietor of that land was a company, the transfer by the company of any lot in that strata plan in exchange for or in satisfaction of a right of a kind referred to in subsection (12) or (13) of this section shall not of itself constitute, and shall be deemed never to have constituted, a reduction of the share capital of the company. .

19. The principal Act is amended by adding after section 64 the following new section—

Section 64A added.

64A. (1) Where shares in a company which were formerly not divided into classes are so divided or where shares of one class are converted into shares of another class, the company shall, within one month after the division or conversion, lodge with the Commissioner a return in the prescribed form showing particulars of the division or conversion.

Return of division or conversion of shares.

(2) In the event of a default in complying with subsection (1) of this section, the company, and each officer of the company who is in default, is guilty of an offence against this Act.

Penalty: One hundred dollars. Default penalty. .

Section 67
amended.

20. Subsection (1) of section 67 of the principal Act is repealed and re-enacted as follows—

(1) Except as is otherwise expressly provided by this Act no company shall give, whether directly or indirectly and whether by means of a loan guarantee or the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company or, where the company is a subsidiary, in its holding company or in any way purchase, deal in or lend money on its own shares. .

Section 69A
amended.

21. Section 69A of the principal Act is amended—

(a) by deleting the passage “Governor, by notice” occurring—

(i) in line three of paragraph (b) of subsection (2); and

(ii) in line three of paragraph (c) of subsection (2),

and substituting the passage “Minister, by order” in both cases; and

(b) by deleting the words “Governor may by notice” in line one of subsection (3) and substituting the words “Minister may by order”.

Section 69B
amended.

22. Subsection (1) of section 69B of the principal Act is amended by adding after the word “corporate” in line five the words “or unincorporate”.

Section 69C
amended.

23. Section 69C of the principal Act is amended by deleting the words “an interest or interests” occurring—

(a) in line three of subsection (1); and

(b) in lines four and five of subsection (2),

and substituting the words “a relevant interest or relevant interests” in both cases.

24. Section 69D of the principal Act is amended— Section 69D amended.

(a) by deleting the words “an interest or interests” in line five of subsection (1) and substituting the words “a relevant interest or relevant interests”;

(b) by repealing and re-enacting subsection (2) as follows—

(2) A person required to give a notice under subsection (1) of this section shall give the notice within fourteen days after that person became or becomes aware of the relevant interest or interests by virtue of which he is a substantial shareholder; and

(c) by deleting the passage “whichever period referred to in subsection (2) of this section is applicable” in lines three, four and five of subsection (3) and substituting the passage “the period referred to in subsection (2) of this section”.

25. Section 69E of the principal Act is amended— Section 69E amended.

(a) by deleting the words “interest or interests” occurring—

(i) in line two of subsection (1); and

(ii) in line five of subsection (3),

and substituting the words “relevant interest or relevant interests” in both cases; and

(b) by deleting the words “the date” in line two of subsection (2) and substituting the words “he becomes aware”.

26. Subsection (2) of section 69F of the principal Act is repealed and re-enacted as follows— Section 69F amended.

(2) A person required to give a notice under subsection (1) of this section shall give the notice within fourteen days after he becomes aware that he has ceased to have a relevant interest or relevant interests in a share or shares in a company to the extent necessary to make him a substantial shareholder in the company.

Section 69G
amended.

27. Section 69G of the principal Act is amended by deleting the words "an interest" occurring in paragraph (a) and in line one of paragraph (b) and substituting the words "a relevant interest" in both cases.

Section 69H
repealed.

28. Section 69H of the principal Act is repealed.

Section 69M
repealed and
re-enacted.

29. Section 69M of the principal Act is repealed and re-enacted as follows—

Knowledge
of servant
or agent
imputed
to master or
principal.

69M. In any proceedings under section sixty-nine L or sixty-nine N a person shall in the absence of proof to the contrary be presumed to have been aware at a particular time of a fact or occurrence of which a servant or agent having duties or acting in relation to a relevant interest or relevant interests of his master or principal in a share or shares in the company concerned was aware at the time. .

Section 69N
amended.

30. Section 69N of the principal Act is amended—

(a) by deleting the word "Minister" in line seven of subsection (1) and substituting the word "Commissioner";

(b) by deleting the words "an interest" occurring in line four of paragraph (c), line five of paragraph (d), lines three and four of paragraph (e), and in line four of paragraph (g) of subsection (1), and substituting the words "a relevant interest" in each case; and

(c) by repealing subsection (11) and substituting the following subsections—

(11) Where an offence under subsection (10) of this section is committed by a corporation an officer of the corporation who is in default is guilty of the same offence.

Penalty: One thousand dollars. Default penalty: Two hundred dollars.

(12) Subsections (10) and (11) of this section do not affect the powers of the Court in relation to the punishment of contempt of the Court. .

31. Section 74 of the principal Act is amended—

Section 74
amended.

(a) by deleting the word “subparagraphs” in line five of paragraph (d) of subsection (1) and substituting the word “paragraphs”;

(b) by adding after subsection (1) the following subsections—

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

(a) be given generally or in relation to a particular borrowing corporation or to a particular class of borrowing corporation or in relation to a particular trust deed;

(b) be given subject to such terms and conditions as the Minister thinks fit and as are specified in the notice; and

(c) be varied or revoked by the Minister by notice published in the *Government Gazette*.

(1b) Where the approval of a corporation has been revoked under subsection (1a) of this section, the borrowing corporation may appoint a trustee corporation qualified pursuant to this section in place of the trustee corporation which by reason of the revocation has ceased to be qualified. ;

(c) by repealing subsection (2);

(d) by deleting the passage “subsection (4)” in lines one and two of subsection (5) and substituting the passage “subsection (3)”;

- (e) by deleting the passage “subsection (4)” in line one of subsection (6) and substituting the passage “subsection (3)”; and
- (f) by re-numbering subsections (3), (4), (5), (6) and (7), as subsections (2), (3), (4), (5) and (6), respectively.

**Section 74A
amended.**

32. Section 74A of the principal Act is amended—

- (a) by deleting the passage commencing with the word “but” in line eight of subsection (1) and ending with the word “sixty-six”, being the last word in that subsection; and
- (b) by repealing and re-enacting subsection (5) as follows—

(5) Where the trustee for the holders of the debentures has ceased to exist or to be qualified under section seventy-four and in the case where a trustee for the holders of debentures has not been appointed pursuant to subsection (1a) of that section or where the trustee for the holders of debentures 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 Commissioner 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 as aforesaid. .

**Section 74B
amended.**

33. Section 74B of the principal Act is amended—

- (a) by deleting the words “in pursuance of an offer to the public” in lines five and six of subsection (2); and
- (b) by repealing subsection (3).

34. Section 74D of the principal Act is amended— Section 74D
amended.

- (a) by deleting the word “comply” in line three of paragraph (c) of subsection (1) and substituting the word “complies”;
- (b) by deleting the word “have” in line four of paragraph (d) of subsection (1) and substituting the word “has”;
- (c) by repealing and re-enacting subsection (2) as follows—

(2) 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 which 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 Commissioner for an order under this subsection and the Commissioner may, on such application, after giving the borrowing corporation an opportunity of making representations in relation to that application, by order in writing served on the corporation at its registered office in the State, impose such restrictions on the activities of the corporation, including restrictions on advertising for deposits or loans and on borrowing by the corporation as the Commissioner thinks necessary for the protection of the interests of the holders of the debentures, or the Commissioner may, and if the borrowing corporation so requires, shall, direct the trustee to apply to the Court for an order under subsection (4) of this section and the trustee shall apply accordingly. ;

- (d) by deleting the word “Minister” occurring—
 - (i) in line three of paragraph (b) of subsection (3); and
 - (ii) in line two of subsection (6),

and substituting the word "Commissioner"
in both cases; and

(e) by repealing subsection (7).

Section 74F
amended.

35. Section 74F of the principal Act is amended—

(a) by deleting paragraph (a) of subsection (2) and substituting the following paragraph—

(a) whether or not the limitations on the amount that the corporation may borrow have been exceeded and, if they have been exceeded, particulars of borrowings exceeding those limitations; ;

(b) by deleting the word "have" in line two of paragraph (b) of subsection (2) and substituting the word "has";

(c) by adding after subsection (2) the following subsection—

(2a) Where during the period to which a report referred to in subsection (1) of this section relates—

(a) a corporation has become a guarantor corporation;

(b) a guarantor corporation has ceased to be liable for the payment of the whole or part of the moneys for which it was liable under the guarantee; or

(c) a guarantor corporation has changed its name,

the report shall so state and shall give particulars of the matters so stated. ;

- (d) by deleting paragraph (a) of subsection (4) and substituting the following paragraph—

(a) The directors of every borrowing corporation which 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 which has guaranteed the repayment of the moneys raised by the issue of those debentures shall—

- (i) at some date not later than seven months, or in the case of a particular corporation not later than the expiration of such other period as is for the time being fixed by the Commissioner with the consent of the trustee for the debenture holders for that corporation, after the expiration of each financial year of the corporation, cause to be made out and lodged with the Commissioner and with the trustee for the holders of the debentures (if any) a profit and loss account for that financial year and a balance-sheet as at the end of that financial year; and
- (ii) at some date not later than ten months or, in the case of a particular corporation, not later than the expiration of such other period as is for the time being fixed by the Commissioner 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 Commissioner 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: One hundred dollars. Default penalty. ;

(e) by deleting paragraph (b) of subsection (4);

(f) by deleting paragraph (c) of subsection (4) and substituting the following paragraphs—

(c) Nothing in paragraph (a) of this subsection applies to the directors of a prescribed corporation.

(d) In this subsection “prescribed corporation” means a corporation that 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 and is declared by the Commissioner by notice in the *Government Gazette* to be a prescribed corporation for the purposes of this subsection.

(e) The Commissioner may by notice in the *Government Gazette*—

(i) specify terms and conditions subject to which paragraph (c) of this subsection shall have effect in relation to a prescribed corporation; or

- (ii) vary or revoke any declaration or specification made under this subsection. ;
- (g) by adding after subsection (4) the following subsection—
 - (4a) Subsections (1), (3) and (4) of this section do not apply in respect of a borrowing corporation or a guarantor corporation which is being wound up or in respect of which a receiver or receiver and manager has been appointed and has not ceased to act under that appointment. ;
- (h) by deleting the passage “Subject to the provisions of subsection (7) of this section, the” in lines one and two of subsection (5) and substituting the word “The”;
- (i) by deleting the passage “(8) and (9)” in line seven of subsection (5) and substituting the passage “(9) and (10)”;
- (j) by deleting the words “Board of Trade” in line twenty-three of subsection (5) and substituting the words “Department of Trade”;
- (k) by deleting paragraph (a) of subsection (7) and substituting the following paragraph—
 - (a) Notwithstanding anything contained in subsection (5) of this section, a profit and loss account and balance-sheet of a borrowing corporation or its guarantor corporation relating to a period of six months immediately following a financial year of the corporation required to be made out and lodged in accordance with subsection (4) of this section need not be audited or the audit thereof may be of a limited nature or extent if the trustee for the holders of the 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. ;

- (l) by deleting paragraph (c) of subsection (7) and substituting the following paragraph—

(c) Notwithstanding anything contained in this section, a profit and loss account and balance-sheet of a borrowing corporation or its guarantor corporation relating to a period of six months immediately following a financial year of the 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 borrowing corporation or the guarantor corporation as the case may be, as reasonably estimated by the directors thereof on the basis of the values of such 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 them as such. ; and

- (m) by deleting paragraph (d) of subsection (7).

Section 76
amended.

36. Section 76 of the principal Act is amended—

- (a) by deleting the word “or” appearing immediately after paragraph (e) of the interpretation “interest” in subsection (1);
- (b) by deleting the passage commencing with the word “paragraph” in line four of subparagraph (ii) of paragraph (f) of the interpretation “interest” in subsection (1) and ending with the passage “business;” appearing at the end of that interpretation and substituting the passage “paragraph; or”;

(c) by adding after paragraph (f) of the interpretation “interest” in subsection (1) the following paragraph—

(g) a prescribed right or interest or a right or interest of a prescribed class or kind declared by the regulations to be an exempt right or interest for the purposes of this Division; ;

(d) by adding after the words “in respect of property” occurring in line seven and again in lines eleven and twelve of the interpretation “investment contract” in subsection (1) the words “whether in the State or elsewhere”, in both cases; and

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

(1a) A regulation made for the purposes of subparagraph (ii) of paragraph (f) of the interpretation “interest” in subsection (1) of this section does not apply to an agreement or a class of agreements relating to a partnership—

(a) being a partnership for the carrying on of a profession or trade where a person carrying on that profession or trade is required by any Act to be registered, licensed or otherwise authorised in order to do so; and

(b) the business of which does not include any business other than the business of a partnership referred to in paragraph (a) of this subsection. .

37. Subsection (1) of section 80 of the principal Act is amended by deleting the passage “subsection (5)” in line nine of paragraph (d) and substituting the passage “subsection (7)”.

Section 80
amended.

Section 82
amended.

38. Subsection (1) of section 82 of the principal Act is repealed and re-enacted as follows—

(1) Before a company or an agent of a company issues or offers to the public for subscription or purchase or invites the public to subscribe for or purchase any interest the company shall issue or cause to be issued a statement in writing in connection therewith which statement shall for all purposes be deemed to be a prospectus issued by a company, and subject to subsection (2) of this section, all provisions of this Act and rules of law relating to prospectuses or to the offering or to an intended offering of shares for subscription or purchase to the public shall with such adaptations as are necessary apply and have effect accordingly and, without limiting the generality of the foregoing, apply and have effect as if—

- (a) the interest were shares offered or intended to be offered to the public for subscription or purchase;
- (b) persons accepting any offer or invitation in respect of or subscribing for or purchasing any such interest were subscribers for shares;
- (c) a reference in paragraph (a) of subsection (4) of section forty to “the corporation” were a reference to the financial or business undertaking or scheme, the common enterprise or the investment contract to which the statement relates;
- (d) the reference in subparagraph (iv) of that paragraph to “the directors” were a reference to the management company for the interest and the directors thereof; and
- (e) in subparagraph (vi) of that paragraph a reference to “debentures” were a reference to an interest and a reference to “the trustee for the debenture holders” were a reference to the trustee for, or representative of, the holders of the interests. .

39. Section 83 of the principal Act is amended by repealing subsections (3), (4) and (5). Section 83.
amended.

40. Section 84 of the principal Act is amended— Section 84
amended.

- (a) by deleting the word “The” in line one of subsection (1) and substituting the passage “Subject to subsection (3a) of this section, the”;
- (b) by deleting the words “Governor by Order in Council” in line thirteen of subsection (3) and substituting the words “Commissioner by order”; and
- (c) by adding after subsection (3) the following subsection—

(3a) The Minister may by notice published in the *Government Gazette* declare that subject to such terms and conditions as are specified in the notice a specified management company is not required to comply with the provisions of subsection (1) of this section in respect of a deed specified in the notice. .

41. Subsection (1) of section 91 of the principal Act is amended by deleting the passage “Except as provided in subsection (2) of this section, each” in lines one and two and substituting the word “Each”. Section 91
amended.

42. Subsection (1) of section 92 of the principal Act is amended by deleting the word “the” in line two and substituting the word “a”. Section 92
amended.

43. Subsection (4) of section 98 of the principal Act is amended by adding the word “and” immediately after subparagraph (i) of paragraph (b). Section 98
amended.

Section 100
amended.

44. Section 100 of the principal Act is amended—

(a) by deleting the word “the” in line two of paragraph (d) of subsection (3) and substituting the word “a”; and

(b) by repealing and re-enacting subsection (9) as follows—

(9) No charge or assignment to which this section applies need be filed or registered under the Bills of Sale Act, 1899. .

Section 102
amended.

45. Subsection (1) of section 102 of the principal Act is repealed and re-enacted as follows—

(1) Where a company acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Division, or, where a foreign company becomes registered in the State and has prior to such registration created a charge which if it had been created by the company while it was registered in the State would have been required to be registered under this Division or, where a foreign company becomes registered in the State and has prior to such registration acquired property which is subject to a charge of any such kind as would if it had been created by the company after the acquisition and while it was registered in the State have been required to be registered under this Division, the company shall cause a statement of the prescribed particulars and the instrument by which the charge was created or is evidenced or a copy thereof accompanied by a statutory declaration containing such particulars as are prescribed, and where a copy is lodged also verifying it as a true copy thereof, to be lodged with the Commissioner for registration within thirty days after the date on which the acquisition is completed or the date of the registration of the company in the State (as the case may be). .

46. Subsection (1) of section 111 of the principal Act is repealed and re-enacted as follows—

Section 111
amended.

(1) A company shall, as from the day of its incorporation, have a registered office within the State to which all communications and notices may be addressed and which shall be open and accessible to the public—

- (a) where a notice has been lodged by the company with the Commissioner under subsection (1a) of section one hundred and twelve or under a corresponding previous enactment—for such hours (being not less than three) between the hours of nine o'clock in the morning and five o'clock in the evening each day, Saturdays, Sundays and holidays excepted, as are specified in the later of that notice or a notice lodged by the company with the Commissioner under subsection (1c) of that section or under a corresponding previous enactment; or
- (b) where a notice has not been lodged by the company with the Commissioner under subsection (1a) of section one hundred and twelve or under a corresponding previous enactment—for not less than five hours between 10 o'clock in the morning and four o'clock in the afternoon each day, Saturdays, Sundays and holidays excepted. .

47. Section 112 of the principal Act is amended by repealing subsections (1) and (1a) and substituting the following subsections—

Section 112
amended.

(1) On the lodging of the memorandum of a proposed company for registration notice in the prescribed form of the address of the proposed registered office of the company shall be lodged with the Commissioner.

(1a) On the lodging of the memorandum of a proposed company for registration or at any later time, notice in the prescribed form of the hours

(being not less than three) between the hours of nine o'clock in the morning and five o'clock in the evening each day, Saturdays, Sundays and holidays excepted, during which the registered office of the company is to be open and accessible to the public may be lodged with the Commissioner.

(1b) Notice in the prescribed form of a change of address of the registered office of a company shall be lodged with the Commissioner not later than seven days after the day on which the change occurs.

(1c) Where a notice has been lodged by a company under subsection (1a) of this section or under a corresponding previous enactment, notice in the prescribed form of a change of the hours during which the registered office of the company is open and accessible to the public shall be lodged with the Commissioner not later than seven days after the day on which the change occurs. .

Section 117
amended.

48. Subsection (2) of section 117 of the principal Act is amended by deleting the passage "Minister and on the Official Receiver under any law of the Commonwealth relating to bankruptcy, and the Minister and the Official Receiver or either of them" in lines three, four, five and six and substituting the words "Commissioner who".

Section 121
amended.

49. Section 121 of the principal Act is amended—

(a) by adding after the word "appointed" in line three of subsection (1) the words "or act as";

(b) by adding after the word "company" being the last word in subsection (1) the passage ", but nothing in this subsection prevents a person from acting as a director of a company during the period commencing on the day on which he attains the age of seventy-two years and ending at the conclusion of the annual general meeting commencing next after that day";

- (c) by deleting the words “to act as” in line fourteen of subsection (6) and substituting the words “in office as”;
- (d) by adding after the word “re-appointment” occurring in line eighteen and again in line twenty-one of subsection (6) the words “or authorization” in both cases;
- (e) by adding after the word “re-appointed” in line twenty of subsection (6) the words “or authorized”;
- (f) by deleting the word “Minister” occurring in line six and in line nine of subsection (6b) and substituting the word “Commissioner” in both cases; and
- (g) by deleting the word “Minister” in line one of subsection (6c) and substituting the word “Commissioner”.

50. Section 122 of the principal Act is amended—

Section 122
amended.

- (a) by deleting the word “or” appearing immediately after paragraph (b) of subsection (1);
- (b) by adding after the word “Commonwealth” in the last line of paragraph (c) of subsection (1) the passage “or under section one hundred and thirteen of the Securities Industry Act, 1975 or a corresponding provision of the law of another State or Territory of the Commonwealth; or”;
- (c) by adding after paragraph (c) of subsection (1) the following paragraph—
 - (d) of any offence under subsection (3) of section three hundred and three as enacted before the twenty-fifth day of November, one thousand nine hundred and sixty-nine, or under any of the corresponding provisions of the law of another State or Territory of the Commonwealth; and

- (d) by deleting the word “Minister” occurring in line three of subsection (2) and line two of subsection (3) and substituting the word “Commissioner” in both cases.

Section 123
amended.

51. Subsection (6) of section 123 of the principal Act is repealed and re-enacted as follows—

(6) The declaration shall be made at the first meeting of the directors held—

(a) after he becomes a director; or

(b) (if already a director) after he commenced to hold the office or to possess the property,

as the case requires. .

Section 124
amended.

52. Section 124 of the principal Act is amended—

(a) by deleting the passage “(a) liable” in line one of paragraph (a) of subsection (3) and substituting the passage “(a) subject to subsection (4) of this section, liable”; and

(b) by repealing subsection (4) and substituting the following subsections—

(4) Where an officer of a corporation who commits a breach of this section has been found by a court to be liable to pay to a person an amount by reason of a contravention of Part X. of the Securities Industry Act, 1975 that was the subject of the same act or transaction as the breach of this section, the amount of the liability of the officer under this section shall be reduced by the first-mentioned amount.

(5) For the purposes of subsection (4) of this section, the onus of proving that the liability of a person to pay an amount to another person arose from the same act or transaction from which another liability arose lies on the person liable to pay the amount.

(6) This section has effect in addition to and not in derogation from any other enactment or rule of law relating to the duty or liability of a director or officer of a corporation. .

53. Section 124A of the principal Act is repealed. Section 124A repealed.

54. Section 125 of the principal Act is amended— Section 125 amended.

(a) by repealing subsection (1) and substituting the following subsections—

(1) A company shall not, whether directly or indirectly—

(a) make a loan to—

(i) a director of the company or a relative of a director of the company;

(ii) a director of a related corporation or a relative of such a director; or

(iii) a corporation in which a director of the company or of a related corporation or a relative of any such director has, or two or more such persons together have, a substantial shareholding within the meaning of Division 3A of Part IV.; or

(b) enter into a guarantee or provide security in connection with a loan made or to be made by another person to a person or corporation referred to in paragraph (a) of this subsection.

(1a) Nothing in subsection (1) of this section applies—

(a) to anything done by a company that is an exempt proprietary company;

- (b) to anything done by a subsidiary in relation to a director where that director is its holding company;
- (c) subject to subsection (2) of this section, to anything done by a company to provide a person with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company;
- (d) subject to subsection (2) of this section, to anything done by a company to provide a person who is engaged in the full-time employment of the company or a holding company with funds to meet expenditure incurred or to be incurred by him in purchasing or otherwise acquiring a home;
- (e) to a loan made by a company to a person who is engaged in the full-time employment of the company or its holding company, if any, if, where the company is not a subsidiary, it has at a general meeting or, where the company is a subsidiary, the company and its holding company have at general meetings, approved a scheme for the making of loans to employees of the company or holding company, or employees of the company and holding company, as the case may be, and the loan is in accordance with that scheme; or
- (f) to anything done by a company in the ordinary course of its ordinary business where that business includes the lending of money or

the giving of guarantees in connection with loans made by other persons.

(1b) In subsection (1) of this section “relative” means spouse, parent or remoter lineal ancestor, son, daughter or remoter issue, brother or sister. ;

- (b) by deleting the passage “subsection (1)” in line one of subsection (2) and substituting the passage “subsection (1a)”;
- (c) by deleting the words “given at a general meeting” in line two of paragraph (a) of subsection (2) and substituting the passage “and, where the company is a subsidiary, its holding company given at a general meeting of the company or holding company, as the case may be”;
- (d) by deleting the words “not so given at or before the next following annual general meeting” in lines two and three of paragraph (b) of subsection (2) and substituting the passage “or, where the company is a subsidiary, approvals of the company and of its holding company are not given as aforesaid at or before the next following annual general meeting of the company or holding company, as the case may be”; and
- (e) by adding after the word “company” in line one of subsection (3) the words “or holding company”.

55. Section 126 of the principal Act is amended—

**Section 126
amended.**

- (a) by deleting the words “an interest” in line three of paragraph (a) of subsection (1) and substituting the words “a relevant interest”.
- (b) by deleting the words “an interest” in lines three and four of paragraph (b) of subsection (1) and substituting the words “a relevant interest”;

- (c) by deleting the words “an interest” in line two of subsection (14) and substituting the words “a relevant interest”; and
- (d) by deleting the passage “subsections (1) and (3)” in line four of subsection (14) and substituting the passage “paragraphs (a) and (c) of subsection (1)”.

Section 127
amended.

56. Section 127 of the principal Act is amended—

- (a) by deleting subparagraph (iii) of paragraph (a) of subsection (2) and substituting the following subparagraph—
 - (iii) as the case may require, the date on which the director became aware that he had a relevant interest in the shares, debentures or participatory interests, or the date on which the director became aware that he had acquired the rights or options, or the date on which the director entered into the contracts, ;
- (b) by deleting the words “the occurrence” in line three of paragraph (b) of subsection (2) and substituting the words “that person becomes aware of the occurrence”;
- (c) by repealing subsection (4);
- (d) by deleting the passage “(5) For the purposes of subsection (4) of this section,” in lines one and two of subsection (5) and substituting the passage “(4) In any proceedings under this section”;
- (e) by repealing subsection (6) and substituting the following subsection—
 - (5) In this section—
 - (a) a reference to a participatory interest is a reference to an interest within the meaning of section seventy-six; and

(b) a reference to a person who has or acquires shares, debentures or participatory interests or a relevant interest in shares, debentures or participatory interests includes a reference to a person who, under an option, has or acquires the right to acquire a share, debenture or participatory interest or a relevant interest in a share, debenture or participatory interest. ;

(f) by repealing subsection (7) and substituting the following subsection—

(6) In determining for the purposes of this section whether a person has a relevant interest in a debenture or participatory interest, the provisions of section six A, except paragraphs (a) and (c) of subsection (1) of that section, have effect, and in applying those provisions a reference to a share shall be read as a reference to a debenture or participatory interest. .

57. Subsection (2) of section 129 of the principal Act is amended by deleting the passage “section one hundred and eighty-four (as in force immediately before the commencement of Part VI of the Companies Act Amendment Act, 1973) or” in lines twelve, thirteen and fourteen. .

Section 129
amended.

58. Section 134 of the principal Act is amended by repealing subsections (8) and (9) and substituting the following subsections—

Section 134
amended.

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

Penalty: One hundred dollars. Default penalty.

(8) A certificate of the Commissioner stating that from any return lodged with the Commissioner pursuant to this section or a corresponding provision of the repealed Act or any corresponding previous enactment it appears that at any time specified in the certificate any person was a director, manager or secretary of a specified company shall, in all courts and by all persons having power to take evidence for the purposes of this Act, be received as *prima facie* evidence of the facts stated therein; and for the purposes of this subsection a person who appears from any return so lodged to be a director, manager or secretary of a company shall be deemed to continue as such until by a subsequent return so lodged or by a notification of change in the prescribed form so lodged it appears that he has ceased to be such a director, manager or secretary. .

Section 142
amended.

59. Section 142 of the principal Act is amended by adding at the end thereof the following subsection—

(3) For the purposes of an application to the Court or a meeting held by order of the Court under this section, the personal representative of a deceased member of a company shall be deemed to be a member of the company and, notwithstanding anything to the contrary in this Act or the memorandum or articles of the company, to have the same voting rights as the deceased member had immediately before his death by reason of his holding shares that on his death were transmitted to his personal representative by operation of law. .

Section 144
amended.

60. Section 144 of the principal Act is amended—

- (a) by deleting the words “referred to in that subsection” in lines four and five of subsection (2);
- (b) by deleting the words “representing not less than ninety-five per centum of the total voting rights at that meeting” in lines nine

- and ten of subsection (2) and substituting the words “represents not less than ninety-five per centum of the total voting rights of all members having the right to attend and vote at the meeting”; and
- (c) by deleting the word “company” in the last line of paragraph (b) of subsection (4) and substituting the passage “company or, where the company does not have a share capital, if that member represents, or those two members together represent, not less than one-tenth of the total voting rights of all members having the right to attend and vote at the meeting”.

61. Section 146 of the principal Act is amended— Section 146 amended.

- (a) by deleting the word “and” appearing immediately after paragraph (a) of subsection (1);
- (b) by deleting paragraph (b) of subsection (1) and substituting the following paragraphs—
- (b) each resolution or agreement which binds a class of shareholders, whether or not agreed to by all the members of that class; and
- (c) each document or resolution that attaches rights to shares (whether or not in substitution for other rights) and is not otherwise required to be lodged with the Commissioner under this Act, ; and
- (c) by deleting the words “resolution or agreement” in line two of subsection (2) and substituting the passage “resolution, document or agreement”.

Section 149
amended.

62. Section 149 of the principal Act is amended—

- (a) by adding after the words “any general meeting” in line two of subsection (1) the passage “and of a meeting of the directors or of the managers (if any) of the company”;
- (b) by deleting the words “and shall be open” in line five of subsection (1) and substituting the passage “and, in the case of the books containing the minutes of proceedings of general meetings, shall be open”; and
- (c) by deleting the passage “specified in subsection (1) of this section” in line four of subsection (2) and substituting the words “of a general meeting”.

Section 157
amended.

63. Subsection (8) of section 157 of the principal Act is amended by deleting the words “Governor may by Order in Council” in lines four and five and substituting the words “Commissioner may by Order”.

Section 158
amended.

64. Section 158 of the principal Act is amended by repealing subsection (6).

Section 159
amended.

65. Subsection (2) of section 159 of the principal Act is amended by adding after paragraph (a) the following paragraph—

- (aa) the participating States (if any) in which the name of the company is reserved; .

Section 159A
amended.

66. Subsection (2) of section 159A of the principal Act is repealed and re-enacted as follows—

(2) This section does not apply to an exempt proprietary company that is an unlimited company that, pursuant to section one hundred and sixty-five A, did not appoint an auditor to audit the accounts referred to in subsection (1) of this section.

67. Subsection (2) of section 160 of the principal Act is amended by deleting the words "Governor may by Order in Council" in line one and substituting the words "Commissioner may by order." Section 160 amended.
68. Section 161B of the principal Act is amended by deleting the word "Board" occurring in line five of subsection (9) and in line one of subsection (10) and substituting the word "Court" in both cases. Section 161B amended.
69. Section 162A of the principal Act is amended— Section 162A amended.
- (a) by adding after the word "may" in line six of paragraph (1) of subsection (1) the word "substantially"; and
 - (b) by adding after the word "may" in line seven of paragraph (n) of subsection (2) the word "substantially".
70. Section 162C of the principal Act is amended— Section 162C amended.
- (a) by adding after subsection (1) the following subsection—
 - (1a) Notice of an order under subsection (1) of this section shall be served on the company to which it relates. ;
 - (b) by adding after subsection (2) the following subsection—
 - (2a) Notice of an order under subsection (2) of this section shall be published in the *Government Gazette*. ;
 - (c) by adding after subsection (4) the following subsection—
 - (4a) The revocation or suspension under subsection (4) of this section of an order does not take effect until—
 - (a) in the case of an order under subsection (1) of this section—
notice of the revocation or

suspension is served on the company to which the order relates; and

- (b) in the case of an order under subsection (2) of this section— notice of the revocation or suspension is published in the *Government Gazette*. ; and
- (d) by adding after subsection (5) the following subsection—
 - (6) A person aggrieved by—
 - (a) an order under subsection (1) or (2) of this section;
 - (b) the revocation or suspension of the operation of such an order; or
 - (c) the refusal of an application for an order or for revocation or suspension of the operation of an order,

may, within two months after the service or publication, as the case may be, of notice of the order or notice of the revocation or suspension or after the refusal, as the case may be, appeal to the Court, and the Court may confirm, set aside or modify the order, or confirm or set aside the revocation, suspension or refusal and may make such further order as it thinks just. .

Section 165B
amended.

71. Section 165B of the principal Act is amended—

- (a) by repealing and re-enacting subsection (5) as follows—

(5) Where, by reason of the circumstances referred to in subsection (1) or (2) of this section, accounts or group accounts of a company required to be laid before the company at its annual general meeting are not audited, there shall be included in, or attached to, the annual return of the company for the financial year to which

the accounts or group accounts relate a certificate signed by not less than two directors of the company stating whether—

- (a) the company has, in respect of the financial year—
 - (i) kept such accounting records as correctly record and explain the transactions and financial position of the company;
 - (ii) kept its accounting records in such a manner as would enable true and fair accounts of the company to be prepared from time to time; and
 - (iii) kept its accounting records in such a manner as would enable the accounts of the company to be conveniently and properly audited in accordance with this Act; and
- (b) the accounts and group accounts (if any) have been properly prepared by a competent person. ;
- (b) by adding the word “or” immediately after subparagraph (ii) of paragraph (a) of subsection (6);
- (c) by deleting subparagraph (iv) of paragraph (a) of subsection (6);
- (d) by deleting the passage commencing with the words “the directors” in line twenty-three of subsection (6) and ending with the word “company” being the last word in the subsection and substituting the passage “there shall be deemed to be a vacancy in the office of auditor of the company and subsection (5) of section one hundred and sixty-six shall apply to that vacancy”; and

- (e) by adding after the word "company", being the last word in subsection (8) the passage "and subsection (1) of this section shall not apply to or in relation to that vacancy".

Section 166
amended.

72. Section 166 of the principal Act is amended—

- (a) by repealing and re-enacting subsections (4) and (5) as follows—

(4) A person or firm appointed as auditor under subsection (3) of this section shall hold office until death or removal or resignation from office in accordance with section one hundred and sixty-six B or until ceasing to be capable of acting as auditor by reason of subsection (1) or (2) of section one hundred and sixty-five.

(5) Within one month after a vacancy (other than a vacancy caused by the removal of an auditor from office) occurs in the office of auditor of the company, if there is no surviving or continuing auditor of the company, the directors shall, unless—

- (a) the company at a general meeting has appointed a person or persons or a firm or firms or any combination thereof to fill the vacancy; or
- (b) where the company is an exempt proprietary company, all the members of the company have at an annual general meeting agreed that it is not necessary for the vacancy to be filled,

appoint a person or persons or a firm or firms or any combination thereof to fill the vacancy. ;

- (b) by deleting paragraph (a) of subsection (10) and substituting the following paragraph—

(a) the company may at that meeting (without adjournment) by a resolution passed by a majority of not less than three-fourths of such members of the company as, being entitled so to do, vote in person or, where proxies are allowed, by proxy, forthwith appoint as auditor or auditors a person or persons or a firm or firms or any combination thereof to whom or which has been sent a copy of the notice of nomination in accordance with subsection (3) of section one hundred and sixty-six A; or ;

- (c) by deleting the words “if such a resolution is not passed” in line one of paragraph (b) of subsection (10) and substituting the passage “if such a resolution is not passed or, by reason only that such a copy of the notice of nomination has not been sent to a person, could not be passed”;

- (d) by repealing and re-enacting subsection (12) as follows—

(12) If after the removal from office of an auditor of a company, the company fails to appoint another auditor under subsection (10) of this section the company shall, within seven days after the failure, notify the Board accordingly whereupon the Board shall, unless—

- (a) there is another auditor of the company whom the Board believes to be able to carry out the responsibilities of auditor alone and who agrees to continue as auditor; or
- (b) where the company is an exempt proprietary company, all the members of the company have

agreed at an annual general meeting that it is not necessary for another auditor to be appointed and the company has notified the Board of that agreement,

appoint as auditor or auditors of the company a person or persons or a firm or firms or any combination thereof who or which consents or consent to be so appointed. ;

- (e) by deleting the passage “a person or persons or a firm or firms, or any combination thereof, as auditor or auditors of the company” in lines five, six and seven of subsection (13) and substituting the words “as auditor or auditors of the company a person or persons or a firm or firms or any combination thereof who or which consents or consent to be so appointed” ;
- (f) by deleting the words “another company” in line three of subsection (15) and substituting the words “a corporation”; and
- (g) by deleting the words “resigns or is sooner removed” in line four of subsection (15) and substituting the words “vacates his office”.

Section 166A
amended.

73. Subsection (3) of section 166A of the principal Act is amended by adding after the words “appointment at” in line three the words “a meeting or”.

Section 166B
amended.

74. Section 166B of the principal Act is amended—

- (a) by adding after the word “resignation” in line two of paragraph (a) of subsection (5) the words “and stated the reasons for his application”; and
- (b) by adding after the word “Court” in line five of subsection (8) the words “after giving the company an opportunity to be heard”.

75. Section 167 of the principal Act is amended— Section 167 amended.

(a) by adding after the word “auditor” being the last word in subsection (7) the words “and is entitled so to be heard notwithstanding that he retires at that meeting or a resolution to remove him from office is passed at that meeting”;

(b) by adding after subsection (7) the following subsection—

(8) If an auditor of a company becomes aware that the company or the directors have made default in complying with the provisions of section one hundred and thirty-six or subsection (1), (3) or (4) of section one hundred and sixty-two relating to the laying of accounts or group accounts before the annual general meeting of the company, the auditor shall immediately inform the Commissioner by notice in writing and, if accounts or group accounts have been prepared and audited, forward to the Commissioner a copy of the accounts or group accounts and of his report thereon. ;

(c) by deleting the passage “(8) If an auditor” in line one of subsection (8) and substituting the passage “(9) Except in a case to which subsection (8) of this section applies, if an auditor” ; and

(d) by re-numbering subsection (9) as subsection (10).

76. Section 167C of the principal Act is amended— Section 167C amended.

(a) by repealing subsection (5) and substituting the following subsections—

(5) Where, under a law of the Commonwealth relating to life insurance, a prescribed corporation is required to prepare accounts annually, the prescribed corporation and the directors and auditors thereof shall not be deemed to have failed

to comply with such of the provisions of this Part as are applicable to it or them by reason only—

(a) that no accounts are laid before the annual general meeting of the corporation other than accounts that—

(i) comply with the provisions of that law; or

(ii) comply with such conditions as are specified by the Commissioner; or

(b) that where accounts that comply with such conditions as are specified by the Commissioner are laid before the annual general meeting of the corporation, an auditor's report to the members on those accounts is not laid before that meeting.

(6) Subsection (2) of section one hundred and sixty-seven does not apply to or in relation to the accounts of a prescribed corporation that is registered under a law of the Commonwealth relating to life insurance where those accounts comply with that law. ; and

(b) by renumbering subsections (6), (7) and (8) as subsections (7), (8) and (9), respectively.

Section 168
amended.

77. Section 168 of the principal Act is amended—

(a) by adding after the word "company" occurring in line one of the interpretation "affairs" in subsection (1) and again in line three of paragraph (b), lines five and eight of paragraph (c) and line five of paragraph (d) of that interpretation, the words "or corporation" in each case;

- (b) by deleting the word “and” appearing immediately after paragraph (aa) of the interpretation “company” in subsection (1);
- (c) by deleting the word “Governor” in line one of paragraph (b) of the interpretation “company” in subsection (1) and substituting the word “Minister”;
- (d) by adding after the passage “corporation;” in the last line of paragraph (b) of the interpretation “company” in subsection (1) the word “and”;
- (e) by adding at the end of the interpretation “company” in subsection (1) the following paragraph—
 - (c) where the Minister has given his consent under section one hundred and seventy-two in relation to a corporation, that corporation; ; and
- (f) by adding after subsection (2) the following subsection—

(3) Where two or more inspectors have been appointed, whether by the same instrument or by different instruments, to investigate affairs of a company, each of those inspectors may exercise his powers or perform his functions under this Part independently of the other inspector or inspectors.

78. Subsection (4) of section 169 of the principal Act is amended by deleting the word “Governor” in line two and in line five and substituting the word “Minister” in both cases.

Section 169
amended.

Section 170
amended.

79. Section 170 of the principal Act is amended—

(a) by deleting the word “Governor” occurring in—

(i) line one of subsection (1);

(ii) line one of paragraph (b) of subsection (2); and

(iii) line ten of subsection (2),

and substituting the word “Minister” in each case;

(b) by adding after the word “corporation” in line four of paragraph (a) of subsection (2) the words “or any necessary consent has been given for the investigation by such a person of affairs of a related corporation”;

(c) by deleting the word “as” in line eleven of subsection (2) and substituting the word “an”; and

(d) by repealing and re-enacting subsection (3) as follows—

(3) The Minister may, by instrument in writing, declare that a specified person whom he could appoint under subsection (2) of this section to investigate affairs of a specified corporation in the State shall have, in relation to the investigation of affairs of the corporation and subject to such terms and conditions as are specified in the instrument, such of the powers of an inspector appointed under subsection (1) of this section as are specified in the instrument, and the person so specified shall thereupon have the powers so specified, subject to the terms and conditions so specified, as if—

(a) the corporation were a company within the meaning of subsection (1) of section one hundred and sixty-eight; and

(b) that person had been appointed an inspector under this section. .

- 80.** Section 171 of the principal Act is amended— Section 171 amended
- (a) by deleting the word “Governor” in line one of subsection (1) and substituting the word “Minister”;
 - (b) by adding immediately after paragraph (a) of subsection (1) the word “and”;
 - (c) by deleting paragraphs (b) and (c) and substituting the following paragraph —
 - (b) the terms and conditions, if any, to which the appointment is subject. ;
 - (d) by adding after subsection (1) the following subsection—
 - (1a) The Minister—
 - (a) may, in the instrument appointing an inspector, specify the period in respect of which the investigation is to be made; and
 - (b) may at any time by notice in writing given to an inspector vary particulars specified in the instrument of appointment, being particulars referred to in paragraph (a) or (b) of subsection (1) of this section or may vary the period in respect of which the investigation is to be made. ; and
 - (e) by deleting the word “Governor” in line one of subsection (2) and substituting the word “Minister”.
- 81.** Section 172 of the principal Act is amended Section 172 amended. by deleting the word “Governor” in the last line and substituting the word “Minister”.
- 82.** Subsection (2) of section 175 of the principal Act is amended Section 175 amended. by adding after the word “Court” in line five of paragraph (b) the passage “and if it sees fit, also make an order pursuant to paragraph (a) of this subsection”.

Section 176
amended.

83. Subsection (6) of section 176 of the principal Act is amended by adding after the word "institution" in line four the words "or preparation".

Section 178
repealed
and
re-enacted.

84. Section 178 of the principal Act is repealed and re-enacted as follows—

Report of
Inspector.

178. (1) An inspector may, and if so directed by the Minister shall, make interim reports to the Minister and on the completion or termination of the investigation the inspector shall report his opinion on or in relation to the affairs of the company or companies which he has investigated, together with the facts upon which his opinion is based, to the Minister.

(1a) An inspector (whether appointed before or after the date of commencement of section eighty-four of the Companies Act Amendment Act (No. 2), 1975) may, when making a report under this section, give to the Minister any books of which he has taken possession under subsection (4) of section one hundred and seventy-three and the Minister—

- (a) may retain the books for such period as he considers to be necessary to enable a decision to be made as to whether or not any legal proceedings ought to be instituted as a result of the investigation;
- (b) may retain the books for such further period as he considers to be necessary to enable any such proceedings to be instituted and prosecuted;
- (c) may permit other persons to inspect the books while they are in his possession;
- (d) may permit the use of the books for the purposes of any legal proceedings instituted as a result of the investigation; and
- (e) shall permit a person who would be entitled to inspect any one or more of the books if they were not in the possession of the Minister to inspect at all reasonable times such of the books as that person would be so entitled to inspect.

(2) Subject to subsection (3) of this section, a copy of a final report shall, and a copy of the whole or any part of an interim report may, if the Minister thinks fit, be forwarded by the Minister to the registered office in the place of its incorporation, of the company to which the report relates, and a further copy of a report so forwarded shall, at the request of an applicant under section one hundred and sixty-nine, be delivered to him.

(3) The Minister is not bound to furnish a company or any other person with a copy of any part of a report by an inspector or with a complete copy of such a report if the Minister is of the opinion that there is good reason for not divulging the contents of the report or of parts of the report.

(4) The Minister may if he is of the opinion that it is in the public interest so to do cause the whole or any part of a report to be printed and published.

(5) Where an inspector has caused notes of an examination under this Part to be forwarded to the Minister with the report to which they relate, a copy of the notes may, subject to section one hundred and seventy-six, be supplied to such persons and upon such conditions as the Minister thinks fit.

(6) If from a report under this section or from the notes of an examination under this Part, the Minister is of the opinion that an offence may have been committed by a person and that a prosecution ought to be instituted, the Minister shall cause a prosecution to be instituted and prosecuted.

(7) Where the Minister has formed the opinion referred to in subsection (6) of this section he may, by notice in writing given before or after the institution of a prosecution in accordance with that subsection, require an officer of the company, of which affairs were investigated (not being an officer who is or, in the opinion of the Minister, is likely to be, a defendant in the proceedings) to give all assistance in connection with the prosecution or proposed prosecution that he is reasonably able to give.

(8) Where a person to whom a notice has been given under subsection (7) of this section fails to comply with the requirement specified in the notice, the Court may on the application of the Minister, direct that person to comply with the requirement.

(9) If from a report of an inspector made under this section or from the notes of an examination under this Part, the Minister is of the opinion that proceedings ought in the public interest to be brought by a company, affairs of which were investigated by the inspector, for the recovery of damages in respect of fraud, misfeasance or other misconduct in connection with affairs of the company or for the recovery of property of the company, the Minister may cause proceedings to be instituted accordingly in the name of the company.

(10) A copy of a report of an inspector purporting to be certified as such a report by the Minister is admissible in legal proceedings as evidence of the inspector's report of his opinion for the purposes of paragraph (g) of subsection (1) of section two hundred and twenty-two.

(11) The court before which legal proceedings are brought against a company or other person for or in respect of matters dealt with in a report under this Part may order that a copy of the report be given to that company or person.

(12) Nothing in this section operates to diminish the protection afforded to witnesses by the Evidence Act, 1906.

Section 179
amended.

85. Section 179 of the principal Act is amended—

(a) by repealing and re-enacting subsection (2) as follows—

(2) Where the Minister is of the opinion that the whole or any part of the expenses of and incidental to an investigation into affairs of a company under this Part (including the expenses incurred and payable by the Minister in any proceedings brought by him in the name of a company)

should be paid by the company, the Minister may by order direct that the expenses or part thereof be so paid or, if they have been paid under subsection (1) of this section, direct the company to reimburse the Crown and may, in either case, direct the company to reimburse the Crown in respect of the remuneration of any servant of the Crown concerned with the investigation. ;

- (b) by deleting the word "Order" occurring in line one of subsection (3) and in line one and line three of subsection (4) and substituting the word "order" in each case;
- (c) by deleting the word "Governor" in line two of subsection (4) and substituting the word "Minister";
- (d) by deleting the words "reimburse the Crown" in line four of subsection (4) and substituting the words "pay expenses or reimburse the Crown";
- (e) by repealing and re-enacting subsections (5) and (6) as follows—

(5) Any amount for which a company is liable pursuant to an order under subsection (2) of this section may be recovered as a debt due to the Crown in a court of competent jurisdiction.

(6) An inspector may include in his report a recommendation whether an order under subsection (2) of this section should be made, or whether application under subsection (7) of this section for a like order should be made, or whether both such an order and such an application should be made. ; and

- (f) by repealing subsection (7) and substituting the following subsections—

(7) An application referred to in subsection (8) of this section may be made to a court by or on behalf of the Minister—

- (a) in the course of proceedings in that court instituted in the name of a company under subsection (9) of section one hundred and seventy-eight; or
- (b) upon, or within fourteen days after, a conviction by the court in proceedings certified by the Minister for the purposes of the application, to have been instituted as a result of an investigation under this Part of affairs of a specified company,

and that court may make such order with respect to the application or its subject-matter as it thinks fit.

(8) The application that may be made under subsection (7) of this section is an application for the same order against a specified person (being, where the application is made under paragraph (a) of that subsection, a party to the proceedings or being, where the application is made under paragraph (b) of that subsection, the person the subject of the conviction) as the Minister is empowered by subsection (2) of this section to make—

- (a) in the case of an application under paragraph (a) of subsection (7) of this section—against the company in whose name the proceedings were instituted; or

- (b) in the case of an application under paragraph (b) of subsection (7) of this section—against the company referred to in the Minister's certificate.

(9) The provisions of subsections (3), (4) and (5) of this section apply, with such modifications as may be necessary, to and in relation to an order made pursuant to an application under subsection (7) of this section as if that order were an order made by the Minister under subsection (2) of this section.

(10) Where—

- (a) an inspector was appointed in pursuance of an application under subsection (1) of section one hundred and sixty-nine;
- (b) the applicants have given security in accordance with subsection (3) of section one hundred and sixty-nine; and
- (c) the company fails to comply with an order under subsection (2) of this section,

the security shall, in the discretion of the Minister, be forfeited or, if the amount that the company has failed to pay in pursuance of the order is less than the amount of the security, a part of the security equal to the amount ordered to be paid shall be forfeited. .

86. Section 179B of the principal Act is amended— Section 179B
amended.

- (a) by deleting the word "Governor" in line three of subsection (1) and substituting the word "Minister";
- (b) by deleting the words "Governor may by Order in Council" in line ten of subsection (1) and substituting the words "Minister may by order";

- (c) by repealing and re-enacting subsections (2), (3) and (4) as follows—

(2) The Minister may by order published in the *Government Gazette* vary or revoke any order published under subsection (1) of this section.

(3) A copy of an order under subsection (1) or (2) of this section shall be served on the company to which it refers.

(4) Where an order made under subsection (1) of this section is in force a person aggrieved by the order may apply to the Court for revocation or variation of the order and the Court may, if it is satisfied that it is reasonable to do so revoke or vary the order and any order by which it has been varied. ; and

- (d) by repealing and re-enacting subsection (6) as follows—

(6) Where an offence under subsection (5) of this section is committed by a company, each officer (as defined in subsection (1) of section five) of the company who is in default is guilty of an offence against this Act.

Penalty: One thousand dollars. Default penalty: Two hundred dollars.

Section 180
amended.

87. Subsection (1) of section 180 of the principal Act is amended by deleting the words “the subject of the report” in lines four and five of paragraph (a).

Section 180A
amended.

88. Subsection (5) of section 180A of the principal Act is amended by deleting the words “an interest” occurring in paragraph (a) and in paragraph (b) and substituting the words “a relevant interest” in both cases.

89. Subsection (1) of section 180B of the principal Act is amended by adding after the word “corporate” in line five the words “or unincorporate”.

Section 180B
amended.

90. Section 180C of the principal Act is amended—

Section 180C
amended.

- (a) by adding after the passage “director;” in the last line of subparagraph (i) of paragraph (b) of subsection (1) the word “and”;
- (b) by deleting subparagraph (ii) of paragraph (b) of subsection (1) and by re-numbering subparagraph (iii) of that paragraph as subparagraph (ii);
- (c) by adding after the passage “director;” in the last line of subparagraph (i) of paragraph (b) of subsection (3) the word “and”;
- (d) by deleting subparagraph (ii) of paragraph (b) of subsection (3) and by re-numbering subparagraph (iii) of that paragraph as subparagraph (ii);
- (e) by adding after subsection (4) the following subsection—
 - (5) The person who records the minute of a resolution referred to in subparagraph (i) of paragraph (b) of subsection (1) of this section or subparagraph (i) of paragraph (b) of subsection (3) of this section shall record in the minute the name of any director who is absent from the meeting when the resolution is passed, the name of any director who votes against the resolution and the name of any director who is present when the resolution is passed and abstains from voting on the resolution. ; and
- (f) by re-numbering subsections (5), (6) and (7) as subsections (6), (7) and (8), respectively.

Section 180D
amended.

91. Subsection (2) of section 180D of the principal Act is amended by deleting the words "an interest" in line one of paragraph (b) and substituting the words "a relevant interest".

Section 180J
amended.

92. Section 180J of the principal Act is amended—

(a) by repealing subsection (1) and substituting the following subsections—

(1) Where—

(a) there is, in a statement that purports to be a Part A statement given under section one hundred and eighty C, matter that is false in a material particular or materially misleading in the form and context in which it appears; or

(b) there is an omission of material matter from such a statement,

a person to whom this subsection applies is, subject to this section, guilty of an offence against this Act.

Penalty: Two thousand dollars or imprisonment for one year, or both.

(1a) Where—

(a) there is, in a statement that purports to be a Part B statement given under section one hundred and eighty G, matter that is false in a material particular or materially misleading in the form and context in which it appears; or

(b) there is an omission of material matter from such a statement,

a person to whom this subsection applies is, subject to this section, guilty of an offence against this Act.

Penalty: Two thousand dollars or imprisonment for one year, or both. ;

- (b) by deleting the passage “this section applies is, in the circumstances referred to in subsection (1)” in lines one and two of subsection (2) and substituting the passage “subsection (1) or (1a) of this section applies is, in the circumstances referred to in subsection (1) or (1a)”;
- (c) by deleting the words “this section applies” in line one of subsection (3) and substituting the passage “subsection (1) of this section applies”;
- (d) by adding after subsection (3) the following subsection—
 - (3a) The persons to whom subsection (1a) applies are—
 - (a) the offeree company; and
 - (b) a person who was a director of the offeree company at the time when the statement was given, not being a director who was not present at the meeting at which the resolution authorizing the signing of the statement was agreed to or a director who voted against that resolution. ; and
- (e) by adding after the passage “subsection (1)” in line two of subsection (5) the passage “or (1a)”.

93. Subsection (1) of section 180R of the principal Act is amended by deleting the word “Minister” in line three and substituting the word “Commissioner”.

Section 180R
amended.

(6) Notwithstanding the provisions of subsection (10) of section one hundred and eighty-one "company" in this section does not include any company other than a company as defined in section five.

Section 195
amended.

98. Section 195 of the principal Act is amended by adding after subsection (1) the following subsection—

(1a) Notwithstanding the provisions of subsection (1) of this section, the accounts referred to in that subsection may be lodged within such times as may be prescribed in lieu of the times specified in that subsection but so that accounts are lodged at least twice a year.

Section 197A
repealed.

99. Section 197A of the principal Act is repealed.

Section 199
repealed
and
re-enacted.

100. Section 199 of the principal Act is repealed and re-enacted 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 that 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 so 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 the company shall, by giving notice thereof in accordance with subsection (9) of this section, within 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 or, where in the opinion of the Commissioner the company would not be able properly to comply with the requirements of this section, within such further period as the Commissioner allows, 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) If default is made in complying with subsection (1) of this section the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty: Four hundred dollars. Default penalty: One hundred dollars.

(3) 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.

(4) Each director of the company shall furnish 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 and, subject to subsection (7) of this section, a company shall be deemed not to have prepared a statement of its affairs in accordance with the last preceding subsection unless each director has furnished to the company such a certificate.

(5) 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.

(6) A director of a company shall not furnish a certificate concerning a statement of the affairs of a company for the purpose of subsection (4) 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 it is made up.

(7) Where the Commissioner is satisfied that it is impracticable for a company to obtain the certificate of a director of the company, the Commissioner may dispense with the obtaining of the certificate from that director.

(8) A company or a director who fails to comply with, or a director who fails to take all reasonable steps to secure compliance by the company with, any provision of subsections (3), (4), (5) and (6) of this section, shall be guilty of an offence against this Act.

Penalty: Four hundred dollars. Default penalty: One hundred dollars.

(9) Notice of the meeting 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.

(10) The company shall attach to every notice posted to the creditors under subsection (9) 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 (3) 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 it 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 (4) of this section.

(11) If default is made in complying with subsection (10) of this section, or with any request made under paragraph (b) of that subsection, the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty: Four hundred dollars. Default penalty.

(12) Notwithstanding subsection (10) of this section, the company may attach to every notice posted to the creditors under subsection (9) of this section a complete copy of the statement of affairs of the company required to be prepared by the company under subsection (3) of this section and if the company does so attach the complete copy it will not be required to comply with paragraphs (a) and (b) of subsection (10) of this section.

(13) The meeting shall be called for a time and place convenient to the majority in value of the creditors.

(14) The chairman of the meeting 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 and 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 shall be final; but if the chairman decides that the time and place of the meeting are not convenient to that majority, the meeting shall lapse.

(15) Within seven days after the first notice calling the meeting is posted to any creditor, the company shall lodge with the Commissioner 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 (3) of this section and certified copies of the certificates furnished by the directors under subsection (4) of this section.

Section 200
amended.

101. Subsection (1) of section 200 of the principal Act is amended by deleting the passage "subsection (4)" in line six and substituting the passage "subsection (3)".

Section 201
amended.

102. Section 201 of the principal Act is amended—

- (a) by deleting the words "of creditors of a company" in line one of subsection (1);
- (b) by adding after the word "time" in line four of subsection (3) the passage ", date"; and
- (c) by deleting the word "the" in the last line of subsection (3) and substituting the word "that".

Section 202
amended.

103. Section 202 of the principal Act is amended by repealing and re-enacting subsection (6) as follows—

(6) Where the Court makes an order under subsection (4) of this section the person obtaining the order shall—

- (a) within seven days after the making of the order lodge with the Commissioner notice in the prescribed form of the making of the order and its date; and
- (b) within seven days of the passing and entering of the order lodge with the Commissioner an office copy of the order. .

Section 203C
amended.

104. Section 203C of the principal Act is amended—

- (a) by deleting the words "extended or earlier" in the last line of subsection (2) and substituting the words "further extended or is sooner"; and
- (b) by deleting the passage "referred to in subsection (2) of this section" in lines one and two of subsection (3).

105. Subsection (2) of section 204 of the principal Act is amended— Section 204 amended.

- (a) by deleting the passage “or becomes the auditor of the company.” in lines four and five of paragraph (c) and substituting the passage “; or”; and
- (b) by adding after paragraph (c) the following paragraph—
 - (d) having been appointed official manager he becomes the auditor of the company. .

106. Subsection (1) of section 206 of the principal Act is amended by deleting the words “or owes collectively” in lines five and six of paragraph (e). Section 206 amended.

107. Subsection (4) of section 208 of the principal Act is amended by adding after the words “dispose of” in line two the words “or mortgage or charge”. Section 208 amended.

108. Section 211A of the principal Act is repealed and re-enacted as follows— Section 211A repealed and re-enacted.

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 Commissioner notice in the prescribed form of the making of the order and the date thereof. Lodgment of office copy of Court order.

(2) The person who obtained the order shall lodge with the Commissioner an office copy of the order within seven days of the passing and entering of the order.

(3) 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 passing and entering of the order publish a copy of the order at least once in a daily newspaper circulating generally throughout the State.

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

Penalty: One hundred dollars. Default penalty. .

Section 212
amended.

109. Section 212 of the principal Act is amended—

(a) by deleting the words “by him” in line six of subsection (5);

(b) by adding after subsection (5) the following subsection—

(5a) If the meeting is not held on the day for which it is called under subsection (2) of this section, the person who was official manager shall, within seven days after that day, lodge with the Commissioner—

(a) a notice that the meeting was not held on that day; and

(b) a copy of the report prepared under subsection (1) of this section.

Penalty: One hundred dollars. Default penalty. ; and

(c) by deleting the words “being presented to the meeting of” in line four of subsection (9) and substituting the passage “notice of the meeting has been given under subsection (3) of this section to”.

Section 214
amended.

110. Subsection (2) of section 214 of the principal Act is amended—

(a) by deleting the words “to them” appearing at the end of subparagraph (iii) of paragraph (a); and

(b) by deleting paragraph (b) and substituting the following paragraph—

(b) may remove the deputy official manager and may, if it feels it is necessary, appoint another person to be deputy official manager in his place; .

111. Section 218 of the principal Act is amended— Section 218
amended.

- (a) by deleting the passage “the provisions of subsection (2) of this section and” in lines seven and eight of subsection (1);
- (b) by deleting the passage “(4)” in line three of paragraph (e) of subsection (1) and substituting the passage “(2)”;
- (c) by repealing subsections (2) and (3); and
- (d) by renumbering subsection (4) as subsection (2).

112. Subsection (2) of section 221 of the principal Act is amended— Section 221
amended.

- (a) by adding the word “and” immediately after paragraph (b);
- (b) by deleting the passage “Court; and” in the last line of paragraph (c) and substituting the passage “Court.” ; and
- (c) by deleting paragraph (d).

113. Section 232 of the principal Act is amended by repealing subsection (3) and substituting the following subsections— Section 232
amended.

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

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

(b) failing such agreement or, where there is no committee of inspection, by a resolution passed at a meeting of creditors by a majority of not less than three-fourths in value and one-half in number of the creditors present in person or by proxy and voting at the meeting and whose debts have been admitted to proof.

(3a) A meeting of creditors for the purposes of subsection (3) of this section shall be convened by the liquidator by sending to each creditor a notice to which is attached a statement of all receipts and expenditure by the liquidator and of the amount of remuneration sought by him.

Section 233
amended.

114. Section 233 of the principal Act is amended—

(a) by deleting the passage “shall lodge an office copy of the order with the Commissioner within fourteen days after the making of the order; and the liquidator” in lines seven, eight and nine of subsection (2);

(b) by repealing subsections (3) and (4) and substituting the following subsections—

(3) Where an order is made under this section, the liquidator of the company to which the order relates shall, within fourteen days after the making of the order, lodge with the Commissioner an office copy of the order.

Penalty: Two hundred dollars. Default penalty.

(4) Notwithstanding the provisions of subsection (2) of this section, an order made under this section does not take effect—

(a) so far as it relates to land under the Transfer of Land Act, 1893, until the liquidator of the

company to which the order relates has lodged an office copy of the order with the Registrar of Titles and all such entries as are necessary to give effect to the order are made in the register book and on the duplicate grant or certificate of title and duplicate instrument (if any);

- (b) so far as it relates to land that is not under the Transfer of Land Act, 1893 and is not referred to in paragraph (c) of this subsection, until the liquidator of the company to which the order relates has lodged a memorial of the order with the Registrar of Deeds and the Registrar of Deeds has made in the book of registry all such entries as are necessary to give effect to the order; or
- (c) in the case of land subject to the provisions of any Act relating to Crown lands, until the liquidator of the company to which the order relates has lodged an office copy of the order with the Minister for Lands, and—
 - (i) an appropriate transfer is registered so that the land is transferred to the liquidator; or
 - (ii) an entry of the vesting is made in the appropriate register kept under the Act to which the land is subject.

(5) An entry made under subparagraph (ii) of paragraph (c) of subsection (4) of this section has the same effect as if the land were transferred. .

Section 234
amended.

115. Section 234 of the principal Act is amended—

(a) by adding after the word “liquidator” in line five of subsection (2) the words “by notice in writing”; and

(b) by repealing subsection (3) and substituting the following subsections—

(2a) A liquidator may serve a notice on a person under subsection (2) of this section either personally or by sending it by post to the address of that person last known to the liquidator.

(3) A person required to submit a statement referred to in subsection (2) of this section shall, subject to subsection (3a) of this section, submit it not later than fourteen days after the liquidator serves notice of the requirement.

(3a) Where the liquidator believes there are special reasons for so doing, he may, on an application made to him whether before or after the expiration of the time limited by subsection (3) of this section for the submission by the applicant of a statement under subsection (2) of this section, grant, by notice in writing, an extension of that time.

(3b) A liquidator—

(a) shall, within seven days after receiving a statement under subsection (2) of this section, cause a copy of the statement to be filed with the Court and a copy to be lodged with the Commissioner; and

(b) shall, where he gives a notice under subsection (3a) of this section forthwith send a copy of the notice to the Commissioner. .

116. Subsection (2) of section 236 of the principal Act is amended by deleting the words "or sequestration" occurring in lines one and two and again in lines four and five of paragraph (e). Section 236 amended.

117. Subsection (6) of section 240 of the principal Act is amended by deleting the word "Registrar" in line seven and substituting the word "Commissioner". Section 240 amended.

118. Subsection (1) of section 250 of the principal Act is amended by deleting the word "further" in line two. Section 250 amended.

119. Subsection (1) of section 269 of the principal Act is amended by deleting the word "or" appearing immediately after paragraph (d). Section 269 amended.

120. Subsection (1) of section 270 of the principal Act is amended by adding after the word "such" in the penultimate line, the passage "transfer,". Section 270 amended.

121. Section 277A of the principal Act is amended— Section 277A amended.
 (a) by repealing subsections (1) and (2) and substituting the following subsections—

(1) Subject to this section, a person shall not consent to be appointed and shall not act as liquidator of a company if he is not a registered liquidator or a corporation authorized by an Act to act as a liquidator.

Penalty: Two hundred dollars. Default penalty.

(1a) Subject to this section, a registered liquidator shall not, except with the leave of the Court, consent to be appointed and shall not act as liquidator of a company—

(a) if he is indebted to the company or to a related corporation in an amount exceeding one thousand dollars; or

(b) if he is—

- (i) an officer of the company;
- (ii) a partner, employer or employee of an officer of the company; or
- (iii) a partner or employee of an employee of an officer of the company.

Penalty: Two hundred dollars. Default penalty.

(2) Subsection (1) of this section does not apply to a members' voluntary winding up of an exempt proprietary company and paragraph (b) of subsection (1a) of this section does not apply to a creditors' voluntary winding up if by a resolution carried by a majority of the creditors in number and value present in person or by proxy and voting at a meeting of which seven days' notice has been given to every creditor stating the object of the meeting, it is determined that that paragraph shall not so apply. ; and

(b) by deleting the passage "(1)" in line one of subsection (3) and substituting the passage "(1a)".

Section 281
amended.

122. Section 281 of the principal Act is amended by adding at the end thereof the following subsection—

(6) Notwithstanding the provisions of subsection (1) of this section, the accounts referred to in that subsection may be lodged within such times as may be prescribed in lieu of the times specified in that subsection but so that accounts are lodged at least twice a year. .

Section 291
amended.

123. Section 291 of the principal Act is amended—

(a) by deleting the passage commencing with the word "Where" in line one and ending with the words "winding up" in line seven of subsection (3) and substituting the passage "The amount of a debt of a

company (including a debt that is for or includes interest) is to be computed for the purposes of the winding up"; and

- (b) by adding after subsection (3) the following subsection—

(4) Subsection (3) of this section does not apply to an amount required to be paid under subsection (1a) of section two hundred and ninety-two. .

124. Section 292 of the principal Act is amended— Section 292 amended.

- (a) by deleting the word "petition" in line three of paragraph (a) of subsection (1) and substituting the word "petitioner";
- (b) by adding after the word "assessment" in line nine of paragraph (e) of subsection (1) the passage "the amount of tax within the meaning of the Pay-roll Tax Assessment Act, 1971 payable by the company under that Act at the relevant date";
- (c) by adding after the word "seventy-nine" in line three of paragraph (f) of subsection (1) the passage "or under section twenty-four of the Securities Industry Act, 1975";
- (d) by adding after subsection (1) the following subsections—

(1a) Where, after the relevant date, an order is made under section one hundred and seventy-nine or under section twenty-four of the Securities Industry Act, 1975 against a company that is being wound up, the amount that, pursuant to the order, the company is liable to pay shall be admissible to proof against the company and—

- (a) where all the debts that, under subsection (1) of this section, have priority over all unsecured debts

have not been paid at the time when the amount is admitted to proof—shall be paid in priority to all other unsecured debts except those having priority under subsection (1) of this section; and

- (b) where all the debts that, under subsection (1) of this section, have priority over all other unsecured debts have been paid at the time when the amount is admitted to proof—shall be paid in priority to all other unsecured debts that, at that time, have not been paid.

(1ab) Where a copy of an order referred to in subsection (1a) of this section against a company is served on the liquidator of the company and the liquidator has not admitted to proof the amount that, pursuant to the order, the company is liable to pay, the liquidator—

- (a) shall serve notice on the Minister that he has not admitted that amount to proof; and
- (b) shall not make a payment or further payments out of the property of the company (other than payments of debts that, under subsection (1) of this section, have priority over all other unsecured debts) until the expiration of seven days after service of that notice.

(1b) Where a contract of employment with a company being wound up was subsisting immediately before the relevant date, the employee under the contract shall, whether or not he is a person referred to in subsection (1c) of this section, be entitled to payment under subsection (1) of this

section, as if his services with the company had been terminated by the company on the relevant date.

(1c) Where, for the purposes of the winding up of a company, a liquidator employs a person whose services with the company had been terminated by reason of the winding up, that person shall, for the purpose of calculating any leave entitlement, be deemed, while the liquidator employs him for those purposes, to be employed by the company.

(1d) Subject to subsection (1e) of this section, where, after the relevant date, an amount in respect of long service leave or extended leave becomes due to or in respect of a person referred to in subsection (1c) of this section in respect of the employment referred to, the amount is a cost of the winding up.

(1e) Where, at the relevant date, the length of qualifying service of a person employed by a company that is being wound up is insufficient to entitle him to any amount in respect of long service leave or extended leave but, by the operation of subsection (1c) of this section he becomes entitled to such an amount after that date, that amount—

- (a) is a cost of the winding up to the extent of an amount that bears to that amount the same proportion as the length of his qualifying service after that relevant date bears to the total length of his qualifying service; and
- (b) shall, to the extent of the balance thereof, be deemed to be an amount referred to in paragraph (d) of subsection (1) of this section. ;

- (e) by repealing and re-enacting subsection (4) as follows—

(4) So far as the assets of the company available for the payment of general creditors are insufficient to meet—

- (a) any preferential debt specified in paragraphs (b) and (d) of subsection (1) of this section;
- (b) any amount that pursuant to subsection (1d) or (1e) of this section, is a cost of the winding up, being an amount that if it had been payable on or before the relevant date would have been a preferential debt specified in paragraph (b) or (d) of subsection (1) of this section; and
- (c) any amount payable in priority by virtue of subsection (3) of this section,

those debts shall have priority over the claims of the holders of debentures under any floating charge created by the company, and shall be paid accordingly out of any property comprised in or subject to that charge. ;

- (f) by adding after subsection (8) the following subsection—

(9) Where an amount due in respect of workers' compensation under any law relating to workers' compensation is a weekly payment, that amount shall, for the purposes of paragraph (c) of subsection (1) of this section, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if an application were made for that purpose under that law. ; and

- (g) by re-numbering subsections (9) and (10) as subsections (10) and (11), respectively.

125. Subsection (2) of section 293 of the principal Act is amended— Section 293 amended.

- (a) by deleting the word “or” appearing immediately after subparagraph (i) of paragraph (a);
- (b) by deleting the passage commencing with the passage “(iii) the date” and ending with the word “earliest” being the last word in paragraph (a) and substituting the passage “(iii) in any other case, the date of the presentation of the petition for the winding up” ; and
- (c) by deleting paragraph (b) and substituting the following paragraph—

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

(i) where on the date of the passing of the resolution the company is under official management or had been under official management at any time within six months before the passing of the resolution, the date of the commencement of the official management; or

(ii) in any other case, the date upon which the resolution to wind up the company voluntarily is passed. .

126. Subsection (6) of section 296 of the principal Act is amended by adding after the word “conveyance” in the last line the passage “, transfer”. Section 296 amended.

127. Section 306 of the principal Act is amended— Section 306 amended.

- (a) by deleting the word “Minister” occurring—
 - (i) in the last line of subsection (1);
 - (ii) in line six and in line nine of subsection (2);

- (iii) in line two and in line fifteen of subsection (4); and
- (iv) in line seven of subsection (5), and substituting the word "Commissioner" in each case;
- (b) by adding after the word "him" in line seven of subsection (3) the word "such";
- (c) by deleting the passage ", if he thinks expedient," in line four of subsection (4); and
- (d) by deleting the words "Minister or" occurring—
 - (i) in line two and in line five of subsection (6);
 - (ii) in line one, in line seven and in line eight of subsection (6a); and
 - (iii) in line four of subsection (8).

Section 311
amended.

128. Subsection (1) of section 311 of the principal Act is amended by adding after the word "may" in line eight the passage "get in,".

Section 312
repealed and
re-enacted.

129. Section 312 of the principal Act is repealed and re-enacted as follows—

Liability of
Commis-
sioner and
Crown as
to property
vested in
Commis-
sioner.

312. Property vested in the Commissioner by operation of this subdivision or by operation of any corresponding previous enactment shall be liable and subject to all charges, claims and liabilities imposed thereon or affecting such property by reason of any statutory provision as to rates, taxes, charges or any other matter or things to which such property would have been liable or subject had such property continued in the possession, ownership or occupation of the company; but there shall not be imposed on the Commissioner or the Crown any duty, obligation or liability whatsoever to do or suffer any act or thing required by any such statutory provision to be done or suffered by the owner or occupier other than the satisfaction or

payment of any such charges, claims or liabilities out of the assets of the company so far as they are in the opinion of the Commissioner properly available for and applicable to such payment.

130. Subsection (3) of section 322 of the principal Act is amended by deleting the words "three days before that" in lines three and four and substituting the words "seven days before such".

Section 322
amended.

131. Section 334 of the principal Act is amended—

Section 334
amended.

- (a) by deleting the word "proclamation" in line two of the interpretation "investment company" in subsection (1) and substituting the words "order of the Minister published in the *Government Gazette*";
- (b) by deleting the words "Governor may by proclamation" in line one of subsection (2) and substituting the words "Minister may by order published in the *Government Gazette*"; and
- (c) by deleting the words "Governor may by like proclamation revoke any proclamation" in lines six and seven of subsection (2) and substituting the words "Minister may by like order so published revoke any order".

132. Section 339 of the principal Act is amended by deleting the words "in a proclamation" in the last line and substituting the passage "by the Minister by order published in the *Government Gazette* for the purposes of this section, and any order published under this section may be revoked by like order so published".

Section 339
amended.

Section 343A
amended.

133. Subsection (1) of section 343A of the principal Act is amended by deleting the passage "section three hundred and forty-three E and" in lines one and two and substituting the passage "subsection (1) of section three hundred and forty-three E and in".

Section 343C
amended.

134. Section 343C of the principal Act is amended—

(a) by repealing and re-enacting subsection (1) as follows—

(1) A recognized company which has established a place of business or commenced to carry on business within the State shall have a principal office within the State to which all communications and notices may be addressed and which shall be open and accessible to the public—

(a) where a notice has been lodged by the recognized company with the Commissioner under subsection (2a) of this section—for such hours (being not less than three) between the hours of nine o'clock in the morning and five o'clock in the evening each day, Saturdays, Sundays and holidays excepted, as are specified in the later of that notice or a notice lodged by the recognized company with the Commissioner under subsection (2) of section three hundred and forty-three D; or

(b) where a notice has not been lodged by the recognized company under subsection (2a) of this section—for not less than five hours between 10 o'clock in the morning and four o'clock in the afternoon of each day, Saturdays, Sundays and holidays excepted. ;

- (b) by deleting the words “and the hours during which the office is open for business” in lines six and seven of subsection (2); and
- (c) by adding after subsection (2) the following subsection—

(2a) A recognized company which has established a place of business or commenced to carry on business within the State may lodge with the Commissioner notice of the hours (being not less than three) between the hours of nine o'clock in the morning and five o'clock in the evening each day, Saturdays, Sundays and holidays excepted, during which the principal office of the recognized company in the State is open and accessible to the public. .

135. Section 343D of the principal Act is amended—

Section 343D
amended.

- (a) by adding after the section number “343D.” the subsection designation “(1)”;
- (b) by deleting the words “or of the hours during which it is open and accessible to the public” in lines two, three and four of paragraph (a); and
- (c) by adding at the end thereof the following subsection—

(2) Where a notice has been lodged by a recognized company under subsection (2a) of section three hundred and forty-three C, the recognized company shall, where there is a change of the hours during which the principal office of the recognized company is open and accessible to the public, lodge with the Commissioner a notice giving particulars of the change within one month or such further period as the Commissioner in special circumstances allows after the change. .

Section 343E
repealed and
re-enacted

136. Section 343E of the principal Act is repealed and re-enacted as follows—

Establish-
ment of
place of
business
and use of
name by
recognized
company.

343E. (1) A recognized company shall not establish a place of business or carry on business within the State unless the name of the company is reserved under subsection (8e) of section twenty-two in respect of that company.

(2) A recognized company to which this Division applies shall not use in the State any name other than the name reserved in respect of that company under subsection (8e) of section twenty-two or a name registered in respect of that company under any other Act.

(3) If default is made in complying with this section the recognized company and every officer of the recognized company who is in default shall be guilty of an offence against this Act.

Penalty: Two hundred dollars. Default penalty. .

Section 343K
amended.

137. Section 343K of the principal Act is amended by deleting the word “applications” in line six and substituting the word “application”.

Section 343L
amended.

138. Section 343L of the principal Act is amended by deleting the word “registers” in line six and substituting the word “register”.

Section 343M
amended.

139. Section 343M of the principal Act is amended by adding after the word “on” in line five the word “and”.

Section 344
amended.

140. Subsection (1) of section 344 of the principal Act is amended by deleting the word “This” in line one and substituting the passage “Except where the contrary intention appears, this”.

Section 346
amended.

141. Section 346 of the principal Act is amended—

- (a) by adding after the word “company” in line nine of paragraph (e) of subsection (1) the words “or recognized company”;

- (b) by deleting paragraph (f) of subsection (1) and substituting the following paragraph—

(f) notice of the situation of its registered office in the State; ;

- (c) by adding after subsection (1) the following subsection—

(1a) A foreign company which has established a place of business or commenced to carry on business within the State may lodge with the Commissioner notice of the hours (being not less than three) between the hours of nine o'clock in the morning and five o'clock in the evening each day, Saturdays, Sundays and holidays excepted, during which the principal office of the foreign company in the State is open and accessible to the public. ;

- (d) by repealing and re-enacting subsection (4) as follows—

(4) A foreign company shall have a registered office within the State to which all communications and notices may be addressed and which shall be open and accessible to the public—

- (a) where a notice has been lodged by the foreign company with the Commissioner under subsection (1a) of this section—for such hours (being not less than three) between the hours of nine o'clock in the morning and five o'clock in the evening each day, Saturdays, Sundays and holidays excepted, as are specified in the later of that notice or a notice lodged by the foreign company with the Commissioner under subsection (1a) of section three hundred and forty-seven; or

- (b) where a notice has not been lodged by the foreign company under subsection (1a) of this section—for not less than five hours between ten o'clock in the morning and four o'clock in the afternoon of each day, Saturdays, Sundays and holidays excepted. ; and
- (e) by deleting from subsection (10) the passage commencing with the word “but” in line five and ending with the word “Act” in the last line.

Section 347
amended.

142. Section 347 of the principal Act is amended—

- (a) by deleting the words “or of the days or hours during which it is open and accessible to the public” in lines two, three and four of paragraph (d) of subsection (1); and
- (b) by adding after subsection (1) the following subsection—

(1a) Where a notice has been lodged by a foreign company under subsection (1a) of section three hundred and forty-six, the foreign company shall, where there is a change of the hours during which the principal office of the foreign company is open and accessible to the public, lodge with the Commissioner a notice giving particulars of the change within one month or such further period as the Commissioner in special circumstances allows after the change. .

Section 349
amended.

143. Subsection (1) of section 349 of the principal Act is amended by deleting the words “under item eighteen or nineteen of the Second Schedule” in lines eleven and twelve.

144. Section 350 of the principal Act is amended by repealing and re-enacting subsections (2) and (3) as follows—

Section 350
amended.

(2) If a foreign company incorporated under the law of any other State or Territory of the Commonwealth is placed under official management in its place of incorporation by any law or enactment corresponding to Part IX. or is being wound up every invoice, order for goods or business letter 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 being a document on or in which the name of the company appears 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 foreign company and every officer of the company who knowingly and wilfully authorizes or permits the default shall be guilty of an offence against this Act.

Penalty: Forty dollars. .

145. Subsection (9) of section 354 of the principal Act is amended—

Section 354
amended.

- (a) by deleting the passage “unsecured notes, and unsecured deposit notes” in lines five and six; and
- (b) by deleting the passage “, a note-holder or a depositor” in the last line.

146. Subsection (2) of section 362 of the principal Act is amended—

Section 362
amended.

- (a) by deleting the word “The” in line one and substituting the passage “For the purposes of subsection (1) of this section, the”; and
- (b) by deleting the passage “(1a)” in line five and substituting the passage “(1b)”.

Section 367
amended.

147. Section 367 of the principal Act is amended by deleting the words “a delegate of an inspector under” in line two and substituting the words “a person authorised by him pursuant to”.

Section 367A
amended.

148. Section 367A of the principal Act is amended—

- (a) by deleting the words “Attorney General” occurring in lines one and two, in line seven and in line nine of subsection (1) and substituting the word “Commissioner” in each case; and
- (b) by deleting the words “Attorney General” in line two of paragraph (d) of subsection (7) and substituting the word “Minister”.

Section 367B
amended.

149. Section 367B of the principal Act is amended—

- (a) by repealing subsection (1) and substituting the following subsections—

(1) Where it appears to the Commissioner or a prescribed person that any other person who has taken part in the formation, promotion, administration, management or winding up of a company to which this section applies—

- (a) has misapplied or retained or become liable or accountable for any money or property of the company; or
 - (b) has been guilty of any negligence, default, breach of duty or breach of trust in relation to the company,
- the Commissioner or prescribed person, may apply to the Court to examine the conduct of that other person or for an order that that other person—

- (c) repay or restore the money or property or such part thereof as the Court thinks fit together with interest at such rates as the Court thinks just; or

- (d) pay to the company such sum by way of damages in respect of the misapplication, retainer, misfeasance or breach of trust, as the Court thinks just,

or may apply for both such an examination and such an order.

(1a) In relation to a company referred to in subsection (1) of this section—

- (a) a liquidator or provisional liquidator of the company;
- (b) a contributory of the company;
- (c) where the company is under official management, the official manager or a member of the company; and
- (d) a person authorized by the Commissioner to make an application under subsection (1) of this section,

are prescribed persons for the purposes of that subsection. ; and

- (b) by adding after subsection (3) the following subsection—

(4) Where the Court is satisfied that an application was made under this section without reasonable cause, it may order the whole or any part of the costs incurred by the person against whom the order was sought to be paid by the applicant. .

150. Section 367C of the principal Act is amended—

Section 367C
amended.

- (a) by repealing and re-enacting subsection (1) as follows—

(1) In sections three hundred and sixty-seven A and three hundred and sixty-seven B “company to which this section applies”

means a company or an unregistered company within the meaning of Division 5 of Part X—

- (a) which is in course of being wound up;
 - (b) which is under official management;
 - (c) in respect of affairs of which there is an inspector within the meaning of Part VIA;
 - (d) in respect of which a receiver or manager has been appointed whether by the Court or pursuant to the powers contained in any instrument;
 - (e) which has ceased to carry on business or is unable to pay its debts; or
 - (f) which has entered into a compromise or scheme of arrangement with its creditors . . . ; and
- (b) by deleting subparagraph (i) of paragraph (a) of subsection (2) and substituting the following subparagraph—
- (i) sent to the company by post a letter pursuant to the provisions of subsection (1) of section three hundred and eight and has not, within the next succeeding period of one month, received an answer to the effect that the company is carrying on business; or . . .

Section 368
amended.

151. Subsection (1) of section 368 of the principal Act is amended by deleting the word “Minister” in line two and substituting the word “Commissioner”.

152. Subsection (2) of section 370 of the principal Act is amended by adding after the word "corporation" occurring in lines two and three and again in line four, the words "or banking corporation" in both cases.

Section 370
amended.

153. Section 374 of the principal Act is amended—

Section 374
amended.

- (a) by deleting the passage commencing with the word "Governor" in line eight and ending with the word "exemption" in line twelve of subsection (2) and substituting the words "Minister for such exemption and the application has been granted but such exemption may at any time be revoked by the Minister by notice published in the *Government Gazette*"; and
- (b) by deleting the word "company" in line one of subparagraph (ii) of paragraph (c) of subsection (4) and substituting the word "corporation".

154. Section 374D of the principal Act is amended—

Section 374D
amended.

- (a) by deleting the passage "the appropriate officer or, with the consent of the Attorney General, any creditor or contributory of the company" in lines four, five and six of subsection (1) and substituting the words "the Commissioner or a prescribed person"; and
- (b) by adding after subsection (1) the following subsection—
 - (1a) In relation to a company to which a conviction referred to in subsection (1) of this section relates—
 - (a) the appropriate officer; and
 - (b) a creditor or contributory of the company authorized by the Minister to make an application under subsection (1) of this section,

are prescribed persons for the purposes of that subsection.

Section 374E
amended.

155. Section 374E of the principal Act is amended—

- (a) by repealing and re-enacting subsection (1) as follows—

(1) In sections three hundred and seventy-four A to three hundred and seventy-four D, both inclusive—

“appropriate officer” means—

- (a) in relation to a company, or an unregistered company within the meaning of Division 5 of Part X, which is being wound up, the liquidator;
- (b) in relation to a company which is under official management, the official manager;
- (c) in relation to a company in respect of affairs of which there is an inspector within the meaning of Part VIA, the person nominated as the appropriate officer in the particular case by the Minister;
- (d) in relation to a company in respect of which a receiver or manager of all or any of the property of the company has been appointed whether by the Court or pursuant to the powers contained in any instrument, the receiver or manager; and
- (e) in relation to any company which, within the meaning of subsection (2) of this section, has ceased to carry on business or is unable to pay its debts, the Commissioner;

“company to which this section applies” means a company, or an unregistered company within the meaning of Division 5 of Part X,—

- (a) which is in course of being wound up;
- (b) which is under official management;
- (c) in respect of affairs of which there is an inspector within the meaning of Part VIA;
- (d) in respect of which a receiver or manager has been appointed whether by the Court or pursuant to the powers contained in any instrument; or
- (e) which, within the meaning of subsection (2) of this section, has ceased to carry on business or is unable to pay its debts;

“the relevant day” means—

- (a) in relation to a company, or an unregistered company within the meaning of Division 5 of Part X, which is being wound up, the day upon which, under the provisions of this Act, the winding up is or is deemed to have commenced;
- (b) in relation to a company which is under official management, the day upon which it is determined that the company shall be placed under official management;

- (c) in relation to a company in respect of affairs of which there is an inspector within the meaning of Part VIA, the day upon which the inspector was appointed;
 - (d) in relation to a company in respect of which a receiver or manager has been appointed, the day upon which the receiver or manager was appointed;
 - (e) in relation to a company which is, within the meaning of subsection (2) of this section unable to pay its debts, the day upon which the execution or other process was returned unsatisfied in whole or in part; and
 - (f) in relation to any company which has, within the meaning of subsection (2) of this section, ceased to carry on business, the day upon which the last return was lodged by the company pursuant to the requirements of section one hundred and fifty-eight or one hundred and fifty-nine, as the case requires. ; and
- (b) by deleting subparagraph (i) of paragraph (a) of subsection (2) and substituting the following subparagraph—
- (i) sent to the company by post a letter pursuant to the provisions of subsection (1) of section three hundred and eight and has not, within the

next succeeding period of one month,
 received an answer to the effect that
 the company is carrying on business;
 or .

156. Section 374H of the principal Act is amended— Section 374H
amended.

- (a) by deleting the word “fifteen” in line six of paragraph (b) of subsection (2) and substituting the word “fourteen”;
- (b) by adding after the passage “up,” in line six of paragraph (c) of subsection (2) the word “being”;
- (c) by adding after the words “six months” in the last line of subsection (3) the words “or both”; and
- (d) by deleting the word “company” in line two of subsection (5) and substituting the passage “corporation or an unregistered company within the meaning of Division 5 of Part X”.

157. Section 379 of the principal Act is amended Section 379
amended. by adding at the end thereof the following subsection—

(4) Any offence against this Act for which a penalty or punishment upon conviction upon indictment is prescribed shall be an indictable offence.

If a penalty or punishment upon summary conviction for the offence is also prescribed, it may be prosecuted either upon indictment or summarily, but not both upon indictment and summarily. .

SECOND SCHEDULE—*continued.*TABLE OF FEES TO BE PAID TO THE
COMMISSIONER—*continued.*

	\$
9. For every order of the Minister granting consent to use of a name by a corporation	30.00
10. For every approval of the Commissioner to the change of name of a company (otherwise than a change of name directed by the Commissioner pursuant to subsection (2) of section 23 or a change of name pursuant to subsection (2) of section 24)	30.00
11. For every application to the Minister to dispense with the word "Limited" in the name of a company	15.00
12. For every licence of the Minister to dispense with the word "Limited" in the name of a company	30.00
13. For approval of the Minister to alter the memorandum or articles of the company	10.00
14. On lodgment of request to the Commissioner to exercise the powers conferred by section 309 or 311	15.00
15. For every act done by the Commissioner as representing a defunct company under section 309	25.00
16. For every act done by the Commissioner as representing a defunct company under section 311	25.00
17. On late lodgment of any document under this Act, in addition to any other fee—	
(a) if lodged within one month after the period prescribed by law	5.00
(b) if lodged more than one month after the period prescribed by law, in addition to the fee payable in paragraph (a) of this item	15.00
<p>The Commissioner, if satisfied that just cause existed for the late lodgment, may waive in whole or in part the additional fee under paragraph (b) of this item.</p>	
18. On lodgment of a notice of the situation of the principal office of a recognized company under subsection (2) of section 343C	5.00

SECOND SCHEDULE—*continued.*TABLE OF FEES TO BE PAID TO THE
COMMISSIONER—*continued.*

	\$
19. For the registration of a foreign company—	
(a) subject to paragraphs (b), (c) and (d) of this item, one-half of the sum of the appropriate fees prescribed in respect of the lodging of the memorandum of and registration of a company registered or incorporated under Part III;	
(b) for the purpose of paragraph (a) of this item, where the share capital of a foreign company includes shares having no fixed nominal amount, the amount of each such share shall be deemed to be—	
(i) where the instrument constituting or defining the constitution of the company has fixed the maximum amount at which shares may be issued—that amount; and	
(ii) in any other case—\$1.00.	
(c) subject to paragraph (d) of this item, where the fee prescribed in paragraph (a) of this item is not applicable	250.00
(d) in the case of a corporation authorized by law of any State or Territory to take in its own name a grant of probate or letters of administration of the estate of a deceased person	200.00
20. On lodging by a foreign company of notice of increase of share capital or in the case of a foreign company not having a share capital on the lodging of notice of increase in number of members beyond its registered number—one-half of the prescribed fee payable on the increase of share capital or on the increase in the number of members of a company incorporated or registered under Part III.	
21. On lodging by a foreign company, the share capital of which consists wholly or partly of shares having no fixed nominal amount, of notice of increase of share capital—one-half of the fee that would be payable if those shares had a nominal amount calculated in accordance with paragraph (b) of item 19.	
22. For registering any charge created by a corporation	20.00
23. For registering particulars of a series of debentures	20.00

SECOND SCHEDULE—*continued.*TABLE OF FEES TO BE PAID TO THE
COMMISSIONER—*continued.*

	\$
24. For registering particulars of each series of debentures where more than one issue in the series	10.00
25. For every application for the reservation of a name	10.00
26. For sending a notification under subsection (7b) or subsection (8b) of section 22 to a corresponding interstate officer—for each notification to a participating State—	
(a) in any case where—	
(i) notification of a reservation of name has been sent to that participating State as the result of an application by the same applicant;	
(ii) a subsequent notification in respect of the names so notified has been sent under subsection (8c) of section 22 to that participating State within the six months preceding the present application; and	
(iii) no refund has been made under subsection (12) of section 22	20.00
(b) in any other case	100.00
27. On lodging articles of association of a company	5.00
28. On lodging a copy of any special resolution altering the articles of association of a company	5.00
29. On lodging a copy of any special resolution altering the objects clause of the memorandum of association of a company	5.00
30. For every application to the Commissioner under section 78 for the approval of a deed	50.00
31. On lodging any statement in lieu of prospectus	25.00
32. On lodging, in relation to a corporation that is a foreign company incorporated in another State or a Territory of the Commonwealth, any prospectus or statement under section 82 being a prospectus or statement registered or acceptable for registration in that other State or Territory	25.00

SECOND SCHEDULE—*continued.*TABLE OF FEES TO BE PAID TO THE
COMMISSIONER—*continued.*

	\$
33. On lodging any prospectus or statement under section 82, other than a prospectus or statement referred to in item 32	50.00
34. For every application to the Commissioner under section 78 for the approval of a deed amending an approved deed	25.00
35. On lodging under section 78 any deed or copy of a deed	5.00
36. On lodging an annual return of a company which is an exempt proprietary company or a corporation to which subsection (5) of section 348 applies together with an additional fee of \$15 for each participating State in which the name of the company is reserved.	15.00
37. On lodging an annual return of a company which is not a corporation to which item 36 or 38 applies together with an additional fee of \$20 for each participating State in which the name of the company is reserved.	20.00
38. On lodging an annual return of a corporation holding a licence under section 24 or holding a licence in the place of incorporation corresponding to a licence under section 24 together with an additional fee of \$10 for each participating State in which the name of the company is reserved.	10.00
39. On lodging a balance sheet of a foreign company pursuant to section 348	20.00
40. On lodging any application under section 44 or section 374	15.00
41. On lodging any application to the Commissioner under section 161B	25.00
42. On lodging any other application	5.00
43. For entry in the register of charges of any memorandum of satisfaction	10.00
44. For every certificate issued by the Commissioner under any Act ..	3.00

SECOND SCHEDULE—*continued.*

TABLE OF FEES TO BE PAID TO THE
COMMISSIONER—*continued.*

	\$
45. For every inquiry as to the availability of any name sought to be adopted by a corporation— for every name the subject of the inquiry	3.00
46. For lodging an application under section 162C	30.00
47. For any other act by the Commissioner which is required or authorized to be done under this Act and for which a fee is not elsewhere prescribed	5.00
48. On lodging, registering, depositing or filing any document with or by the Commissioner for the lodging, registering, depositing or filing of which a fee is not elsewhere prescribed	5.00
49. On service of a subpoena on the Commissioner to produce any documents in his custody and, in addition, if the Commissioner so requires, such other expenses as are reasonably incurred in the production of the document.	10.00
50. For production at office of Commissioner of State Taxation of documents lodged by or in relation to a corporation	5.00
51. (a) For every inspection of a document or documents filed or lodged with the Commissioner by or in relation to a corporation or of any transparency or reproduction of such document or documents ..	2.50
(b) For the supply of an uncertified copy or print of any document where the fee prescribed by paragraph (a) of this item has been paid—for each page of copy or print20
(c) For the supply of an uncertified copy or print of a document without inspection having been made— for the first two pages of the copy or print	1.50
for each additional page20
(d) For every inspection of any document filed or lodged with the Commissioner not being an inspection in respect of which paragraph (a) of this item applies50

SECOND SCHEDULE—*continued.*TABLE OF FEES TO BE PAID TO THE
COMMISSIONER—*continued.*

	\$
(e) The Commissioner may waive the inspection fee provided for in paragraph (a) of this item in respect of any inspection made by or on behalf of—	
(i) the Australian Broadcasting Commission;	
(ii) the holder of a licence for a commercial broadcasting or television station; or	
(iii) the proprietor or publisher of a newspaper generally available to the public otherwise than only on subscription.	
(f) For every written inquiry involving a search for any document filed or lodged by or in relation to a corporation	3.50
(g) For the supply of an uncertified copy or print of a document where the fee prescribed by paragraph (f) of this item has been paid—for each page of the copy or print	.20
52. For every search or inspection in relation to a particular corporation of the registers and documents kept by the Commissioner pursuant to Division 7 of Part IV.	.50
53. (a) For certifying a copy of or extract from any document filed or lodged with the Commissioner of which a typewritten or printed copy is supplied by an applicant—	
for one page	2.00
for each additional page	.50
(b) For the supply of a certified copy or print of any document filed or lodged with the Commissioner—	
for one page	3.00
for each additional page	1.50
54. For the supply of information and a copy or print of a document kept by a corresponding interstate officer	10.00
for each page of the copy or print in excess of four	0.40

Fees payable with respect to companies formed or incorporate outside the Commonwealth shall where appropriate be calculated after the conversion of the share capital to Australian currency.

Fourth
Schedule
amended.

160. The Fourth Schedule to the principal Act is amended—

- (a) by deleting the word “seven” in line two of regulation 45 of Table A and substituting the word “fourteen”; and
- (b) by deleting the word “seven” in line two of regulation 28 of Table B and substituting the word “fourteen”.

Fifth
Schedule
amended.

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

- (a) by deleting the word “Minister” in line seventeen of subparagraph (2) of paragraph 20 and substituting the word “Commissioner”; and
- (b) by deleting the word “other” in line two of subparagraph (e) of paragraph 23 and substituting the word “any”; and
- (c) by adding immediately before the word “corporation” occurring—
 - (i) in line two of subparagraph (a) of paragraph 34;
 - (ii) in lines one and two of subparagraph (c) of paragraph 34;
 - (iii) in line three of subparagraph (c) of paragraph 34;
 - (iv) in line two of subparagraph (d) of paragraph 34;

the word “borrowing” in each case.

Seventh
Schedule
amended.

162. Clause 34 of the Seventh Schedule to the principal Act is amended—

- (a) by deleting the word “allotted” in line three of paragraph (a) and substituting the words “made available to applicants”; and

- (b) by deleting the words “allotment of the units or sub-units” in the last line of paragraph (b) and substituting the words “units or sub-units are made available”.

163. The Eighth Schedule to the principal Act is amended—

Eighth
Schedule
amended.

- (a) by adding after paragraph 1 of Part I the following paragraphs—

1AA. The participating States (if any) in which the name of the company is reserved.

1A. The address of the principal office of the company (if any) in each participating State. ; and

- (b) by deleting the words “the Act” in line two of paragraph 11 of Part I and substituting the passage “the Companies Act, 1961 as amended”.

- (c) by deleting the passage commencing with the words “Annual return of” and ending with the words “on business are” appearing under the heading “FORM OF ANNUAL RETURN OF A COMPANY HAVING A SHARE CAPITAL.” in Part II and substituting the following passage—

Annual Return of _____ Limited
made up to the _____ day of _____ 19 _____,
(being the date of or a date not later than
the 14th day after the date of the annual
general meeting in 19 _____).

The accounts of the company ^{**were*}
_{**were not*}

laid before the annual general meeting of
the company held on the _____ day
of _____ 19 _____, being

* *the date of this return*

* *the date of the annual general meeting
last held before the date of this return*

The address of the registered office of the company is

The name of the company is reserved in the participating States of

The address of the principal office of the company (if any) in each participating State is

The address of the place at which the register of members is kept if other than the registered office is

The business names under which the company carries on business are

;

- (d) by deleting the passage commencing with the word "The" and ending with the word "relates" appearing immediately under the heading "*Copy of last Accounts of the Company.*" in Part II and substituting the following—

Except in the case of—

- (a) a company that, during the whole of the financial year to which the return relates, was an exempt proprietary company and an unlimited company; or
- (b) a company that, during the whole of the financial year to which the return relates was an exempt proprietary company, being a company of which the accounts and group accounts (if any) for that financial year were audited in accordance with the Companies Act, 1961,

the return must include a copy, certified by a director, or by the manager or secretary, of the company to be a true copy, of all accounts and group accounts (if any)

required to be laid before the company at the Annual General Meeting together with a copy of every document required by law to be attached or annexed thereto. ;

- (e) by deleting the word “and” appearing immediately after paragraph (a) under the heading “Certificate.” in Part II;
- (f) by deleting paragraph (e) under the heading “Certificate.” in Part II and substituting the following paragraph—
 - (e) that to the best of our knowledge and belief the company was an exempt proprietary company within the meaning of section 5 of the Companies Act, 1961 during the whole of the financial year to which the return relates ;
- (g) by deleting the passage “*Strike out except in the case of an exempt proprietary company to which section 165B does not apply.*” under the heading “Certificate.” and substituting the passage “*Strike out except in the case of an exempt proprietary company.*” ;
- (h) by deleting the passage “*Strike out this paragraph if inapplicable.*”

Note this paragraph is only applicable to an exempt proprietary company where all the members agreed not more than one month before the annual general meeting not to appoint an auditor.” appearing under the heading “Certificate.” and substituting the passage “*Strike out this paragraph if inapplicable.*”

Note this paragraph is only applicable to an exempt proprietary company that is not an unlimited company all the members of which agreed not more than one month before the annual general meeting not to appoint an auditor.” ;

- (i) by adding after the passage "*See section 132 (5)*" under the heading "*Certificate.*" the passage "*of the Companies Act, 1961*";
- (j) by deleting the heading "*Particulars of the *Directors Managers Secretaries and Auditors of the Limited, at the date of the Annual Return.*" and substituting the heading "*Particulars of the *Directors Managers Secretaries and Auditors of Limited, at the date of the Annual Return.*" ; and
- (k) by deleting the words "List of persons holding shares in the Limited" appearing under the heading "*Certificate.*" and substituting the words "List of persons holding shares in Limited".

**Ninth
Schedule
amended.**

164. The Ninth Schedule to the principal Act is amended—

- (a) by deleting the word "subsidiary" in the last line of paragraph (a) of subclause (1) of clause 2 and substituting the words "related corporation"; and
- (b) by deleting paragraph (i) of subclause (4) of clause 5 and substituting the following paragraph—
 - (i) the total amount outstanding of any loans made, guaranteed or secured by the company or by the company and its subsidiaries, being loans made to a director of the company or of a related corporation or to a relative within the meaning of section 125 of such a director or to a corporation in which such a director or relative has, or two or more such persons together have, a substantial shareholding within the meaning of Division 3A of Part IV. .

165. (1) Where a person may revoke, vary or amend an instrument, declaration or determination made or published under a provision of the Companies Act, 1961 as amended by this Act, he may revoke, vary or amend an instrument, declaration or determination that—

Transitional provisions.

- (a) was made or published under that provision before the provision was amended; and
- (b) was in force immediately before the amendment of the provision,

notwithstanding that the instrument, declaration or determination was not made or published by him.

(2) The provisions of subsections (1a) and (1ab) of section two hundred and ninety-two of the principal Act, as amended by this Act, apply in respect of a company that is being wound up whether the order of the Court for the winding up or the date of commencement of the winding up of the company was made or occurred before or after the date of commencement of this section.
