

## COMPANIES ACT

## Principal Act

<b>Act. No. 1930-07</b>	<i>Commencement</i>	1.2.1930
	<i>Assent</i>	28.11.1930

Amending enactments	Relevant current provisions	Commencement date
Acts. 1932-15	ss.17(1), 18(4), 196(2), 231(2), 244(1) and (2), 246(1), 317(2) and (7), 352(1), 358 and Sch.1	
1933-04	s.246(1)	
1934-15	s.305(1)	
1948-20	s.334	
1949-25	s.221	
1952-17	s.231(3)	
1953-15	s.17	
1955-17	s.305(1)	
1956-24	–	
1962-16	s.383(1)	
1969-09	s.384	
1971-09	Sch.8	
1972-16	ss.17(1) and 20	
1972-18	ss.28, 43, 142 and 350	
1974-16	s.164	
LN. 1975/061	s. 13	
Acts. 1980-04	s. 343(3)	
1982-32	ss.348 and 383 and Sch. 8	
1983-43	s. 180(2) and (3)	
1983-48	ss.221, 244(2), 305(1), 310(2), 311(1) and 352(1)	
1987-30	ss.7(1) to (5) and (7) to (14)	24.12.1987
“ “	s. 305(1)	5.5.1988
“ “	ss.17(1), (2)(d) and (3) to (6), 19(1) to (4), 20, 21 and 22	23.5.1988
“ “	ss.7(6), 93, 94 and Sch.3	17.1.1991
1988-22	ss.183, 184, 185(2) and Sch.10	24.11.1988
1988-34	s.309	1.1.1989
LN. 1988/132	Sch. 8	1.1.1989
1988/153	–	1.1.1989

Acts. 1990-48	s.385	15.11.1990
1991-30	ss.7(12), 19(2), 20(4), 21(4), 22, 26(2), 27(2), 41(2), 53(3), 58(3), 60(3), 69(4), 72(3), 93(2), 102(2), 117(2), 118(2), 123(4), 129(3), 130(2), 132(2), 135(3), 137(2), 138(2), 141(2), (3) and (4), 142(2), 143(6), 148(3), 157(2), 158(9), 165(6), 169(3), 170(3), 171(3), 178(1), 179(4), 180(2) and (3), 181(2), 187, 190(3), 192(1), 197(3), 199(3), 200(4), 202(4), 205(4), 231(4) and (5), 267(3), 278(2), 279(3) and (5), 287(2), 288(3) and (5), 293(2), 305(1)(b) and (c), 315(4), 318(2), 320(2), 323(4), 324(3), 330(2), 336(2), 338(2), 340(2), 348, 363, 365, 366(6) and (8), 367(5), 368(5), 370(a), 371, 372(1), 383(3) and Sch.10	18.7.1991 1.10.1991
LN. 1991/139	Sch. 8	
1992-07	ss.2(1), 3(1), 4(1)(b), 7(1), (10)(a) and (b), (11) and (12), 14(1) and (2), 16(2), 17(1)(c), (d) and (e), 17(6), 20A, 20(1), (2) and (3), 21(1) and (2), 41(3), 42, 43(1) and (2), 44, 45, 46, 49(2), 50(1), 53(1), 60(2), 95(1) and (2), 102(1)(b), (c), (d) and (e), 104(1), 105(1), (2) and (3), 106(1) and (2), 107(1) and (3), 140(1) and (2), 157, 160(1), and (2), 220(d), 222(1)(a)(i), 305(1)(b) and (c), 330(1) and (2), 331(1), (2), (3) and (6), 344, 345, 346, 347(1), (2) and (3), 348 and 383(1)	1.6.1993
	ss.13, 14(2), 73, 153(1), (2) and (5), 154(1), 155(1) and (4) and 156	27.5.2004
LN. 1993/065	Sch. 8	1.6.1993
1993/104	Sch. 8	10.6.1993
1993/178	Sch. 8	28.12.1993
Act. 1994-06	ss.305(1)(a) and (3)(a)	1.7.1994
LN. 1994/007	Sch. 8	13.1.1994
1994/020	Sch. 8	13.1.1994
1994/031	Sch. 8	1.4.1994
		1.8.1994
1995/020	Sch. 8	23.2.1995

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Acts.	1996-04	s.365(1), (2), (3) and (5)	1.3.1996
	1997-09	ss. 360, 364, 386 to 409, Schs. 11, 12, 13 and 14	27.8.1998
	1998-04	s.17(1)(g)	15.1.1998
	1998-08	ss.242(2) and 248(2)	5.4.1999
	1998-20	ss. 4(5), 61 to 68, 71, 72(3) and (4), 95(4), 103, 112, 142(1)(d), 143(4), 209 to 212 and Sch. 15	14.7.2005
	1998-21	ss. 207, 350 and Sch. 16	5.11.1998
	1998-29	ss. 142(1) and (2), 350(1)(dd) and (3)	5.11.1998
LN.	1998/036	s.350	5.11.1998
Acts.	1998-31	ss. 40(1), 145, 161, 167, and 201, Schs.12 and 13	13.8.1998
	1998-39	ss. 180(2) and 181(1)(c) and (2)	1.1.2000
LN.	1998/104	s.360	27.8.1998
Act.	1999-30*	ss.2, 8, 15(2) and (3), 20(1)(c), 24(1) and (2), 29 to 35, 36 to 38, 43, 47(1)(a), (i), (ii) and (4), 49(1), (2)(a) and (b), (3), (4), (5), (6), (7) and (8), 50(1), (2) and (3), 51, 60(3) and (5) to (13), 71, 73(1), (2) and (3), 73 to 92, 109, 110, 117(2), 118(2), 119, 121(1), (4) and (5), 129(3), 141(1)(b), 153(2)(c) and (3)(m), 154(1)(b), 157(5), 164(2)(a), 177(2), 178(1), 180(4) and (8), 181(1)(a) and (b), 186, 188, 189, 192, 195, 196(1)(a) and (b), (3), (4)(a), (c) and (f)(ii) , 197(3), 232(2), 241(2)(b), 291, 320(2), 331(6) and (7), 332, 338(2), 350(1)(c), (k), (l) and (2)(c), 351, 372(2), Sch.1 and Sch.5	1.1.2000
LN.	1999/146	s.164 and 350	1.1.2000
Acts.	2001-02	s.49(9)	14.3.2001
	2001-03	s.267A	14.3.2001
LN.	2001/105	Sch. 8	23.8.2001
Act.	2003-09	267A	31.7.2003
	2005-52	s.332(1) and 333	4.8.2005
LN.	2005/144	Sch. 8	27.10.2005
Act.	2006-14	ss. 40(3) & (4), 41(4), 59A & 96A	18.5.2006
	2007-17	ss. 17(2), 17(2)(e), 17(4), 17(5), 18(1), 18(2), 18(4), 19(2), 19(3), 171(1), 185(2), 185(3), 196(1), 231(1), 231(2), 334, 335, 342,	

\* *Transitional provisions appended at the end of this Ordinance*

	343(1), 343(3), 365(2), 365(3), 365(5), 380, 381, 383(1), 383(2), 385(1) & Sch. 10	14.6.2007
LN. 2007/090	Sch. 8	21.6.2007

*Notes: Relevant current provisions in italics above refer to sections which have been repealed prior to the renumbering and are therefore cited using the old numbering.*

*The re-numbering of this Act came into force on the 22<sup>nd</sup> July 2004 as published in the Revision of the Laws (Supplement No. 16) Order, 2004 LN 2004/061.*

*Rules of court made under s. 334 and other powers appear under the title Supreme Court (These inter alia apply the former English Companies (Winding up) Rules 1929, as amended up to 5 August 1947, with modifications and adaptations.)*

**English sources:**

Married Women's Property Act 1882 (45 & 46 Vict. c.75)  
Companies Act 1929 (19 & 20 Geo. 5 c.23)  
Companies Act 1948 (11 & 12 Geo. 6 c.38)  
Companies Act 1967 (1967 c. 81)  
Companies Act 1985 (1985 c. 6)

**EU Legislation/International Agreements involved:**

Directive 68/151/EEC  
Directive 77/780/EEC  
Directive 78/660/EEC  
Directive 78/855/EEC  
Directive 82/891/EEC  
Directive 89/117/EEC  
Directive 89/666/EEC  
Directive 89/667/EEC

RE-NUMBERING OF SECTIONS

Old Number	New Number	Old Number	New Number	Old Number	New Number
1	1	27	41	45H	80
2	2	28	42	45J	81
3	3	28A	43	45K	82
4	4	28B	44	45L	83
4(4A)	4(5)	28C	45	45M	84
5	5	28D	46	45N	85
6	6	29	47	45P	86
7	7	30	48	45Q	87
8	8	31	49	45R	88
9	9	32	50	45S	89
10	10	33	51	45T	90
11	11	34	52	45U	91
12	12	35	53	45V	92
13	13	36	54	46	93
14	14	37	55	46A	94
15	15	38	56	47	95
16	16	39	57	48	96
17	17	40	58	49	97
18	18	41	59	50	98
19	19	42	60	51	99
19A	20	42B	61	52	100
19B	21	42C	62	53	101
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20	23	42E	64	54A	103
20A	<i>Repealed</i>	42F	65	55	104
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22	25	42H	67	57	106
23	26	42I	68	58	107
24	27	43	69	59	108
24A	28	44	70	60	109
24B	29	44A	71	60A	110
24C	30	45	72	61	111
24D	31	45(2A)	72(3)	61A	112
24E	32	45(2B)	72(4)	62	113
24F	33	45(3)	72(5)	63	114
24G	34	45A	73	64	115
24H	35	45B	74	65	116
24J	36	45C	75	66	117
24K	37	45D	76	67	118
24L	38	45E	77	68	119
25	39	45F	78	69	120
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Old	New	Old	New	Old	New

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71	122	109A	164	145	205
72	123	110	165	146	206
73	124	111	166	146A	207
74	125	112	167	147	208
75	126	112A	168	147A	209
76	127	113	169	147B	210
77	128	114	170	147C	211
78	129	115	171	147D	212
79	130	116	172	148	213
80	131	117	173	149	214
81	132	118	174	150	215
82	133	119	175	151	216
83	134	120	176	152	217
84	135	121	177	153	218
85	136	122	178	154	<i>Omitted</i>
86	137	123	179	155	219
87	138	124	180	156	220
88	139	124(1A)	180(2)	157	221
89	140	124(1B)	180(3)	158	222
90	141	(2)-(6)	180(4)-(8)	159	223
90A	142	125	181	160	224
91	143	126	182	161	225
92	144	127	183	162	226
92A	145	128	184	163	227
93	146	129	185	164	228
94	147	130	186	165	229
95	148	131	187	166	230
96	149	131A	188	167	231
97	150	131B	189	168	232
98	151	132	190	169	233
99	152	133	191	170	234
100	153	134	192	171	235
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(2)-(4)	(3)-(5)	136	194	173	237
101	154	136A	195	174	238
102	155	137	196	175	239
103	156	138	197	176	240
104	157	139	198	177	241
105	158	140	199	178(1A)	242(2)
106	159	141	200	(2)-(5)	242(3)-(6)
107	160	141A	201	179	243
107A	161	142	202	180	244
108	162	143	203	181	245
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183	247	217	281	254	318
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186	250	223	287	260	324
187	251	224	288	261	325
188	252	225	289	262	326
189	253	226	290	263	327
190	254	227	291	264	328
191	255	228	292	265	329
192	256	229	293	266	330
193	257	230	294	267	331
194	258	231	295	267A	332
195	259	232	296	268	333
196	260	233	297	269	334
197	261	234	298	270	335
198	262	235	299	271	336
199	263	236	300	272	337
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203A	267A	241	305	277	342
204	268	242	306	278	343
205	269	243	307	278A	344
206	270	244	308	278B	345
207	271	245	309	278C	346
208	272	246	310	279	347
209	273	247	311	280	348
210	274	248	312	281	349
211	275	249	313	281A	350
212	276	250	314	282	351
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286	355	301	371	321	391
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289	358	304	374	324	394
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290A	360	306	376	326	396
291	<i>Repealed</i>	307	377	327	397
292	361	308	378	328	398
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295	364	311	381	331	401
295A	365	312	382	332	402
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296	366	316	386	336	406
297	367	317	387	337	407
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Old Sch.	New Sch	Old PART	New PART
Sch.1	Sch.1	I	I
Sch.2	Sch.2	II	II
Sch.3	Sch.3	III	III
Sch.4	Sch.4	IV	IV
Sch.5	Sch.5	IVA	V
Sch.6	Sch.6	V	VI
Sch.7	Sch.7	VI	VII
Sch.8	Sch.8	VII	VIII
Sch.9	Sch.9	VIII	IX
Sch.10	Sch.10	IX	X
Sch.11	Sch.11	IXA	XI
Sch.12	Sch.12	X	XII
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**COMPANIES ACT.**

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Section

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27. Issued copies of memorandum to embody alterations.
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30. Certificate of re-registration under section 29.
31. Re-registration of unlimited company as limited.
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34. Certificate of re-registration under section 33.
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36. Certificate of re-registration under section 35.
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AN ACT FOR THE INCORPORATION, MANAGEMENT AND WINDING-UP OF TRADING AND OTHER ASSOCIATIONS.

*Enactment 28 November 1930  
Commencement 1 December 1930*

**Short title.**

1. This Act may be cited as the Companies Act.

**Interpretation.**

2. (1) In this Act, unless the context otherwise requires,—

“annual return” means the return required to be made, in the case of a company having a share capital, under section 153, and, in the case of a company not having a share capital, under section 154;

“articles” means the articles of association of a company, as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained in Table A in Schedule 1 and the provisions of any other Table of that Schedule;

“authorized signatories” means—

- (a) the persons authorized by the company to sign, singly or jointly as resolved by the company from time to time, on behalf of, and thereby to bind the company, to the extent so resolved; or
- (b) two directors or a director and the secretary of the company signing jointly;

“book and paper” and “book or paper” include accounts, deeds, writings and documents;

“company” means a company formed and registered or in the case of a company formed outside Gibraltar, registered under this Act;

“the court”, used in relation to a company, means the Supreme Court and “Registrar of the Court” means Registrar of the Supreme Court;

“debenture” includes debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of the company or not;

“director” includes any person occupying the position of director by whatever name called;

“document” includes summons, notice, order and other legal process and registers;

“memorandum” means the memorandum of association of a company, as originally framed or as altered in pursuance of any enactment or so far as it applies the relevant Table in Schedule 1;

“Minister” means the Minister with responsibility for Trade and Industry;

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

“the Registrar” means the Registrar of Companies appointed under section 343 and, subject to the provisions of that section, includes an Assistant Registrar of Companies;

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

“Table A” means Table A in Schedule 1.

(2) A person shall not be deemed to be within the meaning of any provision in this Act a person in accordance with whose directions or instructions the directors of a company are accustomed to act, by reason only that the directors of the company act on advice given by him in a professional capacity.

## **PART I.**

### **INCORPORATION AND MATTERS INCIDENTAL THERETO.**

#### *Memorandum of Association.*

#### **Mode of forming incorporated company.**

(1929 c.23, s.1).

3. (1) Any seven or more persons associated for any lawful purpose or, where the company to be formed will be a private company, any one may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability.

(2) Such a company may be either—

(a) a company having the liability of its members limited by the memorandum to the amount (if any) unpaid on the shares

respectively held by them (in this Act referred to as “a company limited by shares”); or

- (b) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act referred to as “a company limited by guarantee”); or
- (c) a company not having any limit on the liability of its members (in this Act referred to as “an unlimited company”).

**Requirements with respect to memorandum.**

4. (1) The memorandum of every company must state— (s.2).

- (a) the name of the company, with “Limited” as the last word of the name in the case of a company limited by shares or by guarantee; and
- (b) the objects of the company which requirement shall be satisfied by a statement that the company may do all such things as are lawful to be done by a company registered under this Act subject only to any specified restriction on that power contained in the memorandum.

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

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

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

- (a) the memorandum must also, unless the company is an unlimited company, state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;
- (b) no subscriber of the memorandum may take less than one share;

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

(5) If the memorandum states that the company is to be a public company, the amount of the share capital stated in the memorandum shall be not less than the authorised minimum.

**Stamp and signature of memorandum.**

*(1929 c.23, s.3).*

5. The memorandum must bear the same stamp as if it were a deed and must be signed by each subscriber in the presence of at least one witness who must attest the signature.

**Restriction on alteration of memorandum.**

*(s.4).*

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

**Mode in which and extent to which objects of company may be altered.**

7. (1) A company may by special resolution alter its memorandum with respect to the statement of the company's objects:

Provided that if an application is made under subsection (2), the alteration does not have effect except in so far as it is confirmed by the court.

(2) Where a company's memorandum has been altered by special resolution under subsection (1) of this section, application may be made to the court for the alteration to be cancelled.

(3) Such an application may be made—

- (a) by the holders of not less in the aggregate than 15 per cent in nominal value of the company's issued share capital or any class of it or, if the company is not limited by shares, not less than 15 per cent of the company's members; or
- (b) by the holders of not less than 15 per cent of the company's debentures entitling the holders to object to an alteration of its objects;

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

(4) The application must be made within 21 days after the date on which the resolution altering the company's objects was passed, and may be made

on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(5) The court may on such an application make an order confirming the alteration either wholly or in part and on such terms and conditions as it thinks fit, and may—

- (a) if it thinks fit, adjourn the proceedings in order that an arrangement may be made to its satisfaction for the purchase of the interests of dissentient members, and
- (b) give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement.

(6) The court's order may (if the court thinks fit) provide for the purchase by the company of the shares of any members of the company, and for the reduction accordingly of its capital, and may make such alterations in the company's memorandum and articles as may be required in consequence of that provision.

(7) If the court's order requires the company not to make any, or any specified, alteration to its memorandum or articles, the company does not then have power without the leave of the court to make any such alteration in breach of that requirement.

(8) An alteration in the memorandum or articles of a company made by virtue of an order under this section, other than one made by resolution of the company, is of the same effect as if duly made by resolution; and this Act applies accordingly to the memorandum or articles as so altered.

(9) The debentures entitling the holders to object to an alteration of a company's objects are any debentures secured by a floating charge which were issued or first issued before the date of the coming into force of this section or form part of the same series as any debentures so issued; and a special resolution altering a company's objects requires the same notice to the holders of any such debentures as to members of the company.

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

(10) Where a company passes a resolution altering its objects, then—

- (a) if with respect to the resolution no application is made under this section, the company shall within 15 days from the end of the period for making such an application deliver to the Registrar a printed copy of its memorandum as altered; and

- (b) if such an application is made, the company shall—
- (i) forthwith give notice of that fact to the Registrar, and
  - (ii) within 15 days from the date of any order cancelling or confirming the alteration, deliver to the Registrar an office copy of the order and in the case of any order confirming the alteration, a printed copy of the memorandum as altered.

(11) The court may by order at any time extend the time for the delivery of documents to the Registrar under subsection (10)(b) above for such period as the court may think proper.

(12) If a company makes default in giving notice or delivering any document to the Registrar as required by subsection (10), the company and every officer of it who is in default is liable on summary conviction to a fine at level 4 on the standard scale and, for continued contravention, to a daily penalty of one twentieth of the amount of level 4 on the standard scale.

(13) The validity of an alteration of a company's memorandum with respect to the objects of the company shall not be questioned on the ground that it was not authorised by subsection (1) of this section, except in proceedings taken for the purpose (whether under subsections (2) to (9) or otherwise) before the expiration of 21 days after the date of the resolution in that behalf.

(14) Where such proceedings are taken otherwise than under subsections (2) to (9), subsections (10) to (12) above apply in relation to the proceedings as if they had been taken under those subsections, and as if an order declaring the alteration invalid were an order cancelling it, and as if an order dismissing the proceedings were an order confirming the alteration.

#### *Articles of Association.*

#### **Articles prescribing regulations for companies.**

*(1929 c.23, s.6).*

8. There shall in respect of any company be registered with the memorandum articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

#### **Regulations required in case of unlimited company or company limited by guarantee.**

*(1929 c.23, s.7).*



9. (1) In the case of an unlimited company the articles, if the company has a share capital, must state the amount of share capital with which the company proposes to be registered.

(2) In the case of an unlimited company or a company limited by guarantee, the articles, if the company has not a share capital, must state the number of members with which the company proposes to be registered.

(3) Where a company not having a share capital has increased the number of its members beyond the registered number, it shall, within fifteen days after the increase was resolved on or took place, give to the Registrar notice of the increase, and the Registrar shall record the increase. If default is made in complying with this subsection, the company and every officer of the company who is in default are guilty of offences and are liable on summary conviction to default fines.

#### **Adoption and application of Table A.**

10. (1) Articles of association may adopt all or any of the regulations contained in Table A. *(s.8).*

(2) In the case of a company limited by shares and registered after the commencement of this Act, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations contained in Table A, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

#### **Printing, stamp and signature of articles.**

11. Articles must— *(s.9).*

- (a) be printed;
- (b) be divided into paragraphs numbered consecutively;
- (c) bear the same stamp as if they were contained in a deed; and
- (d) be signed by each subscriber of the memorandum of association in the presence of at least one witness who must attest the signature.

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

12. (1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles. *(1929 c.23 s.10).*

(2) Any alteration or addition so made in the articles shall, subject to the provisions of this Act, be as valid as if originally contained therein, and be subject in like manner to alteration by special resolution.

*Form of Memorandum and Articles.*

**Statutory forms of memorandum and articles.**

(s.11).

13. The form of—

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

shall be respectively in accordance with the forms set out in the appropriate Tables in Schedule 1 or as near thereto as circumstances admit.

*Registration.*

**Registration of memorandum and articles.**

(s.12).

14. (1) The memorandum and the articles (if any) shall be delivered to the Registrar who shall retain and register them.

(2) With the memorandum there shall be delivered a statement in the form prescribed in Schedule 5 containing the information so prescribed and in particular the name, address and nationality of any person or persons, or where any such person is a company, the name of the company and the address of the company's registered office, who are to be the first director or directors of the company.

**Effect of registration.**

(1929 c.23, s.13).

15. (1) On the registration of the memorandum of a company the Registrar shall certify under his hand that the company is incorporated and, in the case of a limited company, that the company is limited.

(2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

(3) A company may, but need not, have a seal for use in Gibraltar.

### **Conclusiveness of certificate of incorporation.**

16. (1) A certificate of incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorized to be registered and duly registered under this Act. <sup>(s.15).</sup>

(2) A statutory declaration by a solicitor of the Supreme Court or by a barrister lawfully acting as a solicitor of the Supreme Court engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company, of compliance with all or any of the said requirements shall be produced to the Registrar, and the Registrar shall be entitled to rely on such a declaration as sufficient evidence of compliance.

### *Provisions with respect to Names of Companies<sup>1</sup>*

### **Restriction on registration of companies by certain names.**

17. (1) No company shall be registered by a name—

- (a) which includes, otherwise than at the end of the name, the word “limited”;
- (b) which includes, otherwise than at the end of the name, an abbreviation of the word “limited”;
- (c) which is the same as the name appearing in the Registrar’s index of company names, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the Registrar requires;

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<sup>1</sup> NOTE.—For restriction on the use of the words “bank” and “trust”, see the *Banking Ordinance, ss.74 and 75*; for restriction on the use of the words “common good”, see the *Charities Ordinance, s. 30*.

- (d) the use of which by the company would in the opinion of the Registrar constitute a criminal offence; or
- (e) which in the opinion of the Registrar is offensive;
- (f) which contains the words “Chamber of Commerce”, unless the company is a company which is to be registered under a licence granted in pursuance of section 18 without the addition of the word “Limited” to its name;
- (g) *Repealed*

(2) Except with the consent of the Minister responsible for finance no company shall be registered by a name which—

- (a) contains the words “Royal” or “Imperial” or “Empire” or “Windsor” or “Crown” or in the opinion of the Registrar suggests, or is calculated to suggest, the patronage of Her Majesty or of any member of the Royal Family or connection with Her Majesty’s Government or the Government of Gibraltar or any department thereof; or
- (b) contains the words “Municipal” or “Chartered” or in the opinion of the Registrar suggests, or is calculated to suggest, connection with any municipality or other local authority or with any society or body incorporated by Royal Charter; or
- (c) in the opinion of the Registrar is undesirable; or
- (d) contains the word “co-operative”; or
- (e) includes any word or expression for the time being specified in regulations made under subsection (4) of this section:

Provided that the Minister shall not consent under subsection (2)(a) to the use of the words “Royal” or “Windsor” or “Crown” or to any name which suggests or is calculated to suggest the patronage of Her Majesty or of any member of the Royal Family or connection with Her Majesty’s Government in the United Kingdom without the prior written consent of the Governor.

(3) In determining for the purposes of subsection (1)(c) whether one name is the same as another, there are to be disregarded—

- (a) the definite article, where it is the first word of the name;

- (b) the following words and expressions where they appear at the end of a name, that is to say—
  - “company” or “and company”
  - “company limited” or “and company limited”
  - “limited”;
- (c) abbreviations of any of those words or expressions where they appear at the end of the name; and
- (d) type and case of letters, accents, spaces between letters and punctuation marks;

and “and” and “&” are to be taken as the same.

(4) The Minister responsible for finance may by regulations specify words or expressions for the registration of which as or as part of a company’s corporate name his approval is required under subsection (2) of this section.

(5) Regulations made under subsection (4) may contain such transitional provisions and savings as the Minister responsible for finance thinks appropriate and may make different provisions for different cases or classes of case.

(6) The Registrar shall keep an index of the names of the following bodies—

- (a) companies as defined by this Act;
- (b) companies incorporated outside Gibraltar which have complied with Part X of this Act, and which do not appear to the Registrar not to have a place of business in Gibraltar;
- (c) incorporated and unincorporated bodies to which any provision of this Act applies;
- (d) limited partnerships registered under the Limited Partnerships Act;
- (e) societies registered under the Co-operative Societies Act and the Friendly Societies Act.

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

*(1929 c.23, s.18).*

18. (1) Where it is proved to the satisfaction of the Minister responsible for finance that an association about to be formed as a limited company is to be formed for promoting commerce, art, science, religion, charity or any other useful object, and intends to apply its profits (if any) or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Minister responsible for finance may by licence direct that the association may be registered as a company with limited liability, without the addition of the word "Limited" to its name, and the association may be registered accordingly.

(2) A licence by the Minister responsible for finance under this section may be granted on such conditions and subject to such regulations as the Minister responsible for finance thinks fit, and those conditions and regulations shall be binding on the association, and shall, if the Minister responsible for finance so directs, be inserted in the memorandum and articles, or in one of those documents.

(3) The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word "Limited" as any part of its name, and of publishing its name, and of sending lists of members to the Registrar.

(4) A licence under this section may at any time be revoked by the Minister responsible for finance, and upon revocation the Registrar shall enter the word "Limited" at the end of the name of the association upon the register, and the association shall cease to enjoy the exemptions and privileges granted by this section:

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

(5) Where the name of the association contains the words "Chamber of Commerce", the notice to be given shall include a statement of the effect of the provisions of section 19(2).

*(1929 c.23, s.3 and 19).*

#### **Change of name.**

19. (1) A company may, by special resolution change its name.

(2) Where a licence granted in pursuance of section 18 to a company the name of which contains the words "Chamber of Commerce" is revoked, the company shall, within a period of six weeks from the date of the revocation or such longer period as the Minister responsible for finance may think fit to allow, change its name to a name which does not contain those words. A company which makes default in complying with the requirements of this subsection is guilty of an offence and is liable on summary conviction to a

fine at level 2 on the standard scale for every day during which the default continues.

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

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

**Power to require company to change name.**

20.(1) Where a company has been registered by a name which—

- (a) is the same as or, in the opinion of the Registrar, too like a name appearing at the time of registration in the Registrar's index of companies names; or
- (b) is the same as or, in the opinion of the Registrar too like the name which should have appeared in that index at that time;
- (c) is in the opinion of the Registrar undesirable;

the Registrar may within 12 months of the time of registration, in writing, direct the company to change its name within such period as he may specify.

Section 17(3) applies in determining under this subsection whether the name is the same as or too like another.

(2) If it appears to the Registrar that misleading information has been given for the purpose of a company's registration with a particular name, or that undertakings or assurances have been given for that purpose and have not been fulfilled, he may within 5 years of the date of its registration with that name in writing direct the company to change its name within such period as he may specify.

(3) Where a direction has been given under subsections (1) or (2) the Registrar may by a further direction in writing extend the period within which the company has to change its name at any time before the end of that period.

(4) A company which fails to comply with a direction under this section, and any officer of it who is in default is liable on summary conviction to a

fine at level 4 on the standard scale, and for continued contravention, to a daily penalty of one twentieth of the amount of level 4 on the standard scale.

(5) Subsections (3) and (4) of section 19 shall apply to any change of name under this section.

21.(1) If in the Registrar's opinion the name by which a company is registered gives so misleading an indication of the nature of its activities as to be likely to cause harm to the public he may direct it to change its name.

(2) The direction must, if not duly made the subject of an application to the court under the following subsection, be complied with within a period of 6 weeks from the date of the direction or such longer period as the Registrar may see fit to allow.

(3) The company may within a period of 3 weeks from the date of the direction, apply to the court to set it aside; and the court may set the direction aside or confirm it and, if it confirms the direction, shall specify the period within which it must be complied with.

(4) If a company defaults in complying with the direction under this section, it is liable on summary conviction to a fine at level 4 on the standard scale, and for continued contravention, to a daily penalty of one twentieth of the amount of level 4 on the standard scale.

(5) Subsections (3) and (4) of section 19 shall apply to any change of name under this section.

22. If any person trades or carries on business under a name or title of which "Limited" or any contraction or imitation of that word, is the last word, that person unless duly incorporated with limited liability, is liable on summary conviction to a fine at level 4 on the standard scale, and for continued default to a daily penalty of one twentieth of the amount of level 4 on the standard scale.

*General Provisions with Respect to Memorandum and Articles.*

**Effect of memorandum and articles.**

(1929 c.23, s.20).

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

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



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

24. For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of a company limited by guarantee, purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby. (s.21).

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

25. Notwithstanding anything in the memorandum or articles of a company no member of the company shall be bound by an alteration made in the memorandum or articles after the date on which he became a member, if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise to pay money to, the company: (s.22).

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

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

26. (1) A company shall, on being so required by any member, send to him a copy of the memorandum and of the articles (if any) and a reference to any Act which alters the memorandum, subject to payment of five pence or such less sum as the company may prescribe. (1929 c.23, s.23).

(2) If a company makes default in complying with this section, the company and every officer of the company who is in default are guilty of offences and are each liable on summary conviction for each offence to a fine of one tenth of the amount at level 1 on the standard scale.

**Issued copies of memorandum to embody alterations.**

27. (1) Where an alteration is made in the memorandum of a company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration. (s.24).

(2) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum

which are not in accordance with the alteration, it is guilty of an offence and is liable on summary conviction to a fine of one tenth of the amount at level 1 on the standard scale for each copy so issued, and every officer of the company who is in default is also guilty of an offence and is liable on summary conviction to the like penalty.

### **Statutory alterations.**

*(1972 c.68, s.9(5)).*

28. Where any alteration is made in a company's memorandum or articles of association by any statutory provision, whether contained in an Act or in an instrument made under an Act, a printed copy of the Act or instrument shall not later than fifteen days after that provision comes into force be forwarded to the Registrar and recorded by him; and where a company is required by this section or otherwise to send to the Registrar any document making or evidencing an alteration in the company's memorandum or articles of association (other than a special resolution under section 7) the company shall send with it a printed copy of the memorandum or articles as altered.

If a company fails to comply with this subsection, the company and any officer of the company who is in default is liable to a default fine.

### **Re-registration of limited company as unlimited.**

*(1985 c.6, s. 49).*

29. (1) Subject to the provisions of this section and section 30, a company which is registered as limited may be re-registered as unlimited in pursuance of an application in that behalf complying with the requirements of this section.

(2) A company is precluded from re-registering under this section if it is limited by virtue of registration under section 31.

(3) A public company shall not be re-registered under this section.

(4) A company which has previously been re-registered as unlimited shall not be re-registered under this section.

(5) An application under this section shall be accompanied by—

- (i) the documents specified in subsection (10); and
- (ii) the prescribed fee.

(6) An application under this section shall set out such alterations in the company's memorandum as—

- (a) if it is to have a share capital, are requisite to bring it (in substance and in form) into conformity with the requirements

of this Act with respect to the memorandum of a company to be formed as an unlimited company having a share capital; or

- (b) if it is not to have a share capital, are requisite in the circumstances.

(7) If the articles of the company have been registered, the application under this section shall set out such alterations in those articles as—

- (a) if the company is to have a share capital, are requisite to bring the articles (in substance and in form) into conformity with the requirements of this Act with respect to the articles of a company to be formed as an unlimited company having a share capital; or
- (b) if the company is not to have a share capital, are requisite in the circumstances.

(8) If articles of the company have not been registered, the application under this section shall have annexed to it, and request the registration of, printed articles.

(9) Articles of the company annexed to an application under this section by virtue of subsection (8) shall, if the company is to have a share capital, comply with the requirements mentioned in subsection (7)(a) and, if not, be articles appropriate to the circumstances.

(10) The documents to be lodged under subsection (5)(i) with the Registrar are—

- (a) the prescribed form of assent to the company being registered as unlimited, subscribed by or on behalf of all the members of the company;
- (b) a statutory declaration made by the directors of the company—
  - (i) that the persons by whom or on whose behalf the form of assent is subscribed constitute the whole of the membership of the company; and
  - (ii) if any of the members have not subscribed that form themselves, that the directors have taken all reasonable steps to satisfy themselves that each person who subscribed it on behalf of a member was lawfully empowered so to do;
- (c) a printed copy of the memorandum incorporating the alterations in it set out in the application;

- (d) if articles have been registered, a printed copy of them incorporating the alterations set out in the application; and
- (e) where the company carries on in or from within Gibraltar a business which is–

*Act. 1989 No. 47.*

*Act. 1992 No. 11.*  
*Act. 1998 No. 10.*

- (i) licensed under the Financial Services Act, 1989; or
- (ii) authorized under the Banking Act, 1992 or the Financial Services Act, 1998; or
- (iii) licensed or authorized in accordance with a Community requirement other than one falling within subparagraph (i) or (ii),

evidence of the consent of the competent authority under the relevant legislation to the company de-registering as a limited company and registering as an unlimited company.

(11) For the purposes of this section–

- (a) subscription to the form of assent by the legal personal representative of a deceased member of a company is deemed subscription by him;
- (b) a trustee in bankruptcy of a member of a company is, to the exclusion of the latter, deemed to be a member of the company.

#### **Certificate of re-registration under section 29.**

*(1985 c.6, s. 50).*

30. (1) The Registrar shall retain the application and other documents lodged with him under section 29 and shall–

- (a) if articles are attached to the application, register them; and
- (b) issue to the company a certificate of incorporation appropriate to the status to be assumed by it by virtue of that section.

(2) On the issue of the certificate referred to in subsection (1)(b)–

- (a) the status of the company, by virtue of the issue, is changed from limited to unlimited; and
- (b) the alterations in the memorandum set out in the application and (if articles have been previously registered) any alteration to the articles so set out take effect as if duly made by resolution of the company; and

(c) the provisions of this Act apply accordingly to the memorandum and articles as altered.

(3) The certificate issued under subsection (1)(b) is conclusive evidence that the requirements of section 29 in respect of re-registration and of matters precedent and incidental to it have been complied with, and that the company was authorized to be registered under this Act in pursuance of that section and was duly so registered.

(4) For the avoidance of doubt it is hereby declared that a company re-registered by virtue of section 29 is a continuation of that company prior to that re-registration.

**Re-registration of unlimited company as limited.**

*(1985 c.6, s.51).*

31. (1) Subject to the provisions of this section and section 32, a company which is registered as unlimited may be re-registered as limited if—

- (a) a special resolution that it should be so re-registered is passed, and
- (b) the requirements of this section are complied with in respect of the resolution and otherwise.

(2) A company shall not under this section be re-registered as a public company.

(3) A company is precluded from re-registering under this section if it is unlimited by virtue of registration under section 29.

(4) The special resolution referred to in subsection (1)(a) shall state whether the company is to be limited by shares or by guarantee and—

- (a) if it is to be limited by shares, shall state what the share capital shall be and provide for the making of such alterations—
  - (i) in the memorandum as are necessary to bring it (in substance and in form) into conformity with the requirements of this Act with respect to the memorandum of a company so limited, and
  - (ii) in the articles as are requisite in the circumstances;
- (b) if it is to be limited by guarantee, shall provide for the making of such alterations in its memorandum and articles as are necessary to bring them (in substance and in form) into

conformity with the requirements of this Act with respect to the memorandum and articles of a company so limited.

(5) The special resolution referred to in subsection (1)(a) is subject to section 165 (copy to be forwarded to the Registrar within fifteen days).

(6) An application for the company to be re-registered as limited, framed in the prescribed form and signed by a director or by the secretary of the company, shall be lodged with the Registrar, together with—

- (a) the necessary documents, and
- (b) the prescribed fee,

not earlier than the day on which the copy of the special resolution forwarded under section 165 is received by him.

(7) The documents required to be lodged with the Registrar for the purposes of subsection (6)(a) are—

- (a) a printed copy of the memorandum as altered in pursuance of the special resolution;
- (b) a printed copy of the articles so altered;
- (c) where the company carries on in or from within Gibraltar a business which is—
  - (i) licensed under the Financial Services Act, 1989; or
  - (ii) authorized under the Banking Act, 1992 or the Financial Services Act, 1998; or
  - (iii) licensed or authorized in accordance with a Community requirement other than one falling within subparagraph (i) or (ii),

evidence of the consent of the competent authority under the relevant legislation to the company de-registering as an unlimited company and registering as a limited company; and

- (d) evidence to the satisfaction of the Registrar that any mortgage or other charge recorded in respect of that company has been discharged in accordance with the Act or the consent in writing of every registered mortgagee or chargee to the de-registration of the company as an unlimited company and re-registration as a limited company has been obtained.

(8) This section does not apply to the re-registration of an unlimited company as a public company.

**Certificate of re-registration under section 31.**

*(1985 c.6, s.52).*

32. (1) The Registrar shall retain the application and other documents lodged with him under section 31 and shall issue to the company a certificate of incorporation appropriate to the status to be assumed by it by virtue of that section.

(2) On the issue of the certificate under subsection (1)–

- (a) the status of the company, by virtue of the issue, is changed from unlimited to limited; and
- (b) the alterations in the memorandum of the company specified in the special resolution and the alterations in, and additions to, the articles of the company so specified take effect.

(3) The certificate issued under subsection (1) is conclusive evidence that the requirements of section 31 in respect of re-registration and of matters precedent and incidental to it have been complied with, and that the company was authorized to be registered in pursuance of that section and was duly so registered.

(4) For the avoidance of doubt it is hereby declared that a company re-registered by virtue of section 31 is a continuation of that company prior to that re-registration.

**Re-registration of company limited by shares as company limited by guarantee and not having share capital.**

33. (1) Subject to the provisions of this section and section 34, a company which is registered as limited by shares or as limited by shares and by guarantee may be re-registered as limited by guarantee and not having share capital if–

- (a) a special resolution that it should be so re-registered is passed by the vote of each member entitled to receive notice of an extraordinary meeting of the company, and
- (b) the requirements of this section are complied with in respect of the resolution and otherwise.

(2) A public company shall not be re-registered under this section.

(3) A company is precluded from re-registering under this section if it is limited by shares by virtue of registration under section 35.

(4) The special resolution referred to in subsection (1)(a) shall state the share capital of the company and shall provide–

- (a) that the total amount of the guarantee of the members from time to time shall not fall below the amount of the share capital of the company at the date of the resolution; and
- (b) for the making of such alterations–
  - (i) in the memorandum as are necessary to bring it (in substance and in form) into conformity with the requirements of this Act with respect to the memorandum of a company limited by guarantee and not having share capital, and
  - (ii) in the articles as are requisite in the circumstances.

(5) The special resolution referred to in subsection (1)(a) is subject to section 165 (copy to be forwarded to the Registrar within fifteen days).

(6) An application for the company to be re-registered as limited by guarantee and not having share capital, framed in the prescribed form and signed by a director or by the secretary of the company, shall be lodged with the Registrar, together with–

- (a) the necessary documents, and
- (b) the prescribed fee,

not earlier than the day on which the copy of the special resolution forwarded under section 165 is received by him.

(7) The documents required to be lodged with the Registrar for the purposes of subsection (6)(a) are–

- (a) a printed copy of the memorandum as altered in pursuance of the special resolution;
- (b) a printed copy of the articles so altered;
- (c) where the company carries on in or from within Gibraltar a business which is–
  - (i) licensed under the Financial Services Act, 1989; or
  - (ii) authorized under the Banking Act, 1992 or the Financial Services Act, 1998; or



- (iii) licensed or authorized in accordance with a Community requirement other than one falling within subparagraph (i) or (ii),

evidence of the consent of the competent authority under the relevant legislation to the company de-registering as a company limited by shares and registering as a company limited by guarantee; and

- (d) evidence to the satisfaction of the Registrar that any mortgage or other charge recorded in respect of that company has been discharged in accordance with the Act.

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

(9) For the purposes of this section “share capital” shall include—

- (a) the nominal value of the allotted shares of every class in the company, whether or not paid up and whether or not paid up in cash or otherwise; and
- (b) any amount in the share premium account (as defined by section 94(1)) of the company.

### **Certificate of re-registration under section 33.**

34. (1) The Registrar shall retain the application and other documents lodged with him under section 33 and shall issue to the company a certificate of incorporation appropriate to the status to be assumed by it by virtue of that section.

(2) On the issue of the certificate under subsection (1)—

- (a) the status of the company, by virtue of the issue, is changed from limited by shares or limited by shares and by guarantee, as the case may be, to limited by guarantee; and
- (b) the alterations in the memorandum of the company specified in the special resolution and the alterations in, and additions to, the articles of the company so specified take effect.

(3) The certificate issued under subsection (1) is conclusive evidence that the requirements of section 33 in respect of re-registration and of matters precedent and incidental to it have been complied with, and that the company was authorized to be registered in pursuance of that section and was duly so registered.

(4) For the avoidance of doubt it is hereby declared that a company re-registered by virtue of section 33 and in respect of which a certificate has been issued under subsection (1) is a continuation of that company prior to that re-registration.

**Re-registration of company limited by guarantee and not having share capital as company limited by shares.**

35. (1) Subject to the provisions of this section and section 36, a company which is registered as limited by guarantee and not having share capital may be re-registered as limited by shares if—

- (a) a special resolution that it should be so re-registered is passed, and
- (b) the requirements of this section are complied with in respect of the resolution and otherwise.

(2) A company shall not be re-registered under this section as a public company.

(3) A company is precluded from re-registering under this section if it is limited by guarantee by virtue of registration under section 33.

(4) The special resolution referred to in subsection (1)(a) shall state the total amount of the guarantee of the members at the date of the resolution and shall provide—

- (a) that the amount of the share capital of the company from time to time shall not fall below the total amount of the guarantee of the members at the date of the resolution; and
- (b) for the making of such alterations—
  - (i) in the memorandum as are necessary to bring it (in substance and in form) into conformity with the requirements of this Act with respect to the memorandum of a company limited by shares, and
  - (ii) are requisite to bring the articles (in substance and in form) into conformity with the requirements of this Act with respect to the articles of a company to be formed as an unlimited company having a share capital.

(5) The special resolution referred to in subsection (1)(a) is subject to section 165 (copy to be forwarded to the Registrar within fifteen days).

(6) An application for the company to be re-registered as limited by shares, framed in the prescribed form and signed by a director or by the secretary of the company, shall be lodged with the Registrar, together with—

- (a) the necessary documents, and
- (b) the prescribed fee.

not earlier than the day on which the copy of the special resolution forwarded under section 165 is received by him.

(7) The documents required to be lodged with the Registrar for the purposes of subsection (6) are—

- (a) a printed copy of the memorandum as altered in pursuance of the special resolution;
- (b) a printed copy of the articles so altered; and
- (c) where the company carries on in or from within Gibraltar a business which is—
  - (i) licensed under the Financial Services Act, 1989; or
  - (ii) authorized under the Banking Act, 1992 or the Financial Services Act, 1998; or
  - (iii) licensed or authorized in accordance with a Community requirement other than one falling within subparagraph (i) or (ii),

evidence of the consent of the competent authority under the relevant legislation to the company de-registering as a company limited by guarantee and registering as a company limited by shares.

#### **Certificate of re-registration under section 35.**

36. (1) The Registrar shall retain the application and other documents lodged with him under section 35 and shall issue to the company a certificate of incorporation appropriate to the status to be assumed by it by virtue of that section.

- (2) On the issue of the certificate under subsection (1)—
  - (a) the status of the company, by virtue of the issue, is changed from limited by guarantee to limited by shares; and

- (b) the alterations in the memorandum of the company specified in the special resolution and the alterations in, and additions to, the articles of the company so specified take effect.

(3) The certificate issued under subsection (1) is conclusive evidence that the requirements of section 35 in respect of re-registration and of matters precedent and incidental to it have been complied with, and that the company was authorized to be registered in pursuance of that section and was duly so registered.

(4) For the avoidance of doubt it is hereby declared that a company re-registered by virtue of section 35 and in respect of which a certificate has been issued under subsection (1) is a continuation of that company prior to that re-registration.

**De-registration of company limited by shares or guarantee or both on registration as a limited partnership.**

37. (1) Subject to the provisions of this section and section 38, a company which is registered as limited by shares or by guarantee or by shares and guarantee may be de-registered on being registered as a limited partnership under the Limited Partnerships Act if—

*Act. 1927 No.7*

- (a) a special resolution that it should be so re-registered is passed by the vote of each member entitled to receive notice of an extraordinary meeting of the company, and
- (b) the requirements of this section are complied with in respect of the resolution and otherwise.

(2) A public company shall not be de-registered under this section.

(3) The special resolution referred to in subsection (1)(a) shall state the share capital or the total amount of the guarantee or both, as the case may be, of the company and shall provide—

- (a) that the total amount of the capital of the limited partnership from time to time shall not fall below the amount of the share capital or the total amount of the guarantee or the total of both, as the case may be, of the company at the date of the resolution; and
- (b) for the method of converting shares or membership or both, as the case may be, into participation in the capital of the limited partnership, specifying which members shall become the limited partners and which shall become the general partners and the sum contributed to the capital of the limited partnership

by each shareholder or member or both, as the case may be;  
and

- (c) for the making of such alterations in the memorandum and articles as are necessary to bring them (in substance and in form) into conformity with the requirements of the Partnership Act and the Limited Partnerships Act as the partnership agreement.

*Act. 1895 No.11.*

(4) The special resolution referred to in subsection (1)(a) is subject to section 165 (copy to be forwarded to the Registrar within fifteen days).

(5) An application for the company to be de-registered on registration under the Limited Partnerships Act as a limited partnership, framed in the prescribed form and signed by a director or by the secretary of the company, shall be lodged with the Registrar, together with—

- (a) the necessary documents, and
- (b) the prescribed fee,

not earlier than the day on which the copy of the special resolution forwarded under section 165 is received by him.

(6) The documents required to be lodged with the Registrar for the purposes of subsection (5)(a) are—

- (a) a printed copy of the memorandum and articles as altered in pursuance of the special resolution to be the limited partnership agreement containing—
  - (i) the name of the company and the firm name under which registration as a limited partnership is to be sought;
  - (ii) the proposed principal place of business of the limited partnership;
  - (iii) the date on which it is proposed to register under the Limited Partnerships Act;
  - (iv) a copy of the statement to be submitted to the Registrar of Limited Partnerships in accordance with section 7A of the Limited Partnerships Act;
- (b) a certificate of good standing in respect of the company issued by the Registrar;

- (c) where the company carries on in or from within Gibraltar a business which is–
  - (i) licensed under the Financial Services Act, 1989; or
  - (ii) authorized under the Banking Act, 1992 or the Financial Services Act, 1998; or
  - (iii) licensed or authorized in accordance with a Community requirement other than one falling within subparagraph (i) or (ii),

evidence of the consent of the competent authority under the relevant legislation to the company de-registering under the Act and registering under the Limited Partnerships Act;

- (d) evidence to the satisfaction of the Registrar that no proceedings for insolvency have been commenced against the company in Gibraltar;
- (e) evidence to the satisfaction of the Registrar that any mortgage or other charge recorded in respect of that company has been discharged in accordance with the Act or the consent in writing to the de-registration of every registered mortgagee or chargee has been obtained.

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

- (8) For the purposes of this section “share capital” shall include–
  - (a) the nominal value of the allotted shares of every class in the company, whether or not paid up and whether or not paid up in cash or otherwise; and
  - (b) any amount in the share premium account (as defined by section 94(1)) of the company.

#### **Certificate of de-registration under section 37.**

38. (1) The Registrar shall–

- (a) retain the application and other documents lodged with him under section 37; and–
- (b) provide to the Registrar of Limited Partnerships appointed under section 13 of the Limited Partnerships Act the document provided for in section 7A of that Act.

- (2) The Registrar shall—
- (a) on being satisfied that the requirements of section 37 are satisfied; and
  - (b) having received notice in writing from the Registrar of Limited Partnerships appointed under section 13 of the Limited Partnerships Act that, on receipt of confirmation from the Registrar that the requirements of section 37 and this section have been met in respect of the body, the body may be registered under section 4 of that Act,

de-register the body as a company registered under this Act and issue to the company a Certificate of De-registration and Continuation for the purpose of Registration as a limited partnership on the date and at the time signified by the Registrar of Limited Partnerships as the date and time at which the registration of the body under section 4 of the Limited Partnerships Act shall occur.

(3) On the issue of the certificate under subsection (2) the alterations in the memorandum of the company specified in the special resolution and the alterations in, and additions to, the articles of the company so specified take effect.

(4) The certificate issued under subsection (2) is conclusive evidence that the requirements of section 37 in respect of de-registration and of matters precedent and incidental to it have been complied with, and that the company was authorized to be de-registered in pursuance of that section and was duly so de-registered.

(5) For the avoidance of doubt it is hereby declared that a limited partnership registered under section 4 of the Limited Partnerships Act as a result of the procedures contained in—

- (a) section 37 and this section; and
- (b) section 7A of the Limited Partnerships Act,

is on the date and time referred to in subsection (2) a continuation of the undertaking of the company de-registered by virtue of the procedures referred to in paragraph (a).

#### *Membership of Company.*

#### **Definition of member.**

(1929 c.23, s.25).

39. (1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.

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

*Private Companies.*

(s.26).

**Meaning of “private company”.**

40. (1) For the purposes of this Act a “private company” means a company limited by shares or limited by guarantee (whether or not having a share capital), being a company which by its articles—

- (a) restricts the right to transfer its shares; and
- (b) limits the number of its members to fifty, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company, were while in that employment, and have continued after the determination of that employment to be, members of the company; and
- (c) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

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

(3) Subject to subsection (4), a company that is or will be a collective investment scheme licensed, authorized or otherwise regulated under the Financial Services Act 1989 or the Financial Services (Collective Investment Schemes) Act 2005 is entitled to be a private company where its articles of association so provide, notwithstanding that it does not comply with subsection (1).

(4) A company that is a private company by virtue of subsection (3) shall comply with subsection (1) until it is licensed, authorized or otherwise regulated as the case may be.

**Circumstances in which company ceases to be, or to enjoy privileges of a private company.**

(1929 c.23, s.27).



41. (1) If a company, being a private company, alters its articles in such manner that they no longer include the provisions which, under section 40, are required to be included in the articles of a company in order to constitute it a private company, the company shall, as on the date of the alteration, cease to be a private company and shall, within a period of fourteen days after such date, deliver to the Registrar for registration a prospectus or a statement in lieu of prospectus in the form and containing the particulars set out in Schedule 2.

(2) If default is made in complying with subsection (1), the company and every officer of the company who is in default are each guilty of offences and are liable on summary conviction to a default fine at level 2 on the standard scale.

(3) Where the articles of a company include the provisions aforesaid but default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies under the provisions contained in section 42(1), section 155(3), section 178(1) and paragraph (d) of section 220, and thereupon the said provisions shall apply to the company as if it were not a private company:

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

(4) Nothing in this section shall prejudice the application of section 40(3) and (4).

*Reduction of Number of Members Below Legal Minimum.*

**Prohibition on carrying on business with fewer than the required number of members.**

42. (1) If at any time the number of members of the company which is a private company is reduced to none and it carries on business while the number is so reduced every officer of the company during that time it so carries on business who is cognisant of the fact that it is carrying on business with fewer than one member shall be severally liable for the payment of the whole debts of the company contracted during that time and may be severally sued therefor.

(2) If at any time the number of members of a company which is a public company is reduced below seven and it carries on business for more than 6 months while the number is so reduced, every person who is a

member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with fewer than seven members shall be severally liable for the payment of the whole debts of the company contracted during that time and may be severally sued therefor.

*Contracts.*

**Pre-incorporation actions.**

43. (1) Where,—

- (a) prior to the date of incorporation mentioned in the certificate of incorporation of a company, any action has been carried out in the name of that company and purportedly by or on behalf of that company, and
- (b) that company is not precluded from doing so by its memorandum or articles,

the company may after that date by resolution ratify that action, and that action shall then be deemed to be the action of the company and—

- (c) the company shall be entitled to the benefit of that action; and
- (d) the company shall be liable in respect of that action; and
- (e) any failure to take any steps necessary to give effect to that action shall be a failure by the company.

(2) Except—

- (a) where a company has ratified that action, as provided for in subsection (1), or
- (b) there is an agreement to the contrary,

an action carried out in the name of a company and purportedly by or on behalf of that company prior to the date of incorporation mentioned in the certificate of incorporation of that company shall be the action of the person or persons by whom it was carried out and that person or those persons shall be jointly and severally liable in respect of that action and shall be entitled to the benefit of that action.

**A company's capacity not limited by its memorandum.**

44. (1) The validity of an act done by a company shall not be called into question on the ground of lack of capacity by reason of anything in the company's memorandum.

(2) A member of the company may bring proceedings to restrain the doing of an act which but for subsection (1) would be beyond the company's capacity save that no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company.

(3) It remains the duty of the directors to observe any limitations on their powers flowing from the company's memorandum and action by the directors which but for subsection (1) would be beyond the company's capacity may only be ratified by the company by special resolution.

(4) A resolution ratifying an action by the directors beyond the company's capacity shall not affect any liability incurred by the directors or any other person and relief from any such liability must be agreed to separately by special resolution.

**Power of directors to bind the company.**

45. (1) In favour of a person dealing with a company in good faith, the power of the board of directors to bind the company, or authorise others to do so, shall be deemed to be free of any limitations under the company's constitution.

(2) For this purpose—

- (a) a person "deals with" a company if he is a party to any transaction or other act to which the company is a party;
- (b) a person shall not be regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the directors under the company's constitution; and
- (c) a person shall be presumed to have acted in good faith unless the contrary is proved.

(3) The reference above to limitations on the directors' powers under the company's constitution includes limitations deriving—

- (a) from the resolution of the company in general meeting or a meeting of any class of shareholders, or
- (b) from any agreement between the members of the company or any class of shareholders.

(4) Subsection (1) does not affect any right of a member of the company to bring proceedings to restrain the doing of an act which is beyond the powers of the directors:

Provided that no such proceedings shall lie in respect of any act to be done in fulfillment of a legal obligation arising from a previous act of the company.

(5) Subsection (1) does not affect any liability incurred by the directors, or any other person, by reason of the directors' exceeding of their powers.

**No duty to enquire as to capacity of company or authority of directors.**

46. A party to a transaction with a company is not bound to enquire as to whether it is permitted by the company's memorandum or as to any limitation on the powers of the board of directors to bind the company or to authorise others to do so.

**Form of contracts, deeds, instruments and other documents.**

*(1929 c.23, s.29).*

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

- (a) a contract which if made between private persons would be by law required to be in writing, and under seal, may be made on behalf of the company in writing—
  - (i) if the company has a seal for use in Gibraltar, under that seal; or
  - (ii) signed by the authorized signatories of the company, each signing or under the seal of the signatory, as the case may be;
- (b) a contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied;
- (c) a contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied.

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

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

(4) The references in subsections (1) to (3) to a contract or contracts shall be taken to include reference to deeds, instruments and other documents and where a company executes a deed, instrument or other document, whether or not the company has a common seal, it shall be sufficient and the company shall be bound if that deed, instrument or other document is signed by the authorized signatories of the company intending it to be executed by way of a deed.

**Bills of exchange and promissory notes.**

48. A bill of exchange or promissory note shall be deemed to have been made, accepted or endorsed on behalf of a company if made accepted or endorsed in the name of, or by or on behalf or on account of the company by any person acting under its authority. *(1929 c.23 s.30).*

**Execution of deeds, instruments and other documents abroad and execution in Gibraltar by foreign companies.**

*(s.31).*

49. (1) A company may, by writing –

- (a) if the company has a seal for use in Gibraltar, under that seal;  
or
- (b) signed by the authorized signatories of the company, each signing or under the seal of the signatory, as the case may be;

empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds, instruments or other documents on its behalf in any place outside Gibraltar.

(2) A deed, instrument or other document signed by such an attorney on behalf of the company and–

- (a) if he has a seal, under that seal; or
- (b) signed by him or, where the attorney is a legal person, the authorized signatories of the attorney,

shall bind the company and have the same effect as if the deed, instrument or other document had been sealed or signed as provided for in section 47(1).

(3) Where a company executes a deed, instrument or other document outside Gibraltar, whether or not the company has an official seal for use in

the territory, district or place outside Gibraltar, it shall be sufficient and the company and the other parties shall be bound if that deed, instrument or document is signed by the authorized signatories of the company intending it to be executed by way of a deed.

(4) Section 15(3) shall apply to a company incorporated outside Gibraltar as it applies to a company incorporated or registered under this Act.

(5) Section 47(1)(a) shall apply to a company incorporated outside Gibraltar as if there were substituted for subparagraph (ii) the following—

- (ii) by any person who, in accordance with the laws of the territory in which the company is incorporated, is acting under the authority, (express or implied) of that company; or
- (iii) in any manner permitted by the laws of the territory in which the company is incorporated for the execution of documents by such a company;

(6) In respect of a company incorporated outside Gibraltar, a deed, instrument or other document which—

- (a) is signed by a person or persons who, in accordance with the laws of the territory in which the company is incorporated, is or are acting under the authority (express or implied) of that company; and
- (b) is expressed (in whatever form of words) to be executed by the company,

has the same effect in relation to that company as it would have in relation to a company incorporated in Gibraltar if executed in accordance with section 47.

(7) In favour of a purchaser a document shall be deemed to have been duly executed if it purports to have been signed by a person or persons who, in accordance with the laws of the territory in which the company is incorporated, is or are acting under the authority

(express or implied) of that company, and for the purpose of this section “a purchaser” means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in a property.

(8) A document executed by a company incorporated outside Gibraltar which makes it clear on its face that it is intended by the person or persons making it to be a deed has effect upon delivery as a deed and it shall be

presumed, unless the contrary intention is proved, to be delivered upon its being so executed.

(9) For the avoidance of doubt, any deed, instrument or other document executed by a company incorporated outside Gibraltar in the manner provided for in subsections (5), (6), (7) or (8) in the six years immediately preceding the 1st day of January 2001 shall be valid and binding on the company and effective as if it had been sealed with the common seal of a company incorporated in Gibraltar.

**Power for company to have official seal for use abroad.**

(1929 c.23, s.32).

50. (1) A company whose objects do not preclude the transaction of business in foreign countries may, unless precluded by its articles, have for use in any territory, district or place outside Gibraltar, an official seal, which –

- (a) if the company has a seal for use in Gibraltar, shall be a facsimile of that seal; or
- (b) if the company does not have a seal for use in Gibraltar, shall bear the name of the company engraven in legible characters,

with the addition on its face of the name of every territory, district or place where it is to be used.

(2) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed or signed as provided for in section 47(1).

(3) A company having an official seal for use in any such territory, district or place may, by writing sealed or signed as provided for in section 47(1), authorize any person appointed for the purpose in that territory, district or place, to affix the official seal to any deed or other document to which the company is party in that territory, district or place.

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

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

*Authentication of Documents.*

**Authentication of documents.**

(1929 c.23, s.33).

51. A document or proceeding requiring authentication by a company may be signed by the authorized signatories of the company.

**PART II.****SHARE CAPITAL AND DEBENTURES.***Prospectus.***Dating and registration of prospectus.**

(s.34).

52. (1) A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

(2) A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company, or by his agent authorized in writing, shall be delivered to the Registrar for registration on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so delivered for registration.

(3) The Registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section.

(4) Every prospectus shall state on the face of it that a copy has been delivered for registration as required by this section.

(5) If a prospectus is issued without a copy thereof being so delivered, the company and every person who is knowingly a party to the issue of the prospectus, are guilty of offences and are each liable on summary conviction to a fine of £5 for every day from the date of the issue of the prospectus until a copy thereof is so delivered.

**Specific requirements as to particulars in prospectus.**

(1929 c.23, s.35).

53. (1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must state the matters specified in Part I of Schedule 3 and set out the reports specified in Part II of that Schedule, and Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any requirement of this



section, or purporting to affect him with notice of any contract, or matter not specifically referred to in the prospectus, shall be void.

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

Provided that this subsection shall not apply if it is shown that the form of application was issued either—

- (a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or
- (b) in relation to shares or debentures which were not offered to the public.

A person who acts in contravention of the provisions of this subsection, is guilty of an offence and is liable on summary conviction to a fine at level 5 on the standard scale.

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

- (a) as regards any matter not disclosed, he proves that he was not cognisant thereof; or
- (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or
- (c) the non-compliance or contravention was in respect of matters which in the opinion of the court dealing with the case were immaterial or was otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 15 of Part I of Schedule 3, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(5) This section shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, but subject as aforesaid, this section shall apply to a

prospectus or a form of application whether issued on or with reference to the formation of a company or subsequently.

(6) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.

**Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospectus.**

*(1929 c.23, s.36).*

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

(2) This section shall not apply to a private company.

**Liability for statements in prospectus.**

*(s.37).*

55. (1) Where a prospectus invites persons to subscribe for shares in or debentures of a company—

- (a) every person who is a director of the company at the time of the issue of the prospectus; and
- (b) every person who has authorized himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time; and
- (c) every person being a promoter of the company; and
- (d) every person who has authorized the issue of the prospectus,

is liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—

- (i) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
- (ii) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or

- (iii) that after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal, and of the reason therefor; or
- (iv) that—
  - (A) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true; and
  - (B) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation; and
  - (C) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document:

Provided that a person shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making any such statement, report or valuation as is mentioned in paragraph (iv)(B) of this subsection was competent to make it.

(2) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorized or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorized the issue thereof, shall be liable to indemnify the person named against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus, or in defending himself

against any action or legal proceedings brought against him in respect thereof.

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

(4) For the purposes of this section,—

“promoter” means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company;

“expert” includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him.

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

*(1929 c.23, s.38).*

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

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

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

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

(3) Section 52 as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as directors of a company, and section 53 as applied by this section shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus—

- (a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates; and
- (b) the place and time at which the contract under which the shares or debentures have been or are to be allotted may be inspected.

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

*Allotment.*

**Prohibition of allotment unless minimum subscription received.**

57. (1) No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which, in the opinion of the directors, must be raised by the issue of share capital in order to provide for the matters specified in paragraph 5 of Part I of Schedule 3 has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company. (1929 c.23, s.39).

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

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

(3) The amount payable on application on each share shall not be less than 5 per cent of the nominal amount of the share.

(4) If the conditions aforesaid have not been complied with on the expiration of forty days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within forty-eight days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per cent per annum from the expiration of the forty-eighth day:

Provided that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

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

(6) This section, except subsection (3), shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

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

*(1929 c.23, s.40).*

58. (1) A company having a share capital which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless at least three days before the first allotment of either shares or debentures there has been delivered to the Registrar for registration a statement in lieu of prospectus, signed by every person who is named therein as a director or a proposed director of the company or by his agent authorized in writing, in the form and containing the particulars set out in Schedule 4.

(2) This section shall not apply to a private company.

(3) If a company acts in contravention of this section, the company and every director of the company who knowingly authorizes or permits the contravention are guilty of offences and are each liable on summary conviction to a fine at level 3 on the standard scale.

**Effect of irregular allotment.**

*(1929 c.23, s.41).*

59. (1) An allotment made by a company to an applicant in contravention of the provisions of sections 57 and 58, shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, or, in any case where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment, and

not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2) A director of a company who knowingly contravenes, or permits or authorizes the contravention of, any of the provisions of those sections with respect to allotment, is liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby:

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

**Exemption for collective investment schemes.**

59A. Sections 52 to 59 shall not apply to a company that is licensed, authorized or otherwise regulated under the Financial Services (Collective Investment Schemes) Act 2005.

**Return as to allotments.**

60. (1) Whenever a company limited by shares or a company limited by guarantee and having a share capital makes any allotment of its shares, the company shall within one month thereafter deliver to the Registrar for registration— *(s.42).*

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

(2) Where such a contract as above mentioned is not reduced to writing, the company shall within one month after the allotment deliver to the Registrar for registration the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and those particulars shall be deemed to be an instrument within the meaning of the Stamp Duties Act, and the Registrar

*Act. 1932 No. 21.*

may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under the relevant provisions of that Act.

(3) If default is made in complying with this section, every director, manager or other officer of the company, who is knowingly a party to the default, is guilty of an offence and is liable on summary conviction to a fine at level 2 on the standard scale for every day during which the default continues:

Provided that, in case of default in delivering to the Registrar within one month after the allotment any document required to be delivered by this section, the company, or any person liable for the default, may apply to the Registrar for leave to file the return of allotment out of time, and the Registrar, if satisfied that the omission to deliver the document was accidental or due to inadvertence or that it is just and equitable to grant relief, may make an order extending the time for the delivery of the document for such period as the court may think proper.

(4) An application made under subsection (3) shall be accompanied by—

(a) an affidavit of—

(i) the applicant's interest in the matter; and

(ii) a statement of the facts on which the application is based; and

(iii) the relief sought; and

(b) the fee prescribed in Schedule 8.

(5) The Registrar may, in his discretion, require that a person making an application under subsection (3) give notice of that application (including the facts on which the application is based and the relief sought) to such other person as the Registrar may specify, being a person who appears to the Registrar to be concerned or to have an interest and may specify the time for receipt by him of any written objection from such person.

(6) On receipt within the time specified by virtue of subsection (5) of any written objection to the granting by the Registrar of an extension of time within which the return of allotment may be filed the Registrar shall forthwith notify the applicant of the receipt of the objection, the terms of the objection and of the identity of the objector.

(7) Where an application for an extension of time for the filing of a return of allotment has been made under subsection (3), the Registrar may, in his discretion, refuse to consider the application and require that the



person by whom the application was made apply to the Supreme Court for an order for such an extension of time.

(8) On receipt of an application under this section the Registrar, if satisfied that there are good grounds for extending the time within which the return of allotment may be made, may direct that the time be extended to the extent specified in his direction.

(9) A direction given under this section may be made subject to conditions and the Registrar may include such further directions and such provisions as seem just and equitable in the circumstances.

(10) The court may, on application under subsection (7), refuse the application or order the period of time for the filing of the return of allotment be extended by the period specified by the court.

(11) In any proceedings under this section, the court may determine any question which may be necessary or expedient to decide in connection with the extension of the time within which the return of allotment may be filed.

(12) The Registrar shall be entitled to appear and be heard on any application to the court under this section and shall appear if so directed by the court.

(13) Any order made by the court under this section shall direct that notice of the order shall be served on the Registrar in the prescribed manner and the Registrar shall, on receipt of the notice, act accordingly.

#### **Payment for allotted shares.**

61.(1) Subject to the following provisions, shares allotted by any company and any premium payable on them may be paid up in money or money's worth (including goodwill and know-how).

(2) A public company may not at any time accept, in payment up of its shares or any premium on them, an undertaking given by any person that he or another should do work or perform services for the company or any other person.

(3) Where a public company accepts such an undertaking in payment up of its shares or any premium payable on them, the holder of the shares when they or the premium are treated as paid up, in whole or in part, by the undertaking is liable to pay the company in respect of those shares an amount equal to their nominal value, together with the whole of any premium or, if the case so requires, such proportion of that amount as is treated as paid up by the undertaking, with interest at the appropriate rate.

(4) This section does not prevent a company from allotting bonus shares to its members or from paying up, with sums available for the purpose, any amount for the time being unpaid on any of its shares (whether on their nominal value or any premium).

(5) The reference in subsection (3) to the holder of shares includes any person who has an unconditional right to be included in the company's register of members in respect of those shares or to have an instrument of transfer of them executed in his favour.

**Shares to be allotted as at least one quarter paid up.**

62.(1) A public company may not allot a share except as paid up at least as to one-quarter of its nominal value and the whole of any premium on it.

(2) If a company allots a share in contravention of subsection (1), the share shall be treated as if one-quarter of its nominal value, together with the whole of any premium on it, had been received.

(3) In the circumstances of subsection (2), the allottee is liable to pay the company the minimum amount which should have been received in respect of the share under subsection (1) (less the value of any consideration actually applied in payment up, to any extent, of the share and any premium on it) with interest at the appropriate rate.

(4) Subsections (2) and (3) do not apply to the allotment of bonus shares, unless the allottee knew or ought to have known that the shares were allotted in contravention of subsection (1).

**Restrictions on payment by long-term undertaking.**

63.(1) A public company may not allot shares as fully or partly paid up (as to their nominal value or any premium on them) except in cash if the consideration for the allotment is or includes an undertaking which is to be, or may be, performed more than 5 years after the date of allotment.

(2) If a company allots shares in contravention of subsection (1), the allottee is liable to pay the company an amount equal to the total of their nominal value and the whole of any premium (or, if the case so requires, so much of that total as is treated as paid up by the undertaking), with interest at the appropriate rate.

(3) Where a contract for the allotment of shares does not contravene subsection (1), any variation of the contract which has that effect is void.

(4) Subsection (3) applies also to the variation by a public company of the terms of a contract entered into before the company was re-registered as a public company.

(5) Where a public company allots shares for a consideration which consists of or includes (in accordance with subsection (1)) an undertaking which is to be performed within 5 years of the allotment, but the undertaking is not performed within the period allowed by the contract for the allotment of the shares, the allottee is then liable to pay the company, at the end of the period so allowed, an amount equal to the total of the nominal value of the shares and the whole of any premium (or, if the case so requires, so much of that total as is treated as paid up by the undertaking), with interest at the appropriate rate.

(6) A reference in this section to a contract for the allotment of shares includes an ancillary contract relating to payment in respect of them.

**Non-cash consideration to be valued before allotment.**

64.(1) A public company shall not allot shares as fully or partly paid up (as to their nominal value or any premium on them) except in cash unless—

- (a) the consideration for the allotment has been independently valued under Part I of Schedule 15;
- (b) a report with respect to its value has been made to the company by a person appointed by the company during the 6 months immediately preceding the allotment of the shares; and
- (c) a copy of the report has been sent to the proposed allottee.

(2) Subsection (1) does not apply where an amount standing to the credit of any of the company's reserve accounts, or of its profit and loss account, is applied in paying up (to any extent) any shares allotted to members of the company or any premiums on shares so allotted.

(3) Subsection (1) does not apply to the allotment of shares by a company in connection with an arrangement providing for the allotment of shares in that company on terms that—

- (a) the whole or part of the consideration for the shares allotted is to be provided by the transfer to that company (or cancellation) of all or some of the shares, or all or some of the shares of a particular class, in another company (with or without the issue to that company of shares, or of shares of any particular class, in that other company); and
- (b) the arrangement is open to all shareholders in the other company (or all shareholders of the particular class, if the arrangement is limited to a particular class of shares).

In determining whether that is the case, shares held by or by a nominee of the company proposing to allot the shares in connection with the arrangement, or held by or by a nominee of a company which is that company's holding company or subsidiary or a company which is a subsidiary of its holding company, shall be disregarded.

(4) Subsection (1) does not apply to the allotment of shares by a company in connection with its proposed merger with another company; that is, where one of the companies proposes to acquire all the assets and liabilities of the other in exchange for the issue of shares or other securities in the first company to shareholders of the other, with or without any cash payment to those shareholders.

(5) If a company allots shares in contravention of subsection (1) and either—

- (a) the allottee has not received the valuer's report required by that subsection to be sent to him; or
- (b) there has been some other contravention of this section or Part I of Schedule 15 which the allottee knew or ought to have known amounted to a contravention,

the allottee is liable to pay the company an amount equal to the total of the nominal value of the shares and the whole of any premium (or, if the case so requires, so much of that total as is treated as paid up by the consideration), with interest at the appropriate rate.

(6) A public company shall deliver to the Registrar for registration a copy of the report mentioned in subsection (1) at the same time as a return of the documents is filed under section 60.

(7) If subsection (6) is not complied with, every officer of the company who is in default is guilty of an offence and liable on summary conviction to a fine at level 5 on the standard scale, and for continued contravention to a daily default fine of £500.

#### **Transfer to public company of non-cash asset in initial period.**

65. (1) A public company shall not, unless the conditions of this section have been complied with, enter into an agreement with a person for the transfer by him during the initial period of one or more non-cash assets to the company or another if—

- (a) that person is a subscriber to the company's memorandum; and
- (b) the consideration for the transfer to be given by the company is equal in value at the time of the agreement to one-tenth or

more of the nominal value of the company's share capital issued at the time.

(2) In subsection (1) the "initial period" is the period of 2 years beginning with the date on which the company was issued with a certificate by the Registrar under section 143(3) that it was entitled to commence business.

(3) This section applies to a company re-registered as a public company, but in that case—

- (a) subsection (1)(a) shall be read as if it referred to a person who is a member of the company on the date of re-registration; and
- (b) the initial period is 2 years beginning with the date of re-registration.

(4) The conditions referred to in subsection (1) are that—

- (a) the consideration to be received by the company (that is to say, the asset to be transferred to the company or the advantage to the company of its transfer to another person) and any consideration other than cash to be given by the company have been independently valued under Part II of Schedule 15;
- (b) a report with respect to the consideration to be so received and given has been made to the company during the six months immediately preceding the date of the agreement;
- (c) the terms of the agreement have been approved by an ordinary resolution of the company; and
- (d) not later than the giving of the notice of the meeting at which the resolution is proposed, copies of the resolution and report have been circulated to the members of the company entitled to receive that notice and, if the person with whom the agreement in question is proposed to be made is not then a member of the company so entitled, to that person.

(5) A company which has passed a resolution under this section with respect to the transfer of an asset shall, within 15 days of so doing, deliver to the Registrar a copy of that resolution together with the report required by this section.

(6) If subsection (5) is not complied with, the company and every officer of it who is in default is guilty of an offence and liable on summary conviction to a fine at level 3 on the standard scale and for continued contravention to a daily default fine of £100.

**Authority of company required for certain allotments.**

66.(1) The directors of a public company may not use any power of the company to allot relevant securities, unless they are, in accordance with this section, authorised to do so by—

- (a) the company in general meeting; or
- (b) the company's articles.

(2) In this section “relevant securities” means—

- (a) shares in the company other than shares shown in the memorandum to have been taken by the subscribers to it; and
- (b) any right to subscribe for, or to convert any security into, shares in the company (other than shares so allotted);

and a reference to the allotment of relevant securities includes the grant of such a right but (subject to subsection (6) below) not the allotment of shares under such a right.

(3) Authority under this section may be given for a general or particular exercise of the power and may be subject to conditions.

(4) The authority shall state the maximum amount of relevant securities that may be allotted under it and the date on which it will expire, which shall be not more than 5 years from whichever is relevant of the following dates—

- (a) in the case of an authority contained in the company's articles at the time of its original incorporation, the date of that incorporation; and
- (b) in any other case, the date on which the resolution is passed by virtue of which the authority is given;

but such an authority (including an authority contained in the articles) may be previously revoked or varied by the company in general meeting.

(5) The authority may be renewed or further renewed by the company in general meeting for a period not exceeding 5 years, but the resolution shall state (or restate) the amount of relevant securities which may be allotted under the authority or, as the case may be, the amount remaining to be allotted under it, and shall specify the date on which the renewed authority will expire.

(6) In relation to authority under this section for the grant of such rights as are mentioned in subsection (2)(b), the reference in subsection (4) (and the corresponding reference in subsection (5)), to the maximum amount of relevant securities that may be allotted under the authority is to the maximum amount of shares which may be allotted under the rights.

(7) The directors may allot relevant securities, even if authority under this section has expired, if they are allotted under an offer or agreement made by the company before the authority expired and the authority allowed it to make an offer or agreement which would or might require relevant securities to be allotted after the authority expired.

(8) A resolution of a company to give, vary, revoke or renew an authority shall be forwarded to the Registrar within 15 days of the passing of that resolution.

(9) A director who knowingly and deliberately contravenes, or permits or authorises a contravention of this section is guilty of an offence and liable on summary conviction to a fine at level 5 on the standard scale.

(10) Nothing in this section affects the validity of any allotment.

**Allotment where issue not fully subscribed.**

67.(1) No allotment may be made of any share capital of a public company offered for subscription unless—

- (a) that capital is subscribed for in full; or
- (b) the offer states that, even if the capital is not subscribed for in full, the amount of that capital subscribed for may be allotted in any event or in the event of the conditions specified in the offer being satisfied;

and, where conditions are so specified, no allotment of the capital may be made by virtue of paragraph (b) unless those conditions are satisfied.

(2) If shares may not be allotted under subsection (1) and 40 days have passed after the first issue of the prospectus, all money received from applicants for shares shall be immediately repaid to them without interest.

(3) If any of the money is not repaid within 48 days after the issue of the prospectus, the directors of the company are jointly and severally liable to repay it with interest at the rate of 5 per cent per annum from the expiration of the 48th day, except that a director is not so liable if he proves that the default in repayment was not due to any misconduct or negligence on his part.

(4) This section applies in the case of shares offered as wholly or partly payable otherwise than in cash as it applies in the case of shares offered for subscription (the word “subscribed” in subsection (1) being construed accordingly).

(5) In subsections (2) and (3), as they apply to the case of shares offered as wholly or partly payable otherwise than in cash, references to the repayment of money received from applicants for shares include—

- (a) the return of any other consideration so received (including, if the case so requires, the release of the applicant from any undertaking); or
- (b) if it is not reasonably practicable to return the consideration, the payment of money equal to its value at the time it was so received.

(6) Any condition requiring or binding an applicant for shares to waive compliance with any requirement of this section is void.

**Application to certain private companies of conditions as to share capital.**

68. The provisions of sections 61 to 65, 95(4) and (5), 103(5) and 143 and Schedule 15 apply where a private company ceases to be a private company in accordance with section 41 in the same way as those provisions apply to a public company.

*Commissions and Discounts.*

**Power to pay certain commissions and prohibition of payment of all other commissions and discounts.**

(1929 c.23, s.43).

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

- (a) the payment of the commission is authorized by the articles; and
- (b) the commission paid or agreed to be paid does not exceed 10 per cent of the price at which the shares are issued or the amount or rate authorized by the articles, whichever is the less; and



- (c) the amount or rate per cent of the commission paid or agreed to be paid is—
- (i) in the case of shares offered to the public for subscription, disclosed in the prospectus; or
  - (ii) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and delivered before the payment of the commission to the Registrar for registration, and, where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice; and
- (d) the number of shares which persons have agreed for a commission to subscribe absolutely is disclosed in manner aforesaid.

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

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

(4) If default is made in complying with the provisions of this section relating to the delivery to the Registrar of the statement in the prescribed form, the company and every officer of the company who is in default are guilty of offences and are each liable on summary conviction to a fine at level 1 on the standard scale.

#### **Statement in balance sheet as to commissions and discounts.**

70. (1) Where a company has paid any sums by way of commission in respect of any shares or debentures, or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed, or so

*(1929 c.23, s.44).*

much thereof as has not been written off, shall be stated in every balance sheet of the company until the whole amount thereof has been written off.

(2) If default is made in complying with this section, the company and every officer of the company who is in default are guilty of offences and are liable on summary conviction to default fines.

**Holding of shares in public company by another company.**

71. (1) The subscription, acquisition or holding of shares in a public company by another company within the meaning of Article 1 of Council Directive 68/151/EEC of 9 March 1968 on the co-ordination of safeguards for the protection of the interests of members of companies in which that public company directly or indirectly holds a majority of the voting rights or on which it can directly or indirectly exercise a dominant influence will be regarded as having been effected by that public company itself.

(2) Subsection (1) applies where the other company is governed by the law of a country outside the European Economic Area and has a legal form comparable to those listed in Article 1 of Directive 68/151/EEC.

(3) Subsections (1) and (2) do not apply where the subscription, acquisition or holding is effected by the other company in its capacity or in the context of its activities as a professional dealer in securities, provided that it is a member of a stock exchange situated or operating within the European Economic Area or is approved or supervised by an authority of a member State competent to supervise professional dealers in securities.

**Prohibition of provision of financial assistance by company for purchase of its own shares.**

72. (1) Subject as provided in this section, it shall not be lawful for a company to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase made or to be made by any person of any shares in the company:

*(1929 c.23 s.45).*

Provided that nothing in this section shall be taken to prohibit—

- (a) where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business;
- (b) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase by trustees of fully-paid shares in the company to be held by or for the benefit of employees of the company, including any

director holding a salaried employment or office in the company;

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

(2) The aggregate amount of any outstanding loans made under the authority of provisos (b) and (c) to subsection (1) shall be shown as a separate item in every balance sheet of the company.

(3) The acceptance of the company's own shares as security, either by the company itself or through a person acting in his own name but on the company's behalf, shall be treated as falling within the scope of the prohibition set out in subsection (1).

(4) Subsection (3) does not apply to transactions concluded by banks and other financial institutions in the normal course of business.

(5) If a company acts in contravention of this section, the company and every officer of the company who is in default are guilty of offences and are each liable on summary conviction to a fine at level 3 on the standard scale.

#### **Power of company to purchase own shares.**

73. (1) Subject to the provisions of this section, and to any requirements imposed on that company by virtue of any licence or authorization to which it is subject under any other Act, a company limited by shares or limited by guarantee and having a share capital may, if authorised to do so by its articles, purchase its own shares (including any redeemable shares).

(2) A company may exercise the power contained in subsection (1) only if it does so in accordance with the provisions of sections 74 to 92 as to—

- (a) the conditions to be met by the company and its directors in respect of any such purchase of its own shares, and
- (b) the application to any such purchase of the provisions of this Act.

(3) A failure to comply with the requirements of sections 74 to 92 shall have the effect specified in that respect by those sections including, where so specified, the liability on summary conviction to a fine at level 3 on the standard scale.

**Acquisition other than for value, in reduction of capital, alteration of objects and on forfeiture.**

74. The restrictions of section 73 shall not apply to a company limited by shares or limited by guarantee and by shares which–

- (a) acquires any of its own fully paid shares other than for valuable consideration;
- (b) acquires its own shares in a reduction of capital duly made;
- (c) purchases its own shares in pursuance of an order made under section 6;
- (d) accepts its own shares in forfeiture of them, or shares surrendered in lieu, in pursuance of the articles, for failure to pay any sum payable in respect of the shares.

**Restrictions on power of company to purchase own shares.**

75.(1) Section 93 applies to the purchase by a company under section 73 of its own shares as it applies to the redemption of redeemable shares, save that the terms and manner of purchase need not be determined by the articles as required by section 93(3).

(2) A company may not under section 73 purchase its shares if as a result of the purchase there would no longer be any member of the company holding shares other than redeemable shares.

**Definitions of “off-market” and “market” purchase.**

76. (1) A purchase by a company of its own shares is “off-market” if the shares either–

- (a) are purchased otherwise than on a recognised investment exchange; or
- (b) are purchased on a recognised investment exchange but are not subject to a marketing arrangement on that investment exchange.

(2) For this purpose, a company’s shares are subject to a marketing arrangement on a recognised investment exchange if the company has been afforded facilities for dealings in those shares to take place on that investment exchange without prior permission for individual transactions from the authority governing that investment exchange and without limit as to the time during which those facilities are to be available.

(3) A purchase by a company of its own shares is a “market purchase” if it is a purchase made on a recognised investment exchange other than a purchase which is an off-market purchase by virtue of subsection (1)(b).

(4) In this section “recognised investment exchange,” means a recognised investment exchange as so listed from time to time in Chapter 11 of Administrative Notice No. 7 issued by the Banking Commissioner under the provisions of the Banking Act, 1992.

**Authority for off-market purchase.**

77. (1) A company may only make an off-market purchase of its own shares in pursuance of a contract approved in advance in accordance with this section or under section 78.

(2) The terms of the proposed contract shall have been authorized by a special resolution of the company before the contract is entered into and subsections (3) to (7) apply with respect to that authority and to resolutions conferring it.

(3) Subject to subsection (4), the authority may be varied, revoked or from time to time renewed by special resolution of the company.

(4) In the case of a public company, the authority conferred by the resolution shall specify a date on which the authority is to expire, and in a resolution conferring or renewing authority the date shall not be later than 18 months after that on which the resolution is passed.

(5) A special resolution to confer, vary, revoke or renew authority is not effective if any member of the company holding shares to which the resolution relates exercised the voting rights carried by any of those shares in voting on the resolution and the resolution would not have been passed if he had not done so, and for this purpose—

- (a) a member who holds shares to which the resolution relates is regarded as exercising the voting rights carried by those shares not only if he votes in respect of them on a poll on the question whether the resolution shall be passed, but also if he votes on the resolution otherwise than on a poll;
- (b) notwithstanding anything in the company’s articles, any member of the company may demand a poll on that question; and
- (c) a vote and a demand for a poll by a person as proxy for a member are the same respectively as a vote and a demand by the member.

(6) Such a resolution is not effective for the purposes of this section unless (if the proposed contract is in writing) a copy of the contract or (if not) a written memorandum of its terms is available for inspection by members of the company both—

- (a) at the company's registered office for not less than 15 days ending with the date of the meeting at which the resolution is passed; and
- (b) at the meeting itself,

and a memorandum of contract terms so made available shall include the names of any members holding shares to which the contract relates, and a copy of the contract so made available shall have annexed to it a written memorandum specifying any such names which do not appear in the contract itself.

(7) A company may agree to a variation of an existing contract so approved, but only if the variation is authorized by a special resolution of the company before it is agreed to, and subsections (3) to (6) apply to the authority for a proposed variation as they apply to the authority for a proposed contract, save that a copy of the original contract or (as the case may require) a memorandum of its terms, together with any variations previously made, shall also be available for inspection in accordance with subsection (6).

**Authority for contingent purchase contract.**

78. (1) A contingent purchase contract is a contract entered into by a company and relating to any of its shares—

- (a) which does not amount to a contract to purchase those shares; but
- (b) under which the company may (subject to any conditions) become entitled or obliged to purchase those shares.

(2) A company may only make a purchase of its own shares in pursuance of a contingent purchase contract if the contract is approved in advance by a special resolution of the company before the contract is entered into, and subsections (3) to (7) of section 77 apply to the contract and its terms.

**Authority for market purchase.**

79. (1) A company shall not make a market purchase of its own shares unless the purchase has first been authorized by the company in a general meeting.

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- (2) That authority—
- (a) may be general for that purpose, or limited to the purchase of shares of any particular class or description; and
  - (b) may be unconditional or subject to conditions.
- (3) The authority shall—
- (a) specify the maximum number of shares authorized to be acquired;
  - (b) determine both the maximum and the minimum prices which may be paid for the shares; and
  - (c) specify a date on which it is to expire.
- (4) The authority may be varied, revoked or from time to time renewed by the company in general meeting, but this is subject to subsection (3), and in a resolution to confer or renew authority the date on which the authority is to expire shall not be later than 18 months after that on which the resolution is passed.
- (5) A company may under this section make a purchase of its own shares after the expiry of the time limit imposed to comply with subsection (3)(c) if the contract of purchase was concluded before the authority expired and the terms of the authority permitted the company to make a contract of purchase which would or might be executed wholly or partly after its expiration.
- (6) A resolution to confer or vary authority under this section may determine either or both the maximum and minimum prices for purchase by—
- (a) specifying a particular sum; or
  - (b) providing a basis or formula for calculating the amount of the price in question without reference to any person's discretion or opinion.
- (7) A resolution of a company conferring, varying, revoking or renewing authority under this section is subject to section 165 (resolution to be sent to Registrar within 15 days).

**Assignment or release of company's right to purchase own shares.**

80. (1) The rights of a company under a contract approved under section 77 or 78, or under a contract for a purchase authorized under section 79, are not capable of being assigned.

(2) An agreement by a company to release its rights under a contract approved under section 77 or 78 is void unless the terms of the release agreement are approved in advance by a special resolution of the company before the agreement is entered into, and subsections (3) to (7) of section 77 apply to approval for a proposed release agreement as to authority for a proposed variation of an existing contract.

**Payments apart from purchase price to be made out of distributable profits.**

81. (1) A payment made by a company in consideration of—

- (a) acquiring any right with respect to the purchase of its own shares in pursuance of a contract approved under section 78; or
- (b) the variation of a contract approved under section 77 or 78; or
- (c) the release of any of the company's obligations with respect to the purchase of any of its own shares under a contract approved under section 77 or 78 or under a contract for a purchase authorized under section 79,

shall be made out of the company's distributable profits.

(2) If the requirements of subsection (1) are not satisfied in relation to a contract—

- (a) in a case within paragraph (a) of the subsection, no purchase by the company of its own shares in pursuance of that contract is lawful under section 73;
- (b) in a case within paragraph (b) of the subsection, no such purchase following the variation is lawful under section 73; and
- (c) in a case within paragraph (c), the purported release is void.

**Disclosure by company of purchase of own shares.**

82. (1) Within the period of 28 days beginning with the date on which any shares purchased by a company under section 73 are delivered to it, the company shall deliver to the Registrar for registration a return in the prescribed form stating with respect to shares of each class purchased the



number and nominal value of those shares and the date on which they were delivered to the company.

- (2) In the case of a public company, the return shall also state—
- (a) the aggregate amount paid by the company for the shares; and
  - (b) the maximum and minimum prices paid in respect of shares of each class purchased.

(3) Particulars of shares delivered to the company on different dates and under different contracts may be included in a single return to the Registrar, and in such a case the amount required to be stated under subsection (2)(a) is the aggregate amount paid by the company for all the shares to which the return relates.

(4) Where a company enters into a contract approved under section 77 or 78, or a contract for a purchase authorized under section 79, the company shall keep at its registered office—

- (a) if the contract is in writing, a copy of it; and
- (b) if the contract is not in writing, a memorandum of its terms,

from the conclusion of the contract until the end of the period of 10 years beginning with the date on which the purchase of all the shares in pursuance of the contract is completed or (as the case may be) the date on which the contract otherwise determines.

(5) Every copy and memorandum so required to be kept shall, during business hours (subject to such reasonable restrictions as the company may in general meeting impose, provided that not less than 2 hours in each day are allowed for inspection) be open to inspection without charge—

- (a) by any member of the company; and
- (b) if it is a public company, by any other person.

(6) If default is made in delivering to the Registrar any return required by this section, every officer of the company who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(7) If default is made in complying with subsection (4), or an inspection required under subsection (5) is refused, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(8) In the case of a refusal of an inspection required under subsection (5) of a copy or memorandum, the court may by order compel an immediate inspection of it.

(9) The obligation of a company under subsection (4) to keep a copy of any contract or (as the case may be) a memorandum of its terms applies to any variation of the contract so long as it applies to the contract.

**The capital redemption reserve.**

83. (1) Where under section 73 shares of a company are redeemed or purchased wholly out of the company's profits, the amount by which the company's issued share capital is diminished in accordance with section 93(4) on cancellation of the shares redeemed or purchased shall be transferred to a reserve, called "the capital redemption reserve".

(2) If the shares are redeemed or purchased wholly or partly out of the proceeds of a fresh issue and the aggregate amount of those proceeds is less than the aggregate nominal value of the shares redeemed or purchased, the amount of the difference shall be transferred to the capital redemption reserve.

(3) Subsection (2) shall not apply if the proceeds of the fresh issue are applied by the company in making a redemption or purchase of its own shares in addition to a payment out of capital under section 84.

(4) The provisions of the Act relating to the reduction of a company's share capital apply as if the capital redemption reserve were paid-up share capital of the company, except that the reserve may be applied by the company in paying up its unissued shares to be allotted to members of the company as fully paid bonus shares.

*Redemption or Purchase of Own Shares out of Capital (Private Companies Only).*

**Power of private companies to redeem or purchase own shares out of capital.**

84. (1) Subject to—

- (a) the following provisions of this section;
- (b) sections 85 to 91; and
- (c) any requirements imposed on a company by virtue of any licence or authorization to which it is subject under any other Act,

a private company limited by shares or limited by guarantee and having a share capital may, if so authorized by its articles, make a payment in respect of the redemption or purchase under section 73 or (as the case may be) section 93, of its own shares otherwise than out of its distributable profits or the proceeds of a fresh issue of shares.

(2) References in this section and sections 85 to 91 to payment out of capital are (subject to subsection (6)) to any payment so made, whether or not it would be regarded apart from this section as a payment out of capital.

(3) The payment which may (if authorized in accordance with the provisions of subsections (4) to (6) and sections 85 to 91) be made by a company out of capital in respect of the redemption or purchase of its own shares is such an amount, as taken together with—

- (a) any available profits of the company; and
- (b) the proceeds of any fresh issue of shares made for the purposes of the redemption or purchase,

is equal to the price of redemption or purchase, and the payment permissible under this subsection is referred to in subsections (4) to (6) and sections 85 to 91 as the permissible capital payment for the shares.

(4) Subject to subsection (6), if the permissible capital payment for shares redeemed or purchased is less than their nominal amount, the amount of the difference shall be transferred to the company's capital redemption reserve.

(5) Subject to subsection (6), if the permissible capital payment is greater than the nominal amount of the shares redeemed or purchased, the amount of any capital redemption reserve, share premium account or fully paid share capital of the company may be reduced by a sum not exceeding (or by sums not in the aggregate exceeding) the amount by which the permissible capital payment exceeds the nominal amount of shares.

(6) Where the proceeds of a fresh issue are applied by a company in making any redemption or purchase of its own shares in addition to a payment out of capital under this section, the references in subsections (4) and (5) to the permissible capital payment are to be read as referring to the aggregate of that payment and those proceeds.

#### **Availability of profits for purposes of section 84.**

85. (1) The reference in section 84(3)(a) to available profits of the company is to the company's profits which are available for distribution, as

determined as to availability and amount in accordance with subsections (2) to (6).

(2) Subject to subsection (3), the availability of profits for distribution and the amount thereof is to be determined by reference to—

- (a) profits, losses, assets and liabilities;
- (b) provisions as to depreciation, diminution in value of assets, retentions to meet liabilities, etc.; and
- (c) share capital and reserves (including undistributable reserves),

as stated in the relevant accounts for determining the permissible capital payment for shares.

(3) The relevant accounts for this purpose are such accounts, prepared as at any date within the period for determining the amount of the permissible capital payment, as are necessary to enable a reasonable judgement to be made as to the amounts of any of the items mentioned in paragraphs (a) to (c) of subsection (2).

(4) For purposes of determining the amount of the permissible capital payment for shares, the amount of the company's available profits (if any) determined in accordance with subsections (2) and (3) is treated as reduced by the amount of any distributions lawfully made by the company after the date of the relevant accounts and before the end of the period for determining the amount of that payment.

(5) The reference in subsection (4) to distributions lawfully made by the company includes—

- (a) financial assistance lawfully given out of distributable profits as assistance to a person to acquire the shares of the company;
- (b) any payment lawfully made by the company in respect of the purchase of any shares in the company (except a payment lawfully made otherwise than out of distributable profits); and
- (c) a payment of any description specified in section 81(1) lawfully made by the company.

(6) References in this section to the period for determining the amount of the permissible capital payment for shares are to the period of 3 months ending with the date on which the statutory declaration of the directors purporting to specify the amount of that payment is made in accordance with section 86(3).

**Conditions for payment out of capital.**

86. (1) Subject to any order of the court under section 90, a payment out of capital by a private company for the redemption or purchase of its own shares is not lawful unless the requirements of this and the next two sections are satisfied.

(2) The payment out of capital shall have been approved by a special resolution of the company.

(3) The company's directors shall have made a statutory declaration specifying the amount of the permissible capital payment for the shares in question and stating that, having made full inquiry into the affairs and prospects of the company, they have formed the opinion—

- (a) as regards its initial situation immediately following the date on which the payment out of capital is proposed to be made, that there will be no grounds on which the company could then be found unable to pay its debts; and
- (b) as regards its prospects for the year immediately following that date, that, having regard to their intentions with respect to the management of the company's business during that year and to the amount and character of the financial resources which will in their view be available to the company during that year, the company will be able to continue to carry on business as a going concern (and will accordingly be able to pay its debts as they fall due) throughout that year.

(4) In forming their opinion for purposes of subsection (3)(a), the directors shall take into account the same liabilities (including prospective and contingent liabilities) as would be relevant in any winding up by the court to the question whether a company is unable to pay its debts.

(5) The directors' statutory declaration shall be in the prescribed form and contain such information with respect to the nature of the company's business as may be so prescribed, and shall in addition have annexed to it a report addressed to the directors by the company's auditors stating that—

- (a) they have inquired into the company's state of affairs; and
- (b) the amount specified in the declaration as the permissible capital payment for the shares in question is in their view properly determined in accordance with sections 84 and 85; and
- (c) they are not aware of anything to indicate that the opinion expressed by the directors in the declaration as to any of the

matters mentioned in subsection (3) is unreasonable in all the circumstances.

(6) A director who makes a declaration under this section without having reasonable grounds for the opinion expressed in the declaration is liable on conviction on indictment to imprisonment or a fine, of both.

**Procedure for special resolution under section 86.**

87. (1) The resolution required by section 86 shall be passed on, or within the week immediately following, the date on which the directors make the statutory declaration required by that section; and the payment out of capital shall be made no earlier than 5 nor more than 7 weeks after the date of the resolution.

(2) The resolution is ineffective if any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares in voting on the resolution and the resolution would not have been passed if he had not done so.

(3) For purposes of subsection (2), a member who holds such shares is to be regarded as exercising the voting rights carried by them in voting on the resolution not only if he votes in respect of them on a poll on the question whether the resolution shall be passed, but also if he votes on the resolution otherwise than on a poll, and, notwithstanding anything in a company's articles, any member of the company may demand a poll on that question.

(4) The resolution is ineffective unless the statutory declaration and auditors' report required by the section are available for inspection by members of the company at the meeting at which the resolution is passed.

(5) For purposes of this section a vote and a demand for a poll by a person as proxy for a member are the same (respectively) as a vote and demand by the member.

**Publicity for proposed payment out of capital.**

88. (1) Within the week immediately following the date of the resolution for payment out of capital the company shall cause to be published in the Gazette a notice—

- (a) stating that the company has approved a payment out of capital for the purpose of acquiring its own shares by redemption or purchase or both (as the case may be);

- (b) specifying the amount of the permissible capital payment for the shares in question and the date of the resolution under section 86;
- (c) stating that the statutory declaration of the directors and the auditors' report required by that section are available for inspection at the company's registered office; and
- (d) stating that any creditor of the company may at any time within the 5 weeks immediately following the date of the resolution for payment out of capital apply to the court under section 89 for an order prohibiting the payment.

(2) Within the week immediately following the date of the resolution the company shall also either cause a notice to the same effect as that required by subsection (1) to be published in a newspaper circulating in Gibraltar or give notice in writing to that effect to each of its creditors.

(3) References in subsections (4) to (7) to the first notice date are to the day on which the company first publishes the notice required by subsection (1) or first publishes or gives the notice required by subsection (2) (whichever is the earlier).

(4) Not later than the first notice date the company shall deliver to the Registrar a copy of the statutory declaration of the directors and of the auditors' report required by section 86.

(5) The statutory declaration and auditors' report—

- (a) shall be kept at the company's registered office throughout the period beginning with the first notice date and ending 5 weeks after the date of the resolution for payment out of capital; and
- (b) shall during business hours on any day during that period be open to the inspection of any member or creditor of the company without charge.

(6) If an inspection required under subsection (5) is refused the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(7) In the case of refusal of an inspection required under subsection (5) of a declaration or report, the court may by order compel an immediate inspection of that declaration or report.

**Objections by company's members or creditors.**

89. (1) Where a private company passes a special resolution approving for purposes of section 84 any payment out of capital for the redemption or purchase of any of its shares—

- (a) any member of the company other than one who consented to or voted in favour of the resolution; and
- (b) any creditor of the company,

may within 5 weeks of the date on which the resolution was passed apply to the court for cancellation of the resolution.

(2) The application may be made on behalf of the persons entitled to make it by such one or more of their number as they may appoint in writing for the purpose.

(3) If an application is made, the company shall—

- (a) forthwith give notice in the prescribed form of that fact to the Registrar; and
- (b) within 15 days from the making of any order of the court on the hearing of the application, or such longer period as the court may by order direct, deliver an office copy of the order to the Registrar.

(4) A company which fails to comply with subsection (3), and any officer of it who is in default, is liable to a fine and for continued contravention, to a daily default fine.

**Powers of court on application under section 89.**

90. (1) On the hearing of an application under section 89 the court may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the court's satisfaction for the purchase of the interests of dissentient members or for the protection of dissentient creditors (as the case may be), and the court may give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement.

(2) Without prejudice to its powers under subsection (1), the court shall make an order on such terms and conditions as it thinks fit either confirming or cancelling the resolution, and, if the court confirms the resolution, it may in particular by order alter or extend any date or period of time specified in the resolution or in any provision in sections 73 to 91 which applies to the redemption or purchase of shares to which the resolution refers.



(3) The court's order may, if the court thinks fit, provide for the purchase by the company of the shares of any of its members and for the reduction accordingly of the company's capital, and may make such alterations in the company's memorandum and articles as may be required in consequence of that provision.

(4) If the court's order requires the company not to make any, or any specified alteration in its memorandum or articles, the company has not then power without leave of the court to make any such alteration in breach of the requirement.

(5) An alteration in the memorandum or articles made by virtue of an order under this section, if not made by resolution of the company, is of the same effect as if duly made by resolution, and this Act applies accordingly to the memorandum or articles as so altered.

**Effect of company's failure to redeem or purchase.**

91. (1) This section has effect where a company has—

- (a) issued shares on terms that they are or are liable to be redeemed; or
- (b) agreed to purchase any of its own shares.

(2) The company is not liable in damages in respect of any failure on its part to redeem or purchase any of the shares.

(3) Subsection (2) is without prejudice to any right of the holder of the shares other than his right to sue the company for damages in respect of its failure, but the court shall not grant an order for specific performance of the terms of redemption or purchase if the company shows that it is unable to meet the costs of redeeming or purchasing the shares in question out of distributable profits.

(4) If the company is wound up and at the commencement of the winding up any of the shares have not been redeemed or purchased, the terms of redemption or purchase may be enforced against the company, and when shares are redeemed or purchased under this subsection they are treated as cancelled.

(5) Subsection (4) does not apply if—

- (a) the terms provided for the redemption or purchase to take place at a date later than that of the commencement of the winding up; or

- (b) during the period beginning with the date on which the redemption or purchase was to have taken place and ending with the commencement of the winding up, the company could not at any time have lawfully made a distribution equal in value to the price at which the shares were to have been redeemed or purchased.

(6) There shall be paid in priority to any amount which the company is liable under subsection (4) to pay in respect of any shares—

- (a) all other debts and liabilities of the company (other than any due to members in their character as such);
- (b) if other shares carry rights (whether as to capital or as to income) which are preferred to the rights as to capital attaching to the first mentioned shares, any amount due in satisfaction of those preferred rights,

but, subject to that, any such amount shall be paid in priority to any amounts due to members in satisfaction of their rights (whether as to capital or income) as members.

**Definitions for sections 73 to 91.**

92. In sections 73 to 91—

“distributable profits”, in relation to the making of any payment by a company, means those profits out of which it could lawfully make a distribution equal in value to the payment;

“permissible capital payment” means the payment permitted by section 84;

“prescribed form” means the form prescribed by the Registrar from time to time,

and references to payment out of capital are to be construed in accordance with section 84.

*Issue of Redeemable Preference Shares and Shares at Discount.*

**Power to issue redeemable shares.**

93. (1) Subject to the provisions of this section, a company limited by shares or limited by guarantee and having a share capital, may, if so

authorised by its articles, issue preference shares which are, or are liable, to be redeemed at the option of the company or the shareholder:

Provided that—

- (i) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption;
- (ii) no such shares shall be redeemed unless they are fully paid, and the terms of redemption must provide for payment on redemption;
- (iii) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall out of profits which would otherwise have been available for dividend be transferred to a reserve fund, to be called “the capital redemption reserve fund”, a sum equal to the nominal amount of the shares redeemed, and the provisions of this Act relating to the reduction of the share capital of a company, shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company;
- (iv) the premium, if any, payable on redemption, shall have been provided for out of the profits of the company, which would otherwise have been available for dividend, or out of the company’s share premium account, before the shares are redeemed.

(2) There shall be included in every balance sheet of a company which has issued redeemable preference shares a statement specifying what part of the issued capital of the company consists of such shares and the date on or before which those shares are, or are to be liable, to be redeemed.

If a company fails to comply with the provision of this subsection, the company and every officer of the company who is in default shall be guilty of an offence and liable on summary conviction to a fine at level 3 on the standard scale.

(3) Subject to the provisions of this section, the redemption of preference shares may be effected on such terms and in such manner as may be provided by the company’s articles.

(4) Shares redeemed under this section shall be treated as cancelled on redemption, and the amount of the company’s issued share capital shall be diminished by the nominal value of those shares accordingly; but the

redemption of shares by a company is not to be taken as reducing the amount of the company's authorised share capital.

(5) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purposes of any enactments relating to stamp duty be deemed to be increased by the issue of shares in pursuance of this subsection:

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

(6) Where new shares have been issued in pursuance of subsection (5) of this section, the capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company in paying up unissued shares of the company to be allotted to members of the company as fully paid bonus shares.

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

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

(2) The share premium account may, notwithstanding anything in the foregoing subsection, be applied by the company in paying up unissued shares of the company to be allotted to members of the company as fully paid bonus shares, in writing off—

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

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

(3) Where a company has before the commencement of this section issued any shares at a premium, this section shall apply as if the shares had been issued after the commencement of this section:

Provided that any part of the premiums which has been so applied that it does not at the commencement of this section form an identifiable part of the company's reserves shall be disregarded in determining the sum to be included in the share premium account.

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

95. (1) Subject as provided in this section, it shall be lawful for a company to issue at a discount shares in the company of a class already issued: *(1929 c.23, s.47).*

Provided that—

- (a) the issue of the shares at a discount must be authorized by resolution passed in general meeting of the company, and must be sanctioned by the Registrar of the Court;
- (b) the resolution must specify the maximum rate of discount at which the shares are to be issued;
- (c) not less than one year must, at the date of the issue, have elapsed since the date on which the company was entitled to commence business;
- (d) the shares to be issued at a discount must be issued within one month after the date on which the issue is sanctioned by the Registrar of the Court or within such extended time as the Registrar of the Court may allow.

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

(3) Every prospectus relating to the issue of the shares and every balance sheet issued by the company subsequently to the issue of the shares must contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the document in question. If default is made in complying with this subsection, the company and every officer of the company who is in default are guilty of offences and are liable on summary conviction to default fines.

(4) Notwithstanding subsection (1), shares in a public company may not be issued at a discount.

*Miscellaneous Provisions as to Share Capital.***Power of company to arrange for different amounts being paid on shares.**

(1929 c.23, s.48).

96. A company, if so authorized by its articles, may do any one or more of the following things:–

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

**Fractional shares.**

96A.(1) A company that is a collective investment scheme licensed, authorized or otherwise regulated under the Financial Services Act 1989 or the Financial Services (Collective Investment Schemes) Act 2005 may issue fractional shares subject to the provisions of its articles of association.

(2) A fractional share issued in accordance with subsection (1) has the corresponding fractional rights, obligations and liabilities of a whole share of the same class.

**Reserve liability of limited company.**

(s.49).

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

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

(1929 c.23, s.50).

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

- (a) increase its share capital by new shares of such amount as it thinks expedient;

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

(2) The powers conferred by this section must be exercised by the company in general meeting.

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

**Notice to Registrar of consolidation of share capital and conversion of shares into stock.**

99. (1) If a company having a share capital has—

(s.51).

- (a) consolidated and divided its share capital into shares of larger amount than its existing shares; or
- (b) converted any shares into stock; or
- (c) re-converted stock into shares; or
- (d) subdivided its shares or any of them; or
- (e) redeemed any redeemable preference shares; or
- (f) cancelled any shares, otherwise than in connection with a reduction of share capital under section 55,

it shall within one month after so doing give notice thereof to the Registrar specifying, as the case may be, the shares consolidated, divided, converted, subdivided, redeemed or cancelled, or the stock re-converted.

(2) If default is made in complying with this section, the company and every officer of the company who is in default are guilty of offences and are liable on summary conviction to default fines.

**Notice of increase of share capital.**

*(1929 c.23, s.52).*

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

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

(3) If default is made in complying with this section, the company and every officer of the company who is in default are guilty of offences and are liable on summary conviction to default fines.

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

*(s.53).*

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

- (a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up;
- (b) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

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

*(1929 c.23, s.54).*

102. (1) Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the



sum so paid by way of interest to capital as part of the cost of construction of the work or building, or the provision of plant:

Provided that—

- (a) no such payment shall be made unless it is authorized by the articles or by special resolution;
- (b) no such payment, whether authorized by the articles or by special resolution, shall be made without the previous consent of the Registrar of the Court;
- (c) before sanctioning any such payment the Registrar of the Court may, at the expense of the company, appoint a person to inquire and report to him as to the circumstances of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry;
- (d) the payment shall be made only for such period as may be determined by the Registrar of the Court, and that period shall in no case extend beyond the close of the half year next after the half year during which the works or buildings have been actually completed or the plant provided;
- (e) the rate of interest shall in no case exceed five per cent per annum or such other rate as may for the time being be prescribed by order of the Governor published in the Gazette;
- (f) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid;
- (g) the accounts of the company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate.

(2) If default is made in complying with proviso (g) to subsection (1), the company and every officer of the company who is in default are guilty of offences and are each liable on summary conviction to a fine at level 2 on the standard scale.

**Authorised minimum.**

103.(1) In this Act “the authorised minimum” in relation to the paid up share capital of a public company means £20,500 or such other sum as the Minister may specify by Order published in the Gazette.

(2) An Order under this section which increases the authorised minimum may—

- (a) require any public company having an allotted share capital of which the nominal value is less than the amount specified in the Order as the authorised minimum to increase that value to not less than that amount or to apply to be re-registered as a private company;
- (b) make, in connection with any such requirement, provision for—
  - (i) any matters relating to the company's registration, re-registration or change of name, to payment for any share comprised in a company's capital and to offers of shares in or debentures of a company to the public; and
  - (ii) the consequences (whether in criminal law or otherwise) of a failure to comply;

and

- (c) contain such additional provisions as are appropriate, make different provisions for different cases and provide for any provision of the order to come into force on different days for different purposes.

(3) Where the court makes an order confirming a reduction of a public company's capital which has the effect of bringing the nominal value of the company's allotted share capital below the authorised minimum, the Registrar shall not register the order under section 107 unless the court otherwise directs or the company is first re-registered as a private company.

(4) The court making any such order in respect of a company may authorise the company to be re-registered as a private company without its having passed a special resolution and, where the court so authorises a company, the court shall specify in the order the alterations in the company's memorandum and articles to be made in connection with that re-registration.

(5) A public limited company may not commence business unless the nominal value of the company's allotted share capital is not less than the authorised minimum.

#### *Reduction of Share Capital.*

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

*(1929 c.23, s.55).*

104. (1) Subject to confirmation by the Registrar of the Court, a company limited by shares or a company limited by guarantee and having a

share capital may, if so authorized by its articles, by special resolution reduce its share capital in any way, and in particular, without prejudice to the generality of the foregoing power, may—

- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or
- (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or
- (c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company,

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

(2) A special resolution under this section is in this Act referred to as “a resolution for reducing share capital.”

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

*(1929 c.23, s.56).*

105. (1) Where a company has passed a resolution for reducing share capital, it may apply by petition to the Registrar of the Court for an order confirming the reduction.

(2) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the Registrar of the Court so directs, the following provisions shall have effect, subject nevertheless to subsection (3):—

- (a) every creditor of the company who at the date fixed by the Registrar of the Court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction;
- (b) the Registrar of the Court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction;

- (c) where a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the Registrar of the Court may, if he thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the Registrar of the Court may direct, the following amount:—
- (i) if the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;
  - (ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the Registrar of the Court after the like inquiry and adjudication as if the company were being wound up by the Registrar of the Court.

(3) Where a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid up share capital, the Registrar of the Court may, if having regard to any special circumstances of the case he thinks proper so to do, direct that subsection (2) shall not apply as regards any class or any classes of creditors.

*(1929 c.23, s.57).*

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

106. (1) The Registrar of the Court, if satisfied, with respect to every creditor of the company who under section 105 is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as he thinks fit.

- (2) Where the Registrar of the Court makes any such order, he may—
- (a) if for any special reason he thinks proper so to do, make an order directing that the company shall, during such period, commencing on or at any time after the date of the order, as is specified in the order, add to its name as the last words thereof, the words “and reduced”; and
  - (b) make an order requiring the company to publish as the Registrar of the Court directs the reasons for reduction or such other information in regard thereto as the Registrar of the Court may think expedient with a view to giving proper information

to the public, and, if the Registrar of the Court thinks fit, the causes which led to the reduction.

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

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

*(1929 c.23, s.58).*

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

(2) On the registration of the order and minute, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

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

(4) The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

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

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

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

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

*(1929 c.23 s.59).*

Provided that, if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of this Act with respect to winding up by the court, to pay the amount of his debt or claim, then—

- (a) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before the said date; and
- (b) if the company is wound up, the court, on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

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

**Penalty on concealment of name of creditor.**

(s.60).

109. A director, manager or other officer of the company who—

- (a) wilfully conceals the name of any creditor entitled to object to the reduction; or
- (b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or
- (c) aids, abets or is privy to any such concealment or misrepresentation,

is guilty of an offence.

**Public companies reducing capital below authorized minimum.**

(1985 c.6, s.139).

110. (1) This section applies where the court makes an order confirming a reduction of a public company's capital which has the effect of bringing the nominal value of its allotted share capital below the authorized minimum.

(2) The Registrar shall not register the order under section 107 unless the court otherwise directs, or the company is first re-registered as a private company.

(3) The court may authorize the company to be so re-registered without its having passed a special resolution to this effect, and where that authority is given, the court shall specify in the order the alterations in the company's memorandum and articles to be made in connection with that re-registration.

(4) The company may then be re-registered as a private company, if an application in the prescribed form and signed by a director or secretary of the company is delivered to the Registrar, together with a printed copy of the memorandum and articles as altered by the court's order and the prescribed fee.

(5) On receipt of such an application, the Registrar shall retain it and the other documents delivered with it and issue the company with a certificate of incorporation appropriate to a company which is not a public company, and—

- (a) the company by virtue of the issue of the certificate becomes a private company, and the alterations set out in the court's order take effect; and
- (b) the certificate is conclusive evidence that the requirements of this section in respect of re-registration and of the matters precedent and incidental thereto have been complied with and that the company is a private company.

*Variation of Shareholders' Rights.*

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

111. (1) If in the case of a company, the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorizing the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than fifteen per cent of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the court to have the variation cancelled, and, where any such application is made, the variation shall not have effect unless and until it is confirmed by the court. (1929 c.23, s.61).

(2) An application under this section must be made within seven days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

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

(4) The decision of the court on any such application shall be final.

(5) The company shall within fifteen days after the making of an order by the court on any such application forward a copy of the order to the Registrar and, if default is made in complying with this provision, the company and every officer of the company who is in default are guilty of offences and are liable on summary conviction to default fines.

(6) The expression “variation” in this section includes abrogation and the expression “varied” shall be construed accordingly.

#### **Variation of rights attached to any class of shares.**

112.(1) This section applies in relation to the variation of the rights attached to any class of shares in a company whose share capital is divided into shares of different classes.

(2) Where the rights are attached to a class of shares otherwise than by the company’s memorandum, and the company’s articles do not contain provisions with respect to the variation of the rights, those rights may only be varied if–

- (a) the holders of three-quarters in nominal value of the issued shares of that class agree in writing to the variation; or
- (b) an extraordinary resolution passed at a separate general meeting of the holders of that class approves the variation;

and any requirement (however imposed) in relation to the variation of those rights is complied with to the extent that it is not comprised in subparagraphs (a) and (b).

(3) Where the variation of such rights is connected with the giving, variation, revocation, or renewal of an authority for allotment or with a reduction of capital those rights shall not be valid unless–



- (i) the condition mentioned in subsection (2)(a) or (b) is satisfied; and
- (ii) any requirement of the memorandum or articles in relation to the variation of rights of that class is complied with to the extent that it is not comprised in that condition.

*Transfer of Shares and Debentures and Evidence of Title.*

**Nature of shares.**

113. (1) The shares or other interest of any member in a company shall be personal estate, transferable in manner provided by the articles of the company, and shall not be of the nature of real estate. (1929 c.23, s.62).

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

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

114. Notwithstanding anything in the articles of a company, it shall not be lawful for the company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company: (s.63).

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

**Transfer by personal representative.**

115. A transfer of the share or other interest of a deceased member of a company made by his personal representative shall, although the personal representative is not himself a member of the company, be as valid as if he had been such a member at the time of the execution of the instrument of transfer. (s.64).

**Registration of transfer at request of transferor.**

116. On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee. (s.65).

**Notice of refusal to register transfer.**

(s.66). 117. (1) If a company refuses to register a transfer of any shares or debentures, the company shall, within two months after the date on which the transfer was lodged with the company, send to the transferee notice of the refusal.

(2) If default is made in complying with this section, the company and every director, manager or other officer of the company who is knowingly a party to the default are guilty of offences and are each liable on summary conviction to a fine of one half of the amount at level 1 on the standard scale for every day during which the default continues.

**Duties of company with respect to issue of certificates.**

(1929 c.23, s.67). 118. (1) Every company shall, within two months after the allotment of any of its shares, debentures or debenture stock, and within two months after the date on which a transfer of any such shares, debentures or debenture stock, is lodged with the company, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

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

(2) If default is made in complying with this section, the company and every director, manager or other officer of the company who is knowingly a party to the default are guilty of offences and are each liable on summary conviction to a fine of one half of the amount at level 1 on the standard scale for every day during which the default continues.

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

**Certificate to be evidence of title.**

119. A certificate, sealed or signed as provided for in section 47(1), specifying any shares held by any member, shall be prima facie evidence of the title of the member to the shares.

**Evidence of grant of probate.**

120. The production to a company of any document which is by law sufficient evidence of probate of the will or letters of administration of the estate of a deceased person having been granted to some person shall be accepted by the company, notwithstanding anything in its articles, as sufficient evidence of the grant. (1929 c.23, s.69).

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

121. (1) A company limited by shares, if so authorized by its articles may, with respect to any fully paid-up shares, issue sealed or signed as provided for in section 47(1) a warrant stating that the bearer of the warrant is entitled to the shares therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the shares included in the warrant. (s.70).

(2) Such a warrant is in this Act referred to as a “share warrant”.

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

(4) A private company may issue a share warrant only if the share capital of the company is divided into fifty or less shares and if a private company which has issued a share warrant increases its capital to more than fifty shares it shall cease to be a private company and shall comply with the conditions of section 41(1).

(5) Where a company is incorporated with share warrants, at least two subscriber shares shall be allotted to named subscribers.

**Penalty for personation of shareholder.**

122. A person who falsely and deceitfully personates any owner of any share or interest in any company, or of any share warrant or coupon, issued in pursuance of this Act, and thereby obtains or endeavours to obtain any such share or interest or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if the offender were the true and lawful owner, is guilty of an offence and is liable to imprisonment for life or for a term not less than three years. (s.71).

*Special Provisions as to Debentures.*

**Right of debenture holders and shareholders to inspect register of debenture holders and to have copies of trust deeds.**

(1929 c.23 s.73).

123. (1) Every register of holders of debentures of a company shall, except when duly closed, be open to the inspection of the registered holder of any such debentures and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that not less than two hours in each day shall be allowed for inspection.

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

(2) Every registered holder of debentures and every holder of shares in a company may require a copy of the register of the holders of debentures of the company or any part thereof on payment of three pence for every hundred words required to be copied.

(3) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed of the sum of five pence or such less sum as may be prescribed by the company, or, where the trust deed has not been printed, on payment of three pence for every hundred words required to be copied.

(4) If inspection is refused, or a copy is refused or not forwarded, the company and every officer of the company who is in default are guilty of offences and are each liable on summary conviction to a fine of one half of the amount at level 1 on the standard scale, and are further liable to a default fine of one fifth of the amount at level 1 on the standard scale.

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

**Perpetual debentures.**

(1929 c.23, s.74).

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

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

125. (1) Where a company has redeemed any debentures previously issued, then— <sup>(s.75).</sup>

- (a) unless any provision to the contrary, whether express or implied, is contained in the articles or in any contract entered into by the company; or
- (b) unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled,

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

(2) On a re-issue of redeemed debentures the person entitled to the debentures shall have, and shall be deemed always to have had, the same priorities as if the debentures had never been redeemed.

(3) Where a company has power to re-issue debentures which have been redeemed, particulars with respect to the debentures which can be so re-issued shall be included in every balance sheet of the company.

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

(5) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued:

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

**Specific performance of contracts to subscribe for debentures.**

*(1929 c.23, s.76).*

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

**Payment of certain debts out of assets subject to floating charge in priority to claims under the charge.**

(s.78).

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

(2) The periods of time mentioned in the said provisions of Part VI shall be reckoned from the date of the appointment of the receiver or of possession being taken, as the case may be.

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

**PART III.**

**REGISTRATION OF CHARGES.**

*Registration of Charges with Registrar of Companies.*

**Registration of charges created by companies registered in Gibraltar.**

(1929 c.23 s.79).

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

(2) This section applies to,—

- (a) a charge for the purpose of securing any issue of debentures;

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

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

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

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

(6) The holding of debentures entitling the holder to a charge on land shall not for the purposes of this section be deemed to be an interest in land.

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

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

together with the deed containing the charge, or, if there is no such deed, one of the debentures of the series:

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

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

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

- (9) In this Part, “charge” includes mortgage.

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

*(1929 c.23, s.80).*

129. (1) It shall be the duty of a company to send to the Registrar for registration the particulars of every charge created by the company and of the issues of debentures of a series, requiring registration under section 128,



but registration of any such charge may be effected on the application of any person interested therein.

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

(3) If any company makes default in sending to the Registrar for registration the particulars of any charge created by the company, or of the issues of debentures of a series, requiring registration, then, unless the registration has been effected on the application of some other person, the company and every director, manager or other person, who is knowingly a party to the default are guilty of offences and are each liable on summary conviction to a fine not exceeding level 2 on the standard scale for every day during which the default continues.

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

130. (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 Part, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument (if any) by which the charge was created or is evidenced, to be delivered to the Registrar for registration in manner required by this Act within twenty-one days after the date on which the acquisition is completed: *(1929 c.23 s.81).*

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

(2) If default is made in complying with this section, the company and every officer of the company who is in default are guilty of offences and are each liable on summary conviction to a default fine at level 2 on the standard scale.

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

131. (1) The Registrar shall keep, with respect to each company, a register in the prescribed form of all the charges requiring registration under this Part, and shall, on payment of the prescribed fee, enter in the register with respect to such charges the following particulars:— *(s.82).*

- (a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are specified in section 128(7);
- (b) in the case of any other charge—
  - (i) if the charge is a charge created by the company, the date of its creation, and if the charge was a charge existing on property acquired by the company, the date of the acquisition of the property; and
  - (ii) the amount secured by the charge; and
  - (iii) short particulars of the property charged; and
  - (iv) the persons entitled to the charge.

(2) The Registrar shall give a certificate under his hand of the registration of any charge registered in pursuance of this Part, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this Part as to registration have been complied with.

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, not exceeding five pence for each inspection.

(4) The Registrar shall keep a chronological index, in the prescribed form and with the prescribed particulars, of the charges entered in the register.

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

*(1929 c.23, s.83).*

132. (1) The company shall cause a copy of every certificate of registration given under section 131 to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the charge so registered:

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

(2) A person who knowingly and wilfully authorizes or permits the delivery of any debenture or certificate of debenture stock which under the provisions of this section is required to have endorsed on it a copy of a certificate of registration without the copy being so endorsed upon it, is

guilty of an offence and, without prejudice to any other liability, is liable on summary conviction to a fine at level 3 on the standard scale.

**Entry of satisfaction.**

133. The Registrar may, on evidence being given to his satisfaction that the debt for which any registered charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall, if required, furnish the company with a copy thereof. (1929 c.23, s.84).

**Rectification of register of charges.**

134. The court, on being satisfied that the omission to register a charge within the time required by this Act, or that the omission or misstatement of any particular with respect to any such charge or in a memorandum of satisfaction, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the court just and expedient, order that the time for registration shall be extended, or, as the case may be, that the omission or misstatement shall be rectified. (s.85).

**Registration of enforcement of security.**

135. (1) If any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall, within seven days from the date of the order or of the appointment under the said powers, give notice of the fact to the Registrar, and the Registrar shall, on payment of the prescribed fee, enter the fact in the register of charges. (s.86).

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

(3) A person who makes default in complying with the requirements of this section, is guilty of an offence and is liable on summary conviction to a fine of one half of the amount at level 1 on the standard scale for every day during which the default continues.

*Provisions as to Company's Register of Charges and as to Copies of Instruments Creating Charges.*

**Copies of instruments creating charges to be kept by company.**

(1929 c.23 s.87).

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

Provided that, in the case of a series of uniform debentures, a copy of one debenture of the series shall be sufficient.

**Company's register of charges.**

(s.88).

137. (1) Every limited company shall keep at the registered office of the company a register of charges and enter therein all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company, giving in each case a short description of the property charged, the amount of the charge, and, except in the case of securities to bearer, the names of the persons entitled thereto.

(2) A director, manager or other officer of the company who knowingly and wilfully authorizes or permits the omission of any entry required to be made in pursuance of this section, is guilty of an offence and is liable on summary conviction to a fine at level 2 on the standard scale.

**Inspection of instruments creating mortgages and charges and register of charges.**

(s.89).

138. (1) The copies of instruments creating any charge requiring registration under this Part with the Registrar, and the register of charges kept in pursuance of section 137, shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day shall be allowed for inspection) to the inspection of any creditor or member of the company without fee, and the register of charges shall also be open to the inspection of any other person on payment of such fee, not exceeding five pence for each inspection, as the company may prescribe.

(2) If inspection of such copies or register is refused, any officer of the company refusing inspection, and every director and manager of the company authorizing or knowingly and wilfully permitting the refusal, are guilty of offences and are each liable on summary conviction to a fine of one half of the amount at level 1 on the standard scale, and a further fine of one fifth of the amount at level 1 on the standard scale for every day during which the refusal continues.

(3) If any such refusal occurs, the court may by order compel an immediate inspection of the copies or register.

*Application of Part III to Companies Incorporated Outside Gibraltar.*

**Application of Part III to company incorporated outside Gibraltar.**

139. The provisions of this Part shall extend to charges on property in Gibraltar which are created, and to charges on property in Gibraltar which is acquired, after the commencement of this Act by a company (whether a company within the meaning of this Act or not) incorporated outside Gibraltar which has an established place of business in Gibraltar. (1929 c.23, s.90).

**PART IV.**  
**MANAGEMENT AND ADMINISTRATION.**

*Registered Office and Name.*

**Registered office of company.**

(s.92).

140. (1) A company shall, as from the day on which it begins to carry on business or as from the twenty-eighth day after the date of its incorporation, whichever is the earlier, have a registered office in Gibraltar to which all communications and notices may be addressed.

(2) Notice of the situation of the registered office, and of any change therein, shall be given within twenty-eight days after the date of the incorporation of the company or of the change, as the case may be, to the Registrar who shall record the same. The inclusion in the annual return of a company of a statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by this subsection unless that return shall have been due and made within 28 days of the change.

(3) If default is made in complying with this section, the company and every officer of the company who is in default are guilty of offences and are liable on summary conviction to default fines.

**Publication of name by company.**

141. (1) Every company—

(1929 c.23, s.93).

- (a) shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible;
- (b) shall have its name engraven in legible characters on its seal, if any;
- (c) shall have its name mentioned in legible characters in all notices, advertisements and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods

purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts and letters of credit of the company.

(2) If a company does not paint or affix its name in manner directed by this Act, the company and every officer of the company who is in default are guilty of offences and are each liable on summary conviction to a fine of one half of the amount at level 1 on the standard scale, and if a company does not keep its name painted or affixed in manner so directed, the company and every officer of the company who is in default are likewise guilty of an offence and liable on summary conviction to default fines.

(3) If a company fails to comply with paragraph (b) or paragraph (c) of subsection (1), the company is guilty of an offence and is liable on summary conviction to a fine at level 2 on the standard scale.

(4) A director, manager or officer of a company or any person on its behalf who—

- (a) uses or authorizes the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid; or
- (b) issues or authorizes the issue of any notice, advertisement or other official publication of the company, or signs or authorizes to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque or order for money or goods, wherein its name is not mentioned in manner aforesaid; or
- (c) issues or authorizes the issue of any bill of parcels, invoice, receipt or letter of credit of the company, wherein its name is not mentioned in manner aforesaid,

is guilty of an offence and is liable on summary conviction to a fine at level 2 on the standard scale, and is further personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods, for the amount thereof, unless it is duly paid by the company.

**Particulars to be shown on letterheads, etc.**

*(1972 c.8, s.9(7)).*

142. (1) Every company shall have the following particulars mentioned in legible characters in all business letters and order forms of the company, that is to say,—

- (a) the place of registration of the company, and the number with which it is registered;

- (b) the address of its registered office; and
- (c) in the case of a limited company exempt from the obligation to use the word “Limited” as part of its name, the fact that it is a limited company;
- (d) in the case of an investment company (as defined in section 210) the fact that it is such a company,

and, if in the case of a company having a share capital there is on the stationery used for any such letters or on the order forms a reference to the amount of the share capital, the reference shall be to paid-up share capital.

(2) If a company fails to comply with subsection (1), the company is guilty of an offence and is liable on summary conviction to a fine at level 2 on the standard scale; and if an officer of a company or any person on its behalf issues or authorizes the issue of any business letter or order form not complying with this subsection, he is guilty of an offence and is liable on summary conviction to a fine at level 2 on the standard scale.

*Restrictions on Commencement of Business.*

**Restrictions on commencement of business.**

143. (1) Where a company having a share capital has issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers unless— *(1929 c.23, s.94).*

- (a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; and
- (b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and
- (c) there has been delivered to the Registrar for registration a statutory declaration by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with.

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

- (a) there has been delivered to the Registrar for registration a statement in lieu of prospectus; and
- (b) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash; and
- (c) there has been delivered to the Registrar for registration a statutory declaration by the secretary or one of the directors in the prescribed form that paragraph (b) of this subsection has been complied with.

(3) The Registrar shall, on the delivery to him of the said statutory declaration, and, in the case of a company which is required by this section to deliver a statement in lieu of prospectus, of such a statement, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled.

(4) Nothing in this section affects the validity of any transaction entered into by a company; but if a company enters into a transaction in contravention of this section and fails to comply with its obligations within 21 days from being called upon to do so, the directors of the company are jointly and severally liable to indemnify the other party to the transaction in respect of any loss or damage suffered by him by reason of the company's failure to comply with those obligations.

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

(6) If a company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention is guilty of an offence and, without prejudice to any other liability, is liable on summary conviction to a fine at level 2 on the standard scale for every day during which the contravention continues.

(7) Nothing in this section shall apply to a private company.

*Register of Members.*

**Register of members.**

(1929 c.23, s.95).

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



- (a) the names and addresses, and the occupations (if any) of the members, and in the case of a company having a share capital a statement of the shares held by each member, distinguishing each share by its number and of the amount paid or agreed to be considered as paid on the shares of each member;
- (b) the date at which each person was entered in the register as a member; and
- (c) the date at which any person ceased to be a member:

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

(2) If default is made in complying with this section, the company and every officer of the company who is in default are guilty of offences and are liable on summary conviction to default fines.

#### **Changes in membership of private company.**

145.(1) If the number of members of a private company limited by shares or by guarantee falls to one there shall upon the occurrence of that event be entered in the company's register of members—

- (a) the name and address of the sole member,
- (b) a statement that the company has only one member, and
- (c) the date on which the company became a company having only one member.

(2) If the membership of a private company limited by shares or by guarantee increases from one to two or more members there shall upon the occurrence of that event be entered in the company's register of members, with the name and address of the person who was formerly the sole member, a statement that the company has ceased to have only one member together with the date on which that event occurred.

(3) If a company makes default in complying with this section the company and every officer of it who is in default is liable on summary conviction to a fine not exceeding level 2 on the standard scale and, for continued contravention, to a daily fine not exceeding one-tenth of level 2 on the standard scale.

#### **Index of members of company.**

(1929 c.23, s.96).

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

(2) The index, which may be in the form of a card index, shall in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.

(3) If default is made in complying with this section, the company and every officer of the company who is in default are guilty of an offence and are liable on summary conviction to default fines.

**Provisions as to entries in register in relation to share warrants.**

(s.97).

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

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

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

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

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

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

**Inspection of register of members.**

148.(1) The register of members, commencing from the date of the registration of the company, and the index of the names of members, shall be kept at the registered office of the company, and, except when the register is closed under the provisions of this Act, shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge and of any other person on payment of five pence, or such less sum as the company may prescribe, for each inspection. *(1929 c.23, s.98).*

(2) Any member or other person may require a copy of the register, or of any part thereof, on payment of three pence, or such less sum as the company may prescribe, for every hundred words or fractional part thereof required to be copied. The company shall cause any copy so required by any person to be sent to that person within a period of ten days commencing on the day next after the day on which the requirement is received by the company.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper period, the company and every officer of the company who is in default are guilty of offences and are liable on summary conviction in respect of each offence to a fine of one fifth of the amount at level 1 on the standard scale, and further to a default fine of the same amount.

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

**Power to close register.**

149. A company may, on giving notice by advertisement in some newspaper circulating in Gibraltar, close the register of members for any time or times not exceeding in the whole thirty days in each year. *(1929 c.23, s.99).*

**Power of court to rectify register.**

150. (1) If— *(s.100).*

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

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

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

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

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

**Trusts not to be entered on register.**

(1929 c.23, s.101).

151. No notice of any trust, express, implied or constructive, shall be entered on the register, or be receivable by the Registrar.

**Register to be evidence.**

(s.102).

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

*Annual Return.*

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

(s.108).

153. (1) Every company having a share capital shall deliver to the Registrar successive annual returns each of which is made up to a date not later than the date which is from time to time the company's "return date", that is—

- (a) the anniversary of the company's incorporation, or
- (b) if the company's last return delivered in accordance with this Act was made up to a different date, the anniversary of that date.

(2) Each return shall—

- (a) be in the form prescribed in Schedule 5;

- (b) contain the information required by or under this Act; and
- (c) be signed by a director or the secretary of the company,

and shall be delivered to the Registrar within 28 days after the date to which it is made up.

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

Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the list must state the amount of stock held by each of the existing members instead of the amount of shares and the particulars relating to shares hereinbefore required.

(4) The return must also state the address of the registered office of the company and must contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars:—

- (a) the amount of the share capital of the company, and the number of the shares into which it is divided;
- (b) the number of shares taken from the commencement of the company up to the date of the return;
- (c) the amount called up on each share;
- (d) the total amount of calls received;
- (e) the total amount of calls unpaid;
- (f) the total amount of the sums (if any) paid by way of commission in respect of any shares or debentures;
- (g) particulars of the discount allowed on the issue of any shares issued at a discount, or of so much of that discount as has not been written off at the date on which the return is made;

- (h) the total amount of the sums (if any) allowed by way of discount in respect of any debentures, since the date of the last return;
- (i) the total number of shares forfeited;
- (j) the total amount of shares for which share warrants are outstanding at the date of the return;
- (k) the total amount of share warrants issued and surrendered respectively since the date of the last return;
- (l) the number of shares comprised in each share warrant;
- (m) all such particulars with respect to the persons who at the date of the return are the directors and secretaries of the company as are by this Act required to be contained with respect to directors and secretaries in the registers of the directors and secretaries of a company;
- (n) the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Registrar under this Act.

(5) The references in this section to a return being delivered “in accordance with this Act” are—

- (a) in relation to a return made on or after the 1st day of August 1992, to a return with respect to which all of the requirements of subsection (2) are complied with;
- (b) in relation to a return made before the 1st day of August 1992, to a return with respect to which the formal and substantive requirements of this Act as it then had effect were complied with, whether or not the return was delivered in time.

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

*(1929 c.23, s.109).*

154. (1) Every company not having a share capital shall deliver to the Registrar successive annual returns each of which is made up to a date not later than the date which is from time to time the company’s “return date”, that is, the anniversary of the company’s incorporation, and each return shall be in the prescribed form and shall state—

- (a) the address of the registered office of the company;
- (b) such particulars with respect to the persons who at the date of the return are the directors and secretaries of the company as

are by this Act required to be contained with respect to directors and secretaries in the registers of directors and secretaries of a company, and

it shall be delivered to the Registrar within 28 days after the date to which it is made up.

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

### **General provisions as to annual returns.**

155.(1) The annual return must be contained in a separate part of the register of members and must be completed within twenty-eight days after the first or only general meeting in the year, and the company must forthwith forward to the Registrar a copy signed by a director or by the manager or by the secretary of the company. (s.110).

(2) Section 148 shall apply to the annual return as it applies to the register of members.

(3) Except where the company is a private company, the annual return shall include a written copy, certified by a director or the manager or secretary of the company to be a true copy, of the last balance sheet which has been audited by the company's auditors, including every document required by law to be annexed thereto, together with a copy of the report of the auditors thereon certified as aforesaid, and if any such balance sheet is in a foreign language there shall also be annexed to it a translation thereof in English, certified in the prescribed manner to be a correct translation:

Provided that, if the last balance sheet did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets there shall be made such additions to and corrections in the copy as would have been required to be made in the balance sheet in order to make it comply with such requirements, and the fact that the copy has been so amended shall be stated thereon.

(4) If a company fails to comply with this section or section 153 or 154—

- (a) the company and every officer of the company who is in default are guilty of offences and are liable on summary conviction to a fine at level 3 on the standard scale and for continued contravention, to a daily fine of an amount of one half of the amount at level 3 on the standard scale;

- (b) in the case of a failure to comply with section 153 or 154, the Registrar may regard that failure as reasonable cause to believe that the company is not carrying on business or in operation.

(5) For the purposes of subsection (4) of this section, “officer”, and for the purposes of sections 153 and 154, “director” shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

**Certificates to be sent by private company with annual return.**

(1929 c.23, s.111).

156. A private company shall send with the annual return required by section 153 a certificate in the form prescribed in Schedule 5 signed by a director or the secretary of the company that the company has not, since the date of the last return, or, in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company, and, where the annual return discloses the fact that the number of members of the company exceeds fifty, also a certificate so signed that the excess consists wholly of persons who under paragraph (b) of section 40(1) are not to be included in reckoning the number of fifty.

*Meetings and Proceedings.*

**Annual general meetings.**

157. (1) Every company shall, subject to the provisions of subsection (5), in each year, hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it.

(2) So long as a company holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

(3) Not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next.

(4) If default is made in holding a meeting in accordance with this section, the company and every officer of it who is in default is liable on summary conviction to a fine, in the case of the company, at level 5 on the standard scale, and in the case of an officer of the company, at level 3 on the standard scale.

(5) A private company may, by special resolution dispense with the holding of annual general meetings and where the company has passed such a special resolution—



- (a) sections 171 and 180(1) shall be deemed to have no effect in respect of that company for such time and in respect of such years as the resolution shall have effect in accordance with this section; and
- (b) the special resolution is subject to section 165 (copy to be forwarded to the Registrar within fifteen days).

(6) A special resolution dispensing with the holding of annual general meetings, shall have effect for the year in which it is made and subsequent years, but shall not affect any liability already incurred by reason of default in holding an annual general meeting.

(7) In any year in which an annual general meeting would be required to be held but for the special resolution and in which no such meeting has been held, any member of the company may, by notice to the company not later than three months before the end of the year, require the holding of an annual general meeting in that year.

(8) If a notice provided for in subsection (7) is given, the provisions of subsections (1) and (4) shall apply with respect to the calling of the meeting and the consequences of default.

(9) If the effect of the special resolution ceases, the company is not obliged under the provisions of this section to hold an annual general meeting in that year if when the special resolution ceases to have effect, less than three months of the year remains:

Provided that this does not affect any obligation of the company to hold an annual general meeting in that year in pursuance of a notice given under subsection (7).

#### **Statutory meeting and statutory report.**

158. (1) Every company limited by shares and every company limited by guarantee and having a share capital shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called “the statutory meeting”. *(1929 c.23, s.113).*

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

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

- (a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;
- (b) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid;
- (c) an abstract of the receipts of the company and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company;
- (d) the names, addresses and descriptions of the directors, auditors (if any), managers (if any) and secretary of the company; and
- (e) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

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

(5) The directors shall cause a copy of the statutory report, certified as required by this section, to be delivered to the Registrar for registration forthwith after the sending thereof to the members of the company.

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

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

(8) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be

passed, and the adjourned meeting shall have the same powers as an original meeting.

(9) In the event of any default in complying with the provisions of this section every director of the company who is guilty of or who knowingly and wilfully authorizes or permits the default is guilty of an offence and is liable on summary conviction to a fine at level 2 on the standard scale.

(10) This section shall not apply to a private company.

**Convening of extraordinary general meeting on requisition.**

159. (1) The directors of a company, notwithstanding anything in its articles, shall, on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as at the date of the deposit carries the right of voting at general meetings of the company, or, in the case of a company not having a share capital, members of the company representing not less than one-tenth of the voting rights of all the members having at the said date a right to vote at general meetings of the company, forthwith proceed duly to convene an extraordinary general meeting of the company. *(1929 c.23, s.114).*

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

(3) If the directors do not within twenty-one days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists, or any of them representing more than one-half of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of three months from the said date.

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

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

(6) For the purposes of this section, the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be

deemed not to have duly convened the meeting if they do not give such notice thereof as is required by section 163.

**Provisions as to meetings and votes.**

*(1929 c.23, s.115).*

160. (1) The following provisions shall have effect in so far as the articles of the company do not make other provision in that behalf:—

- (a) a meeting of a company, other than a meeting for the passing of a special resolution, may be called by seven days' notice in writing;
- (b) notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by Table A, and for the purpose of this paragraph, "Table A" means that Table as for the time being in force;
- (c) two or more members holding not less than one-tenth of the issued share capital or, if the company has not a share capital, not less than five per cent in number of the members of the company may call a meeting;
- (d) in the case of a private company one member, and in the case of any other company three members, personally present shall be a quorum;
- (e) any member elected by the members present at a meeting may be chairman thereof;
- (f) in the case of a company originally having a share capital, every member shall have one vote in respect of each share or each £10 of stock held by him, and in any other case every member shall have one vote.

(2) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in manner prescribed by the articles or this Act, the Registrar of the Court may, either of his own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the Registrar of the Court thinks fit, and where any such order is made may give such ancillary or consequential directions as he thinks expedient, and any meeting called, held and conducted in accordance with any such order shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.

**Quorum at meetings of sole member.**

161. Notwithstanding any provision to the contrary in the articles of a private company limited by shares or by guarantee having only one member, one member present in person or by proxy shall be a quorum.

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

162. (1) A corporation, whether a company within the meaning of this Act or not, may— *(1929 c.23, s.116).*

- (a) if it is a member of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company;
- (b) if it is a creditor (including a holder of debentures) of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

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

**Provisions as to extraordinary and special resolutions.**

163. (1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members as, being entitled so to do, vote in person or, where proxies are allowed, by proxy, at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given. *(s.117).*

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

Provided that, if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special

resolution at a meeting of which less than twenty-one days' notice has been given.

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

(4) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed a poll shall be taken to be effectively demanded, if demanded—

- (a) by such number of members for the time being entitled under the articles to vote at the meeting as may be specified in the articles, so, however, that it shall not in any case be necessary for more than five members to make the demand; or
- (b) if no provision is made by the articles with respect to the right to demand the poll, by three members so entitled or by one member or two members so entitled, if that member holds or those two members together hold not less than fifteen per cent of the paid-up share capital of the company.

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

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

**Written approval.**

164. (1) Notwithstanding anything contained in section 163 it shall not be necessary in the case of a private company to hold a general meeting in order to pass an extraordinary or a special resolution but such a resolution may, if it is so provided in the articles of the company, be passed by approval of such resolution being signified in writing by all members of the company who would be entitled to vote if such resolution were submitted to a general meeting.

(2) Where a resolution has been passed in accordance with the provisions of subsection (1) the printed copy of such resolution forwarded to the Registrar in accordance with the provisions of section 165 shall be accompanied by—

- (a) the written approval of all the members; and
- (b) a statement by the secretary of the company that the members whose written approval is attached are all the members who would be entitled to vote at a general meeting.

(3) No resolution forwarded in accordance with the provisions of subsection (2) shall be recorded by the Registrar unless it complies with the provisions of that subsection.

(4) For the purpose of section 165 a resolution passed by written approval shall be deemed to have been passed on the date on which the last written approval thereto was given and be forwarded to the Registrar within thirty days of such passing.

#### **Registration and copies of certain resolutions and agreements.**

165. (1) A printed copy of every resolution or agreement to which this section applies shall, within fifteen days after the passing or making thereof be forwarded to the Registrar and recorded by him. *(1929 c.23, s.118).*

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

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

- (4) This section shall apply to—
  - (a) special resolutions;
  - (b) extraordinary resolutions;
  - (c) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless, as the case may be, they had been passed as special resolutions, or as extraordinary resolutions;
  - (d) resolutions or agreements which have been agreed to by all the members of some class of shareholders, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or

agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members;

- (e) resolutions requiring a company to be wound up voluntarily, passed under paragraph (a) of section 268(1).

(5) If a company fails to comply with subsection (1), the company and every officer of the company who is in default are guilty of offences and are each liable on summary conviction to a default fine of £2.

(6) If a company fails to comply with subsection (2) or (3), the company and every officer of the company who is in default are guilty of offences and are each liable on summary conviction to a fine of one tenth of the amount at level 1 on the standard scale for each copy in respect of which default is made.

(7) For the purpose of subsections (5) and (6), a liquidator of the company shall be deemed to be an officer of the company.

*(1929 c.23, s.119).*

166. Where a resolution is passed at an adjourned meeting of—

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

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

### **Minutes of proceedings of meetings and directors.**

*(s.120).*

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

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

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



**Recording of decisions by the sole member.**

168.(1) Where a private company limited by shares or by guarantee has only one member and he takes any decision which may be taken by the company in general meeting and which has effect as if agreed by the company in general meeting, he shall (unless that decision is taken by way of a written resolution) provide the company with a written record of that decision.

(2) If the sole member fails to comply with subsection (1) he shall be liable, on summary conviction, to a fine not exceeding level 2 on the standard scale.

(3) Any failure by the sole member to comply with subsection (1) shall not affect the validity of any decision referred to in that subsection.

**Inspection of minute books.**

169. (1) The books containing the minutes of proceedings of any general meeting of a company shall be kept at the registered office of the company, and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that no less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge. *(1929 c.23, s.121).*

(2) Any member shall be entitled to be furnished, within seven days after he has made a request in that behalf to the company, with a copy of any such minutes as aforesaid at a charge not exceeding three pence for every hundred words.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper time, the company and every officer of the company who is in default are guilty of offences and are each liable on summary conviction in respect of each offence to a fine of one fifth of the amount at level 1 on the standard scale and further to a default fine of the same amount.

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

*Accounts and Audit.***Keeping of books of account.**

(s.122).

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

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

(2) The books of account shall be kept at the registered office of the company or at such other place as the directors think fit, and shall at all times be open to inspection by the directors.

(3) A person who, being a director of a company, fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own wilful act been the cause of any default by the company thereunder, is in respect of each offence, liable on summary conviction to imprisonment for six months or to a fine at level 4 on the standard scale:

Provided that a person shall not be sentenced to imprisonment for an offence under this section unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

#### **Profit and loss account and balance sheet.**

(1929 c.23, s.123).

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

Provided that the Minister responsible for finance, if for any special reason he thinks fit so to do, may, in the case of any company, extend the period of eighteen months aforesaid, and in the case of any company and with respect to any year extend the periods of nine and twelve months aforesaid.

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

such balance sheet a report by the directors with respect to the state of the company's affairs, the amount (if any) which they recommend should be paid by way of dividend, and the amount (if any) which they propose to carry to the reserve fund, general reserve or reserve account shown specifically on the balance sheet, or to a reserve fund, general reserve or reserve account to be shown specifically on a subsequent balance sheet.

(3) A person who, being a director of a company, fails to take all reasonable steps to comply with the provisions of this section, is guilty of an offence and is in respect of each offence, liable on summary conviction to imprisonment for six months or to a fine at level 4 on the standard scale:

Provided that a person shall not be sentenced to imprisonment for an offence under this section unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

#### **Contents of balance sheet.**

172. (1) Every balance sheet of a company shall contain a summary of the authorized share capital and of the issued share capital of the company, its liabilities and its assets, together with such particulars as are necessary to disclose the general nature of the liabilities and the assets of the company and to distinguish between the amounts respectively of the fixed assets and of the floating assets, and shall state how the values of the fixed assets have been arrived at. *(1929 c.23, s.124).*

(2) There shall be stated under separate headings in the balance sheet, so far as they are not written off,—

- (a) the preliminary expenses of the company; and
- (b) any expenses incurred in connection with any issue of share capital or debentures; and
- (c) if it is shown as a separate item in or is otherwise ascertainable from the books of the company, or from any contract for the sale or purchase of any property to be acquired by the company, or from any documents in the possession of the company relating to the stamp duty payable in respect of any such contract or the conveyance of any such property, the amount of the goodwill and of any patents and trademarks as so shown or ascertained.

(3) Where any liability of the company is secured otherwise than by operation of law on any assets of the company, the balance sheet shall include a statement that that liability is so secured, but it shall not be necessary to specify in the balance sheet the assets on which the liability is secured.

(4) The provisions of this section are in addition to other provisions of this Act requiring other matters to be stated in balance sheets.

**Assets consisting of shares in subsidiary companies to be set out separately in balance sheet.**

*(1929 c.23, s.125).*

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

**Balance sheet to include particulars as to subsidiary companies.**

*(s.126).*

174. (1) Where a company (in this section referred to as “the holding company”) holds shares either directly or through a nominee in a subsidiary company or in two or more subsidiary companies, there shall be annexed to the balance sheet of the holding company a statement, signed by the persons by whom in pursuance of section 177 the balance sheet is signed, stating how the profits and losses of the subsidiary company, or, where there are two or more subsidiary companies, the aggregate profits and losses of those companies, have, so far as they concern the holding company, been dealt with in, or for the purposes of, the accounts of the holding company, and in particular how, and to what extent,—

- (a) provision has been made for the losses of a subsidiary company either in the accounts of that company or of the holding company or of both; and
- (b) losses of a subsidiary company have been taken into account by the directors of the holding company in arriving at the profits and losses of the holding company as disclosed in its accounts:

Provided that it shall not be necessary to specify in any such statement the actual amount of the profits or losses of any subsidiary company, or the actual amount of any part of any such profits or losses which has been dealt with in any particular manner.

(2) If in the case of a subsidiary company the auditors’ report on the balance sheet of the company does not state without qualification that the auditors have obtained all the information and explanations they have required and that the balance sheet is properly drawn up so as to exhibit a

true and correct view of the state of the company's affairs according to the best of their information and the explanation given to them and as shown by the books of the company, the statement which is to be annexed to the balance sheet of the holding company shall contain particulars of the manner in which the report is qualified.

(3) For the purposes of this section, the profits or losses of a subsidiary company mean the profits or losses shown in any accounts of the subsidiary company made up to a date within the period to which the accounts of the holding company relate, or, if there are no such accounts of the subsidiary company available at the time when the accounts of the holding company are made up, the profits or losses shown in the last previous accounts of the subsidiary company which became available within that period.

(4) If for any reason the directors of the holding company are unable to obtain such information as is necessary for the preparation of such statement, the directors who sign the balance sheet shall so report in writing and their report shall be annexed to the balance sheet in lieu of the statement.

#### **Meaning of subsidiary company.**

175. (1) Where the assets of a company consist in whole or in part of shares in another company, whether held directly or through a nominee and whether that other company is a company within the meaning of this Act or not, and— *(1929 c.23, s.127).*

- (a) the amount of the shares so held is at the time when the accounts of the holding company are made up more than fifty per cent of the issued share capital of that other company or such as to entitle the company to more than fifty per cent of the voting power in that other company; or
- (b) the company has power (not being power vested in it by virtue only of the provisions of a debenture, trust deed or by virtue of shares issued to it for the purpose in pursuance of those provisions) directly or indirectly to appoint the majority of the directors of that other company,

that other company shall be deemed to be a subsidiary company within the meaning of this Act, and the expression "subsidiary company" in this Act means a company in the case of which the conditions of this section are satisfied.

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

**Accounts to contain particulars as to loans to, and remuneration of directors.**

(1929 c.23, s.128).

176. (1) The accounts which in pursuance of this Act are to be laid before every company in general meeting shall, subject to the provisions of this section, contain particulars showing—

- (a) the amount of any loans which during the period to which the accounts relate have been made either by the company or by any other person under a guarantee from or on a security provided by the company to any director or officer of the company, including any such loans which were repaid during the said period; and
- (b) the amount of any loans so made to any director or officer at any time before the period aforesaid and outstanding at the expiration thereof; and
- (c) the total of the amount paid to the directors as remuneration for their services, inclusive of all fees, percentages or other emoluments, paid to or receivable by them by or from the company or by or from any subsidiary company.

(2) The provisions of subsection (1) with respect to loans shall not apply—

- (a) in the case of a company the ordinary business of which includes the lending of money, to a loan made by the company in the ordinary course of its business; or
- (b) to a loan made by the company to any employee of the company if the loan does not exceed £2,000 and is certified by the directors of the company to have been made in accordance with any practice adopted or about to be adopted by the company with respect to loans to its employees.

(3) The provisions of subsection (1) with respect to the remuneration paid to directors shall not apply in relation to a managing director of the company, and in the case of any other director who holds any salaried employment or office in the company there shall not be required to be included in the said total amount any sums paid to him except sums paid by way of directors' fees.

(4) If in the case of any such accounts as aforesaid the requirements of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report on

the balance sheet of the company, so far as they are reasonably able to do so, a statement giving the required particulars.

(5) In this section, “emoluments” include fees, percentages and other payments made or consideration given, directly or indirectly, to a director as such, and the money value of any allowances or perquisites belonging to his office.

#### **Signing of balance sheet.**

177. (1) Every balance sheet of a company shall be signed on behalf of the board by two of the directors of the company, or, if there is only one director, by that director, and the auditors’ report shall be attached to the balance sheet, and the report shall be read before the company in general meeting, and shall be open to inspection by any member. *(1929 c.23, s.129).*

(2) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated or published, or if any copy of a balance sheet is issued, circulated or published without having a copy of the auditors’ report attached thereto, the company and every director, manager or other officer of the company who is knowingly a party to the default, are guilty of offences and are each liable on summary conviction to a fine of £50.

#### **Right to receive copies of balance sheets and auditors’ report.**

178. (1) In the case of a company not being a private company— *(1929 c.23, s.130).*

- (a) a copy of every balance sheet, including every document required by law to be annexed thereto, which is to be laid before the company in general meeting, together with a copy of the auditors’ report, shall, not less than seven days before the date of the meeting, be sent to all persons entitled to receive notices of general meetings of the company;
- (b) any member of the company, whether he is or is not entitled to have sent to him copies of the company’s balance sheets, and any holder of debentures of the company shall be entitled to be furnished on demand without charge with a copy of the last balance sheet of the company, including every document required by law to be annexed thereto, together with a copy of the auditors’ report on the balance sheet.

If default is made in complying with paragraph (a) of this subsection, the company and every officer of the company who is in default are guilty of offences and are each liable on summary conviction to a fine at level 1 on the standard scale, and if, where any person makes a demand for a document with which he is by virtue of paragraph (b) of this subsection

entitled to be furnished, default is made in complying with the demand within seven days after the making thereof, the company and every director, manager or other officer of the company who is knowingly a party to the default are guilty of offences and are each liable on summary conviction to a fine of one half of the amount at level 1 on the standard scale for every day during which the default continues, unless it is proved that that person has already made a demand for and been furnished with a copy of the document.

(2) In the case of a company being a private company, any member shall be entitled to be furnished, within seven days after he has made a request in that behalf to the company, with a copy of the balance sheet and auditors' report at a charge not exceeding three pence for every hundred words. If default is made in furnishing such a copy to any member who demands it and tenders to the company the amount of the proper charge therefor, the company and every officer of the company who is in default are guilty of offences and are liable on summary conviction to a default fine.

#### **Certain other companies to publish periodical statement.**

*(1929 c.23, s.131).*

179. (1) Every company, being an insurance company or a deposit, provident or benefit society, shall, before it commences business, and also on the first Monday in February and the first Tuesday in August in every year during which it carries on business, make a statement in the form set out in Schedule 6, or as near thereto as circumstances admit.

(2) A copy of the statement shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.

(3) Every member and every creditor of the company shall be entitled to a copy of the statement, on payment of a sum not exceeding three pence.

(4) If default is made in complying with this section, the company and every director and manager of the company who knowingly and wilfully authorizes or permits the default are guilty of offences and are each liable on summary conviction to a fine of one half of the amount at level 1 on the standard scale for every day during which the default continues.

(5) For the purposes of this Act, a company which carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance company.

#### **Appointment and remuneration of auditors.**

*(s.132).*

180. (1) Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.



(2) A person or firm shall not be qualified for appointment as an auditor of a company, other than a company registered under Part X, unless he is or the firm is registered in Part I, II or III of the Register maintained under the provisions of the Auditors Approval and Registration Act, 1998.

(3) A company which appoints as auditor, a person or firm who or which under subsection (2) is not qualified to be an auditor, shall be guilty of an offence and shall be liable on summary conviction to a fine of at level 5 on the standard scale.

(4) If an appointment of auditors is not made at an annual general meeting, the Registrar may, on the application of any member of the company, appoint an auditor of the company for the current year.

(5) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a member to the company not less than fourteen days before the annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to the members, either by advertisement or in any other mode allowed by the articles, not less than seven days before the annual general meeting:

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

(6) Subject as hereinafter provided, the first auditors of the company may be appointed by the directors at any time before the first annual general meeting, and auditors so appointed shall hold office until that meeting:

Provided that—

- (a) the company may at a general meeting of which notice has been served on the auditors in the same manner as on members of the company remove any such auditors and appoint in their place any other persons being persons who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than seven days before the date of the meeting; and

- (b) if the directors fail to exercise their powers under this subsection, the company in general meeting may appoint the first auditors, and thereupon those powers of the directors shall cease.

(7) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors (if any) may act.

(8) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of an auditor appointed before the first annual general meeting, or of an auditor appointed to fill a casual vacancy, may be fixed by the directors, and that the remuneration of an auditor appointed by the Registrar may be fixed by the Registrar.

**Disqualification for appointment as auditor.**

(1929 c.23, s.133).

181. (1) None of the following persons shall be qualified for appointment as auditor of a company:—

- (a) a director or officer or the secretary of the company;
- (b) except where the company is a private company, a person who is a partner of or in the employment of an officer or the secretary of the company;
- (c) *Repealed*

(2) *Repealed.*

**Auditors' report and right of access to books and right to attend general meetings.**

(s.134).

182. (1) The auditors shall make a report to the members on the accounts examined by them, and on every balance sheet laid before the company in general meeting during their tenure of office, and the report shall state—

- (a) whether or not they have obtained all the information and explanations they have required; and
- (b) whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company.

(2) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors.

(3) The auditors of a company shall be entitled to attend any general meeting of the company at which any accounts which have been examined or reported on by them are to be laid before the company and to make any statement or explanation they desire with respect to the accounts.

*Inspection.*

**Investigation of companies and their affairs, etc.**

183. Schedule 10 shall have effect with respect to the investigation of companies and their affairs, requisition of documents and other matters provided therein.

**Proceedings on report by inspectors.**

184. If from any report made under the provisions of Schedule 10, it appears to the Attorney-General that any person has been guilty of any offence in relation to the company or any other body corporate whose affairs have been investigated by virtue of those provisions and that the case is one in which a prosecution ought to be instituted and, further, that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him, he shall institute proceedings accordingly, and it shall be the duty of all officers and agents of the company or other body corporate past and present (other than the defendant in the proceedings), to give to him all assistance in connection with the prosecution which they are reasonably able to give.

For the purposes of this section, the expression “agents” in relation to a company or other body corporate is deemed to include its bankers and solicitors and any persons employed by it as auditors, whether those persons are or are not officers of the company or other body corporate.

**Power of company to appoint inspectors.**

185.(1) A company may by special resolution appoint inspectors to investigate its affairs. (1929 c.23, s.137).

(2) Inspectors so appointed shall have the same powers and duties as inspectors appointed by the Minister responsible for finance, except that, instead of reporting to him or the Attorney-General they shall report in such manner and to such persons as the company in general meeting may direct.

(3) An officer or agent of the company who refuses to produce to the inspectors any book or document which it is his duty under this section so to produce, or refuses to answer any question which is put to him by the inspectors with respect to the affairs of the company, is liable to be proceeded against in the same manner as if the inspectors had been inspectors appointed by the Minister responsible for finance.

#### **Report of inspectors to be evidence.**

(1929 c.23, s.138).

186. A copy of the report of any inspectors appointed under this Act, authenticated in accordance with section 51 by the company whose affairs they have investigated, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

#### *Directors and Managers.*

#### **Number of directors.**

(s.139).

187. Every company shall have at least two directors except in the case of a private company in which case the company shall have at least one director.

(2) *Omitted.*

#### **Secretaries.**

(1985 c.6, s.283).

188.(1) Every company shall have a secretary.

(2) A sole director of a company shall not also be the secretary of that company.

(3) Anything authorized to be done by or to the secretary may, if there is no secretary for the time being or there is for any other reason no secretary capable of acting, be done by or to any assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by or to a person authorized generally or specifically in that behalf by the directors.

(4) No company shall—

- (a) have as secretary to the company a corporation the sole director of which is a sole director of the company;
- (b) have as sole director of the company a corporation the sole director of which is secretary to the company.

(5) A person shall not be capable of being appointed secretary to a company by the articles, and, in the case of a public company, shall not be named as secretary or proposed secretary of a company in a prospectus issued by or on behalf of the company, or as proposed secretary of an intended public company in a prospectus issued in relation to that intended company, or in a statement in lieu of prospectus delivered to the Registrar by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus, or the delivery of the statement in lieu of prospectus, as the case may be, he has by himself or by his agent authorized in writing signed and delivered to the Registrar for registration a consent in writing to act as such secretary.

#### **Qualifications of company secretaries.**

189. (1) The directors of a company shall take all reasonable steps to secure that the secretary (or each joint secretary) of the company is a person that appears to them to have the knowledge and experience to discharge the functions of secretary of the company. *(1985 c.6, s.286).*

(2) The directors of a public company shall take all reasonable steps to secure that the secretary (or each joint secretary) of the company is a person that appears to them to have the requisite knowledge and experience to discharge the functions of secretary of the company, that is to say—

- (a) for at least three out of the five years preceding his appointment as secretary he held the appointment of secretary in a company other than a private company; or
- (b) he is a person who by reason of previous appointments held appears to the directors to be a person capable of discharging the functions of secretary; or
- (c) he is a barrister, advocate or solicitor admitted in Gibraltar or in any part of the United Kingdom; or
- (d) he is a member of a recognised accounting body or of the Institute of Chartered Secretaries and Administrators of the United Kingdom.

#### **Restrictions on appointment or advertisement of director.**

190. (1) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in a prospectus issued by or on behalf of the company, or as proposed director of an intended company in a prospectus issued in relation to that intended company, or in a statement in lieu of prospectus delivered to the Registrar by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus, or *(1929 c.23, s.140).*

the delivery of the statement in lieu of prospectus, as the case may be, he has by himself or by his agent authorized in writing—

- (a) signed and delivered to the Registrar for registration a consent in writing to act as such director; and
- (b) either—
  - (i) signed the memorandum for a number of shares not less than his qualification (if any); or
  - (ii) taken from the company and paid or agreed to pay for his qualification shares (if any); or
  - (iii) signed and delivered to the Registrar for registration an undertaking in writing to take from the company and pay for his qualification shares (if any); or
  - (iv) made and delivered to the Registrar for registration a statutory declaration to the effect that a number of shares, not less than his qualification (if any) are registered in his name.

(2) Where a person has so signed and delivered an undertaking to take and pay for his qualification shares, he shall, as regards those shares, be in the same position as if he had signed the memorandum for that number of shares.

(3) On the application for registration of the memorandum and articles of a company the applicant shall deliver to the Registrar a list of the persons who have consented to be directors of the company, and, if this list contains the name of any person who has not so consented, the applicant is guilty of an offence and is liable on summary conviction to a fine at level 2 on the standard scale.

- (4) This section shall not apply to—
  - (a) a company not having a share capital; or
  - (b) a private company; or
  - (c) a company which was a private company before becoming a public company; or
  - (d) a prospectus issued by or on behalf of a company after the expiration of one year from the date on which the company was entitled to commence business.

**Qualification of director or manager.**

191. (1) Without prejudice to the restrictions imposed by section 190, *(1929 c.23, s.141)* it shall be the duty of every director who is by the articles of the company required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the articles.

(2) For the purpose of any provision in the articles requiring a director or manager to hold a specified share qualification, the bearer of a share warrant shall not be deemed to be the holder of the shares specified in the warrant.

(3) The office of director of a company shall be vacated if the director does not within two months from the date of his appointment, or within such shorter time as may be fixed by the articles, obtain his qualification, or if after the expiration of the said period or shorter time he ceases at any time to hold his qualification.

(4) A person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his qualification.

(5) If after the expiration of the said period or shorter time any unqualified person acts as a director of the company, he is guilty of an offence and is liable on summary conviction to a fine of £5 for every day between the expiration of the said period or shorter time or the day on which he ceased to be qualified, as the case may be, and the last day on which it is proved that he acted as a director.

**Provisions as to undischarged bankrupts acting as directors or secretary.**

192. (1) A person who, being an undischarged bankrupt, acts as *(1929 c.23, s.142)* director or secretary of, or directly or indirectly takes part in or is concerned in the management of, any company except with the leave of the court by which he was adjudged bankrupt, is guilty of an offence and is liable on conviction on indictment to imprisonment for two years, or on summary conviction to imprisonment for six months and to a fine at level 5 on the standard scale.

(2) The leave of the court for the purposes of this section shall not be given unless notice of intention to apply therefor has been served on the official receiver and it shall be the duty of the official receiver, if he is of opinion that it is contrary to the public interest that any such application should be granted, to attend on the hearing of and oppose the granting of the application.

(3) In this section, “company” includes an unregistered company and a company incorporated outside Gibraltar which has an established place of business within Gibraltar, and “official receiver” means the official receiver appointed under this Act.

**Validity of acts of directors.**

(s.143). 193. The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

**Register of directors.**

(s.144). 194. (1) Every company shall keep at its registered office a register of its directors or managers containing with respect to each of them the following particulars, that is to say:–

- (a) in the case of an individual, his present forename and surname, any former forename or surname, his usual residential address, his nationality, and, if that nationality is not the nationality of origin, his nationality of origin, and his business occupation (if any) or, if he has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships; and
- (b) in the case of a corporation, its corporate name and registered or principal office.

(2) The company shall, within the periods respectively mentioned in this subsection, send to the Registrar a return in the prescribed form containing the particulars specified in such register and a notification in the prescribed form of any change among its directors or in any of the particulars contained in the register. The period within which the return is to be sent is fourteen days from the appointment of the first directors of the company, and the period within which the notification of a change is to be sent is fourteen days from the happening thereof.

(3) The register to be kept under this section shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member of the company without charge and of any other person on payment of five pence, or such less sum as the company may prescribe, for each inspection.

(4) If any inspection required under this section is refused or if default is made in complying with subsection (1) or subsection (2) the company and every officer of the company who is in default are guilty of offences and are liable on summary conviction to default fines.



(5) In the case of any such refusal, the court may by order compel an immediate inspection of the register.

(6) For the purposes of this section, a person in accordance with whose directions or instructions the directors of a company are accustomed to act shall be deemed to be a director and officer of the company.

**Register of secretaries.**

195. (1) Every company shall keep at its registered office a register of its secretary or secretaries containing with respect to each of them the following particulars, that is to say—

- (a) in the case of an individual, his present forename and surname, any former forename or surname, his usual residential address, his nationality, and, if that nationality is not the nationality of origin, his nationality of origin, and his occupation (if any); and
- (b) in the case of a corporation, its corporate name and the address of its registered or principal office.

(2) The company shall, within the periods respectively mentioned in this subsection, send to the Registrar a return in the form prescribed by the Registrar containing the particulars specified in such register and a notification in the form so prescribed of any change among its secretaries or in any of the particulars contained in the register. The period within which the return is to be sent is fourteen days from the appointment of the first secretary of the company, and the period within which the notification of a change is to be sent is fourteen days from the happening thereof.

(3) The register to be kept under this section shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member of the company without charge and of any other person on payment of five pence, or such less sum as the company may prescribe, for each inspection.

(4) If any inspection required under this section is refused or if default is made in complying with subsection (1) or subsection (2), the company and every officer of the company who is in default are guilty of offences and are liable on summary conviction to default fines.

(5) In the case of any such refusal, the court may by order compel an immediate inspection of the register.

(6) The form and notification to be prescribed by the Registrar for the purposes of subsection (2) shall be the form of return required by rules made under section 334 for the purposes of section 194(2), with the addition to that form of the requirement to provide in respect of a secretary the particulars specified in the register required to be kept by this section, and where there is a requirement under the Act that within the same period of time a return be made in respect of—

- (a) a director under section 194; and
- (b) a secretary under this section,

the particulars of both may be sent on the same form, indicating under which section such particulars are sent.

**Particulars with respect to directors in trade catalogues and circulars.**

*(1929 c.23, s.145).*

196.(1) Every company to which this section applies shall, in all trade catalogues, trade circulars, showcards and business letters on or in which the company's name appears and which are issued or sent by the company to any person in any of Her Majesty's dominions, state in legible characters with respect to every director being a corporation, the corporate name, and with respect to every director being an individual, the following particulars:—

- (a) his present forename, or the initials thereof, and present surname;
- (b) any former forenames and surnames;
- (c) his nationality of origin, if his nationality is not the nationality of origin:

Provided that, if special circumstances exist which render it in the opinion of the Minister responsible for finance expedient that such an exemption should be granted, the Minister responsible for finance may by order grant, subject to such conditions as may be specified in the order, exemption from the obligations imposed by this subsection.

(2) This section shall apply to—

- (a) every company registered under this Act;
- (b) every company incorporated outside Gibraltar which has an established place of business within Gibraltar; and
- (c) every company licensed under the Financial Services (Moneylending) Act.

*Act. 1917 No. 15.*

(3) If a company makes default in complying with this section, every director of the company is guilty of an offence and is liable on summary conviction for each offence to a fine of £5, and in the case of a director being a corporation, every director and officer of the corporation, who is knowingly a party to the default, is liable to a like penalty:

Provided that no proceedings shall be instituted under this section except by, or with the consent of, the Attorney-General.

(4) For the purposes of this section—

- (a) *Omitted*
- (b) “director” includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;
- (c) “initials” include a recognised abbreviation of a forename;
- (d) “showcards” mean cards containing or exhibiting articles dealt with, or samples or representations thereof;
- (e) in the case of a peer or person usually known by a title different from his surname, “surname” means that title;
- (f) references to a former forename or surname do not include—
  - (i) in the case of a peer or a person usually known by a British title different from his surname, the name by which he was known previous to the adoption of or succession to the title; or
  - (ii) in the case of natural born British subjects, a former forename or surname where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years; or
  - (iii) in the case of a married woman, the name or surname by which she was known previous to the marriage.

**Limited company may have directors with unlimited liability.**

197. (1) In a limited company the liability of the directors or managers, or of the managing director, may, if so provided by the memorandum, be unlimited. *(1929 c.23, s.146).*

(2) In a limited company in which the liability of a director or manager is unlimited, the directors or managers of the company (if any) and the member who proposes a person for election or appointment to the office of director or manager, shall add to that proposal a statement that the liability of the person holding that office will be unlimited, and the promoters, directors, managers and secretary (if any) of the company, or one of them, shall, before the person accepts the office or acts therein, give him notice in writing that his liability will be unlimited.

(3) A director, manager or proposer who makes default in adding such a statement, or a promoter, director or manager who makes default in giving such a notice, is guilty of an offence and is liable on summary conviction to a fine at level 3 on the standard scale, and is also liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

**Special resolution of limited company making liability of directors unlimited.**

(s.147). 198. (1) A limited company, if so authorized by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors or managers, or of any managing director.

(2) Upon the passing of any such special resolution the provisions thereof shall be as valid as if they had been originally contained in the memorandum.

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

(1929 c.23, s.148). 199. (1) Subject as hereinafter provided, the directors of a company shall, on demand in that behalf made to them in writing by members of the company entitled to not less than one-fourth of the aggregate number of votes to which all the members of the company are together entitled, furnish to all the members of the company within a period of one month from the receipt of the demand a statement, certified as correct or with such qualifications as may be necessary, by the auditors of the company, showing as respects each of the last three preceding years in respect of which the accounts of the company have been made up the aggregate amount received in that year by way of remuneration or other emoluments by persons being directors of the company, whether as such directors or otherwise in connection with the management of the affairs of the company, and there shall, in respect of any such director who is—

- (a) a director of any other company which is in relation to the first-mentioned company a subsidiary company; or

- (b) by virtue of the nomination, whether direct or indirect, of the company a director of any other company,

be included in the said aggregate amount any remuneration or other emoluments received by him for his own use whether as a director of, or otherwise in connection with the management of the affairs of, that other company:

Provided that—

- (i) a demand for a statement under this section shall be of no effect if the company within one month after the date on which the demand is made resolve that the statement shall not be furnished; and
- (ii) it shall be sufficient to state the total aggregate of all sums paid to or other emoluments received by all the directors in each year without specifying the amount received by any individual.

(2) In computing for the purpose of this section the amount of any remuneration or emoluments received by any director, the amount actually received by him shall, if the company has paid on his behalf any sum by way of income tax (including super-tax and sur-tax) in respect of the remuneration or emoluments, be increased by the amount of the sum so paid.

(3) A director who fails to comply with the requirements of this section, is guilty of an offence and is liable on summary conviction to a fine at level 2 on the standard scale.

(4) In this section, “emoluments” include fees, percentages and other payments made or consideration given, directly or indirectly, to a director as such, and the money value of any allowances or perquisites belonging to his office.

**Disclosure by directors of interest in contracts.**

200. (1) Subject to the provisions of this section, it shall be the duty of a director of a company who is in any way, whether directly, or indirectly, interested in a contract or proposed contract with the company to declare the nature of his interest at a meeting of the directors of the company. *(1929 c.23, s.149).*

(2) In the case of a proposed contract the declaration required by this section to be made by a director shall be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration, or if the director was not at the date of that meeting

interested in the proposed contract, at the next meeting of the directors held after he became so interested, and in a case where the director becomes interested in a contract after it is made, the said declaration shall be made at the first meeting of the directors held after the director becomes so interested.

(3) For the purpose of this section, a general notice given to the directors of a company by a director to the effect that he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm shall be deemed to be a sufficient declaration of interest in relation to any contract so made.

(4) A director who fails to comply with the provisions of this section is guilty of an offence and is liable on summary conviction to a fine at level 3 on the standard scale.

(5) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting directors of a company from having any interest in contracts with the company.

**Contracts with sole members who are directors.**

201.(1) Subject to the provisions of subsection (2) below, where a private company limited by shares or by guarantee having only one member enters into a contract with the sole member of the company and the sole member is also a director of the company, the company shall, unless the contract is in writing, ensure that the terms of the contract are either set out in a written memorandum or are recorded in the minutes of the first meeting of the directors of the company following the making of the contract.

(2) Subsection (1) shall not apply to contracts entered into in the ordinary course of the company's business.

(3) Subject to subsection (4) below, nothing in this section shall be construed as excluding the operation of any other enactment or rule of law applying to contracts between a company and a director of that company.

(4) Any failure to comply with subsection (1) with respect to a contract shall not affect the validity of that contract.

(5) If a company fails to comply with subsection (1), the company and every officer of it who is in default shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

**Provision as to payments received by directors for loss of office or on retirement.**

202. (1) It is hereby declared that it is not lawful in connection with the transfer of the whole or any part of the undertaking or property of a company for any payment to be made to any director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, unless particulars with respect to the proposed payment, including the amount thereof, have been disclosed to the members of the company and the proposal approved by the company. *(1929 c.23, s.150).*

(2) Where a payment which is hereby declared to be illegal is made to a director of the company, the amount received shall be deemed to have been received by him in trust for the company.

(3) Where a payment is to be made to a director of a company in connection with the transfer to any persons, as a result of an offer made to the general body of shareholders, of all or any of the shares in the company, it shall be the duty of that director to take all reasonable steps to secure that particulars with respect to the proposed payment, including the amount thereof, shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(4) Any such director who fails to take reasonable steps as aforesaid, or any person who has been properly required by any such director to include the said particulars in or send them with any such notice and who fails so to do, is guilty of an offence and is liable on summary conviction to a fine at level 1 on the standard scale, and if the requirements of subsection (3) are not complied with in relation to any such payment as is mentioned in that subsection, any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any persons who have sold their shares as a result of the offer made.

(5) If in connection with any such transfer as aforesaid the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares or any valuable consideration is given to any such director, the excess or the money value of the consideration, as the case may be, shall, for the purposes of this section, be deemed to have been a payment made to him by way of compensation for loss of office or as consideration for or in connection with his retirement from office.

(6) Nothing in this section shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any such payments as are mentioned in this section or with respect to any other like payments made or to be made to the directors of a company.

**Provisions as to assignment of office by directors.**

*(1929 c.23, s.151).*

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

*Avoidance of Provisions in Articles or Contracts relieving Officers from Liability.*

**Provisions as to liability of officers and auditors.**

(1929 c.23, s.152).

204. Subject as hereinafter provided, any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any director, manager or officer of the company, or any person (whether an officer of the company or not) employed by the company as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company, shall be void:

Provided that notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid, indemnify any such director, manager, officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under section 378 in which relief is granted to him by the court.

*Arrangements and Reconstructions.*

**Power to compromise with creditors and members.**

(s.153).

205. (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the court may, on the application in a summary way of the company or of any creditor or member of the company, or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the court directs.

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the court, be binding on all the creditors or the class



of creditors, or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) An order made under subsection (2) shall have no effect until an office copy of the order has been delivered to the Registrar for registration, and a copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made, or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

(4) If a company makes default in complying with subsection (3), the company and every officer of the company who is in default are guilty of offences and are each liable on summary conviction to a fine of one tenth of the amount at level 1 on the standard scale for each copy in respect of which default is made.

(5) In this section, “company” means any company liable to be wound up under this Act, and “arrangement” includes a re-organisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods.

#### **Provisions for facilitating reconstruction and amalgamation of companies.**

206. (1) Where an application is made to the court under section 205 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as “a transferor company”) is to be transferred to another company (in this section referred to as “the transferee company”), the court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters:— *(1929 c.23, s.154).*

- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;
- (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the compromise or arrangement are to

be allotted or appropriated by that company to or for any person;

- (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
- (d) the dissolution, without winding up, of any transferor company;
- (e) the provision to be made for any persons, who within such time and in such manner as the court directs, dissent from the compromise or arrangement;
- (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(3) Where an order is made under this section, every company in relation to which the order is made shall cause an office copy thereof to be delivered to the Registrar for registration within seven days after the making of the order, and if default is made in complying with this subsection, the company and every officer of the company who is in default are guilty of offences and are liable on summary conviction to default fines.

(4) In this section, “property” includes property, rights and powers of every description, and “liabilities” include duties.

(5) Notwithstanding the provisions of section 205(5) “company” in this section does not include any company other than a company within the meaning of this Act.

#### **Application of sections 205 and 206 to mergers and divisions.**

207. (1) Where—

- (a) a compromise or arrangement is proposed between a public company and any such persons as are mentioned in section 205 for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies;

- (b) the circumstances are as specified in any of the Cases described in subsection (2), and
- (c) the consideration for the transfer or each of the transfers envisaged in the Case in question is to be shares in the transferee company or any of the transferee companies receivable by members of the transferor company or transferor companies, with or without any cash payment to members,

sections 205 and 206 shall, as regards that compromise or arrangement, have effect subject to the provisions of this section and Schedule 16.

- (2) The Cases referred to in subsection (1) are as follows:

*Case 1*

Where under the scheme the undertaking, property and liabilities of the company in respect of which the compromise or arrangement in question is proposed are to be transferred to another public company, other than one formed for the purpose of, or in connection with, the scheme.

*Case 2*

Where under the scheme the undertaking, property and liabilities of each of two or more public companies concerned in the scheme, including the company in respect of which the compromise or arrangement in question is proposed, are to be transferred to a company (whether or not a public company) formed for the purpose of, or in connection with, the scheme.

*Case 3*

Where under the scheme the undertaking, property and liabilities of the company in respect of which the compromise or arrangement in question is proposed are to be divided among and transferred to two or more companies each of which is either—

- (a) a public company; or
- (b) a company (whether or not a public company) formed for the purposes of, or in connection with, the scheme.

(3) Before sanctioning any compromise or arrangement under section 205 the court may on the application of any pre-existing transferee company or any member or creditor of it or, an administration order being in force in relation to the company, the administrator, order a meeting of the members of the company or any class of them or of the creditors of the company or any class of them to be summoned in such manner as the court directs.

(4) This section does not apply where the company in respect of which the compromise or arrangement is proposed is being wound up.

(5) This section does not apply to compromises or arrangements in respect of which an application has been made to the court for an order under section 205(1) before the date this Act comes into force.

(6) In this section and Schedule 16–

“transferor company” means a company whose undertaking, property and liabilities are to be transferred by means of a transfer envisaged in any of the Cases specified in subsection (2);

“transferee company” means a company to which a transfer envisaged in any of those Cases is to be made;

“pre-existing transferee company” means a transferee company other than one formed for the purpose of, or in connection with, the scheme;

“compromise or arrangement” means a compromise or arrangement to which subsection (1) applies;

“the scheme” means the scheme mentioned in subsection (1)(a);

“Case 1 Scheme”, “Case 2 Scheme” and “Case 3 Scheme” means a scheme of the kind described in Cases 1, 2 and 3 of subsection (2) respectively;

“property” and “liabilities” have the same meaning as in section 206.

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

*(1929 c.23, s.155).*

208. (1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as “the transferor company”) to another company, whether a company within the meaning of this Act or not (in this section referred to as “the transferee company”) has within four months after the making of the offer in that behalf by the transferee company been approved by the holders of not less than nine-tenths in value of the shares affected, the transferee company may, at any time within two months after the expiration of such four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and where such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the court thinks fit to order otherwise, be entitled and bound to acquire those

shares on the terms on which under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee company.

(2) Where a notice has been given by the transferee company under this section and the court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given, or, if an application to the court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.

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

(4) In this section, “dissenting shareholder” includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

## **PART V.**

### **DISTRIBUTION OF PROFITS AND ASSETS.**

#### **Certain distributions prohibited.**

209. (1) A public company may not make a distribution except out of funds available for the purpose.

(2) In this Part “distribution” means every description of distribution of a company’s assets to its members, whether by cash or otherwise, except distribution by way of—

- (a) an issue of shares as fully or partly paid bonus shares;
- (b) the redemption of any of the company’s own shares out of capital (including the proceeds of any issue of shares) or out of unrealised profits;
- (c) the reduction of share capital by extinguishing or reducing the liability of any of the members of any of the company’s shares

in respect of share capital not paid up, or by paying off paid-up share capital; and

- (d) a distribution of assets to members of the company on its winding up.

(3) For the purposes of this Part, a public company's profits available for distribution are its accumulated realised profits, so far as not previously utilised by distribution or capitalisation, less its accumulated realised losses, so far as not previously written off in a reduction or reorganisation of capital duly made.

**Further provisions as to distributions.**

210.(1) A public company may only make a distribution at any time—

- (a) if at that time the amount of its net assets is not less than the total of its called-up share capital and its undistributable reserves; and
- (b) if, and to the extent that, the distribution does not reduce the amount of those assets to less than that total.

(2) A public company may not include any uncalled share capital as an asset in any accounts relevant for the purposes of this section.

(3) (a) Subject to the following provisions of this section, an investment company may also make a distribution at any time out of its accumulated realised revenue profits, so far as not previously utilised by distribution or capitalisation, less its accumulated revenue losses (whether realised or unrealised), so far as not previously written off in a reduction or reorganisation of capital duly made—

- (i) if at that time the amount of its assets is at least equal to one and a half times the total of its liabilities; and
  - (ii) if, and to the extent that, the distribution does not reduce that amount to less than one and a half times that total.
- (b) In subsection (3)(a) “liabilities” includes any provision except to the extent that it is taken into account for the purposes of that subsection in calculating the value of any assets of the company in question.
  - (c) In this section “investment company” means a public company which has given notice (which has not been revoked) to the Registrar of its intention to carry on business as an investment

company (the “requisite notice”) and has since the date of that notice complied with the following requirements–

- (i) that the business of the company consists of investing its funds mainly in securities, with the aim of spreading investment risk and giving members of the company the benefit of the results of the management of its funds;
  - (ii) that none of the company’s holdings in companies (other than companies which are for the time being investment companies) represents more than 15 per cent by value of the investing company’s investment;
  - (iii) that the distribution of the company’s capital profits is prohibited by its memorandum or articles of association; and
  - (iv) that the company has not retained, otherwise than in compliance with this Part, in respect of any accounting reference period more than 15 per cent of the income it derives from securities.
- (d) An investment company may not make a distribution by virtue of subsection (3)(a) unless during the period beginning with the first day of the accounting reference period immediately preceding the accounting reference period in which the proposed distribution is to be made or, where the distribution is proposed to be made during the company’s first accounting reference period, the first day of that period and ending with the date of the distribution, it has not–
- (i) distributed any of its capital profits; or
  - (ii) applied any unrealised profits or any capital profits (realised or unrealised) in paying up debentures or any amounts unpaid on any of its issued shares.
- (e) An investment company may not make a distribution by virtue of subsection (3)(a) unless the company gave the requisite notice before the beginning of the period referred to in subsection (3)(d).
- (f) A notice by a company to the Registrar under subsection (3)(c) may be revoked at any time by the company on giving notice to the Registrar that it no longer wishes to be an investment company within the meaning of this section, and, on giving that notice, the company shall cease to be such an investment company.

(4) (a) Where an insurance company carries on a long term business, any amount included in the relevant part of the balance sheet is to that part of the balance sheet which represents a surplus in the fund or funds maintained by it in respect of that business and which has not been allocated to policy holders in accordance with section 86 of the Insurance Companies Act and any deficit in that fund or those funds shall be respectively treated for the purposes of this Part as a realised profit and a realised loss, and, subject to this, any profits or loss arising in that business will be left out of account for those purposes.

(b) In paragraph (a)–

- (i) the reference to a surplus in any fund of an insurance company is a reference to an excess of the assets representing that fund or those funds over the liabilities of the company attributable to its long term business, as shown by an actuarial investigation;
- (ii) the reference to the relevant part of the balance sheet is to that part of the balance sheet which represents Liabilities item A.V (profit and loss account) in the balance sheet format set out in section B of Chapter 1 of Schedule 1 to the Insurance Companies (Accounts Directive) Regulations 1997; and
- (iii) the reference to a deficit in any such fund or funds is a reference to the excess of those liabilities over those assets, as so shown.

(5) In this Part–

“actuarial investigation” means an investigation to which section 78 of the Insurance Companies Act, 1987 (periodic actuarial investigation of insurer with long term business) applies or which is made in pursuance of a requirement imposed by section 82 of that Act (power for Commissioner to order actuarial investigation);

“insurance company” means an insurance company to which that Act applies;

“long term business” has the same meaning as in that Act;

“relevant capitalisation” is any capitalisation except a transfer of profits of the company to its capital redemption reserve; and



“undistributable reserves” means—

- (a) the share premium account;
- (b) the capital redemption reserve;
- (c) the amount by which the company’s unrealised profits, so far as not previously utilised by a relevant capitalisation exceed its accumulated unrealised losses (so far as not previously written off in a reduction or reorganisation of capital duly made); and
- (d) any other reserve which the company is prohibited from distributing by any provision of this Act, or by its memorandum or articles.

**Consequences of unlawful distribution.**

211. (1) Where a distribution, or part of one, made by a public company to one of its members is made in contravention of this Part and, at the time of the distribution, that member knows or has reasonable grounds to believe that it is so made, he is liable to repay it (or that part of it as the case may be) to the company or (in the case of a distribution made otherwise than in cash) to pay the company a sum equal to the value of the distribution or part at that time.

(2) Subsection (1) is without prejudice to any obligation imposed apart from this section on a member of a company to repay a distribution unlawfully made to him but this section does not apply in relation to—

- (a) financial assistance given by a company in contravention of section 72; or
- (b) any payment made by the company in respect of the redemption by the company of shares in itself.

**Amount of distribution which may be made.**

212. (1) The amount of a distribution which may be made without contravening section 209 or 210 shall be determined by reference to the following items as stated in the company’s last annual accounts or interim accounts—

- (a) profits, losses, assets and liabilities;
- (b) provisions for depreciation, diminution in value of assets and any amounts written off by way of such provisions; and
- (c) share capital and reserves (including undistributable reserves).

(2) In relation to a proposed distribution by a public company the interim accounts must have been properly prepared or have been so prepared subject only to matters which are not material, for determining, by reference to items mentioned in subsection (1), whether the distribution would contravene section 209 or 210.

(3) In this section—

“interim accounts” means those accounts necessary to enable a reasonable judgement to be made as to the amounts mentioned in paragraphs (a) to (c) of subsection (1) where a distribution would contravene section 209 or 210 if reference were made only to the company’s last annual accounts;

“properly prepared” in relation to interim accounts means that the accounts must comply with any requirements imposed by or under this Act and any balance sheet comprised in the accounts must have been signed in accordance with section 177.

## **PART VI.** **WINDING UP.**

### **(A) PRELIMINARY.**

#### *Modes of Winding up.*

#### **Modes of winding up.**

*(1929 c.23, s.156).*

213. (1) The winding up of a company may be either—

- (a) by the court; or
- (b) voluntary; or
- (c) subject to the supervision of the court.

(2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.

#### *Contributories.*

#### **Liability as contributories of present and past members.**

*(s.157).*

214. (1) In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities, and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to the provisions of subsection (2) and the following qualifications:—

- (a) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up;
- (b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;
- (c) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;
- (d) in the case of a company limited by shares no contribution shall be required from any member exceeding the amount (if any ) unpaid on the shares in respect of which he is liable as a present or past member;
- (e) in the case of a company limited by guarantee, no contribution shall, subject to the provisions of subsection (3), be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;
- (f) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;
- (g) a sum due to any member of a company, in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(2) In the winding up of a limited company, any director or manager, whether past or present, whose liability is, under the provisions of this Act, unlimited, shall, in addition to his liability (if any) to contribute as an

ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company:

Provided that—

- (a) a past director or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up;
- (b) a past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;
- (c) subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company, and the costs, charges and expenses of the winding up.

(3) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

#### **Definition of contributory.**

*(1929 c.23, s.158).*

215. The term “contributory” means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of the persons who are to be deemed contributories, includes any person alleged to be a contributory.

#### **Nature of liability of contributory.**

*(s.159).*

216. The liability of a contributory shall create a debt of the nature of a specialty debt accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

#### **Contributories in cases of death of member.**

*(s.160).*

217. (1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives shall be liable in due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

(2) If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory, and for compelling payment thereof of the money due.

**Contributories in case of bankruptcy of member.**

218. If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories— *(1929 c.23, s.161).*

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

**(B) WINDING UP BY THE COURT.**

*Jurisdiction.*

**Jurisdiction.**

219. The Supreme Court shall have jurisdiction to wind up any company registered in Gibraltar. *(s.163).*

*Cases in which Company may be Wound up by Court.*

**Circumstances in which company may be wound up by court.**

220. A company may be wound up by the court if— *(s.168).*

- (a) the company has by special resolution resolved that the company be wound up by the court;
- (b) default is made in delivering the statutory report to the Registrar or in holding the statutory meeting;
- (c) the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;

- (d) the number of members is reduced, in the case of a private company, below one, or, in the case of any other company, below seven;
- (e) the company is unable to pay its debts;
- (f) the court is of opinion that it is just and equitable that the company should be wound up.

**Definition of inability to pay debts.**

(1929 c.23, s.169).

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

- (a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding £500 then due, has served on the company by leaving it at the registered office of the company, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or
- (b) if execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
- (c) if it is proved to the satisfaction of the court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.

*Petition for Winding up and Effects Thereof.*

**Provisions as to applications for winding up.**

(s.170).

222. (1) An application to the court for the winding up of a company shall be by petition, presented subject to the provisions of this section either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately:

Provided that—

- (a) a contributory shall not be entitled to present a winding-up petition unless—

- (i) either the number of members is reduced, in the case of a private company, below one, or, in the case of any other company, below seven; or
  - (ii) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder; and
- (b) a winding-up petition shall not, if the ground of the petition is default in delivering the statutory report to the Registrar or in holding the statutory meeting, be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held; and
- (c) the court shall not give a hearing to a winding-up petition presented by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable and until a prima facie case for winding up has been established to the satisfaction of the court.

(2) Where a company is being wound up voluntarily or subject to supervision, a winding-up petition may be presented by an official receiver of the court as well as by any other person authorized in that behalf under the other provisions of this section, but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

(3) Where under the provisions of this Part any person as being the husband of a female contributory is himself a contributory, and a share has during the whole or any part of the six months mentioned in proviso (a)(ii) to subsection (1) of this section been held by or registered in the name of the wife, or by or in the name of a trustee for the wife or for the husband, the share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the husband.

#### **Powers of court on hearing petition.**

223. (1) On hearing a winding-up petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it thinks fit, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets. *(1929 c.23, s.171).*

(2) Where the petition is presented on the ground of default in delivering the statutory report to the Registrar or in holding the statutory meeting, the court may–

- (a) instead of making a winding-up order, direct that the statutory report shall be delivered or that a meeting shall be held; and
- (b) order the costs to be paid by any persons who, in the opinion of the court, are responsible for the default.

**Power to stay or restrain proceedings against company.**

(s.172). 224. At any time after the presentation of a winding-up petition, and before a winding-up order has been made, the company, or any creditor or contributory, may–

- (a) where any action or proceeding against the company is pending in the court apply for a stay of proceedings therein; and
- (b) where any other action or proceeding is pending against the company, apply to the court to restrain further proceedings in the action or proceeding,

and the court may stay or restrain the proceedings accordingly on such terms as it thinks fit.

**Avoidance of dispositions of property after commencement of winding up.**

(1929 c.23, s.173). 225. In a winding up by the court, any disposition of the property of the company, including things in action, and any transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding up, shall, unless the court otherwise orders, be void.

**Avoidance of attachments.**

(s.174). 226. Where any company is being wound up by the court, any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.

*Commencement of Winding Up.*

**Commencement of winding up by the court.**



227. (1) Where before the presentation of a petition for the winding up of a company by the court a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the court, on proof of fraud or mistake, thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken. (s.175).

(2) In any other case, the winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up.

*Consequences of Winding-up Order.*

**Copy of order to be forwarded to Registrar.**

228. On the making of a winding-up order, a copy of the order must forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute thereof in his books relating to the company. (s.176).

**Actions stayed on winding-up order.**

229. When a winding-up order has been made, or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court, and subject to such terms as the court may impose. (1929 c.23, s.177).

**Effect of winding-up order.**

230. An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory. (s.178).

*Official Receiver in Winding Up.*

**Appointment of official receiver for winding up purposes.**

231. (1) For the purposes of this Act so far as it relates to the winding up of companies by the court, the term “official receiver” means an officer appointed for the purpose by the Minister responsible for finance. (s.179).

(2) Such officer shall for the purpose of his duties under this Act be styled “the official receiver” and shall give security for the due performance of his duties in such sum and in such manner as the Minister responsible for finance may think fit.

(3) Notwithstanding anything to the contrary in this Act contained, the court shall, at any time after the presentation of a petition for the winding up of a company and upon the application of the official receiver, appoint a fit and proper person as liquidator and any such liquidator so appointed shall in addition to his duties as liquidator, be deemed to be, and to have all the duties of, the official receiver in the winding up of such company for all the purposes of this Act.

(4) Where a person is appointed under subsection (3) he shall not be capable of acting as official receiver until he has given such security as may be specified in the notice of appointment.

(5) Where an appointment is made under subsection (3) notice of the appointment specifying the name and address of the liquidator so appointed shall be—

- (a) filed in the court;
- (b) served upon the company at its registered office;  
and
- (c) published in the Gazette.

**Statement of company's affairs to be submitted to official receiver.**

*(1929 c.23, s.181).*

232. (1) Where the court has made a winding-up order or appointed a provisional liquidator, there shall, unless the court thinks fit to order otherwise and so orders, be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts and liabilities, the names, residences and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the secretary or is the chief officer of the company, or by such of the persons hereinafter in this subsection mentioned as the official receiver, subject to the direction of the court, may require to submit and verify the statement, that is to say, persons—

- (a) who are or have been directors or officers of the company;
- (b) who have taken part in the formation of the company at any time within one year before the relevant date;

- (c) who are in the employment of the company, or have been in the employment of the company within the said year, and are, in the opinion of the official receiver, capable of giving the information required;
- (d) who are or have been within the said year officers of or in the employment of a company, which is, or within the said year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within fourteen days from the relevant date, or within such extended time as the official receiver or the court may for special reasons appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official receiver or provisional liquidator, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official receiver may consider reasonable, subject to an appeal to the court.

(5) A person who, without reasonable excuse, makes default in complying with the requirements of this section, is guilty of an offence and is liable on summary conviction to a fine of £10 for every day during which the default continues.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.

(7) A person untruthfully so stating himself to be a creditor or contributory is guilty of a contempt of court and, on the application of the liquidator or of the official receiver, is punishable accordingly.

(8) In this section, "the relevant date" means in a case where a provisional liquidator is appointed, the date of his appointment, and, in a case where no such appointment is made, the date of the winding-up order.

#### **Report by official receiver.**

233. (1) In a case where a winding-up order is made, the official receiver shall, as soon as practicable after receipt of the statement to be submitted under section 232, or, in a case where the court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the court— *(1929 c.23, s.182).*

- (a) as to the amount of capital issued, subscribed and paid up, and the estimated amount of assets and liabilities; and
- (b) if the company has failed, as to the causes of the failure; and
- (c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company, or the conduct of the business thereof.

(2) The official receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.

(3) If the official receiver states in any such further report that in his opinion a fraud has been committed, the court shall have the further powers provided in sections 263 and 264.

#### *Liquidators.*

#### **Power of court to appoint liquidators.**

*(1929 c.23, s.183).*

234. For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the court may impose, the court may appoint a liquidator or liquidators.

#### **Appointment and powers of provisional liquidator.**

*(s.184).*

235. (1) Subject to the provisions of this section, the court may appoint a liquidator provisionally at any time after the presentation of a winding-up petition.

(2) The appointment of a provisional liquidator may be made at any time before the making of a winding-up order, and either the official receiver or any other fit person may be appointed.

(3) Where a liquidator is provisionally appointed by the court, the court may limit and restrict his powers by the order appointing him.

#### **Appointment and style of liquidators.**

*(s.185).*

236. The following provisions with respect to liquidators shall have effect on a winding-up order being made:—

- (a) the official receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such;
- (b) the official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the court for appointing a liquidator in the place of the official receiver;
- (c) the court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories, the court shall decide the difference and make such order thereon as the court may think fit;
- (d) in a case where a liquidator is not appointed by the court, the official receiver shall be the liquidator of the company;
- (e) the official receiver shall by virtue of his office be the liquidator during any vacancy;
- (f) a liquidator shall be described, where a person other than the official receiver is liquidator, by the style of "the liquidator," and, where the official receiver is liquidator, by the style of "the official receiver and liquidator," of the particular company in respect of which he is appointed, and not by his individual name.

**Provisions where person other than official receiver is appointed liquidator.**

237. Where in the winding up of a company by the court a person other than the official receiver is appointed liquidator, that person— *(1929 c.23, s.186).*

- (a) shall not be capable of acting as liquidator until he has notified his appointment to the Registrar and given security in the prescribed manner to the satisfaction of the court;
- (b) shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties under this Act.

**General provisions as to liquidators.**

(1929 c.23, s.188).

238. (1) A liquidator appointed by the court may resign or, on cause shown, be removed by the court.

(2) Where a person other than the official receiver is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the court may direct, and, if more such persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportions as the court directs.

(3) A vacancy in the office of a liquidator appointed by the court shall be filled by the court.

(4) If more than one liquidator is appointed by the court, the court shall declare whether any act by this Act required or authorized to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(5) Subject to the provisions of section 318, the acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

#### **Custody of company's property.**

(s.189).

239. Where a winding-up order has been made or where a provisional liquidator has been appointed, the liquidator, or the provisional liquidator, as the case may be, shall take into his custody, or under his control, all the property and things in action to which the company is or appears to be entitled.

#### **Vesting of property of company in liquidator.**

(s.190).

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

#### **Powers of liquidator.**

(1929 c.23, s.191).

241. (1) The liquidator in a winding up by the court shall have power with the sanction either of the court or of the committee of inspection—

- (a) to bring or defend any action or other legal proceeding in the name and on behalf of the company;

- (b) to carry on the business of the company, so far as may be necessary for the beneficial winding up thereof;
  - (c) to appoint a solicitor to assist him in the performance of his duties;
  - (d) to pay any classes of creditors in full;
  - (e) to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;
  - (f) to compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.
- (2) The liquidator in a winding up by the court shall have power—
- (a) to sell the real and personal property and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;
  - (b) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to seal or sign documents as provided for in section 47(1) using, if it exists, the company's seal or being deemed to be an authorized signatory;
  - (c) to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory, for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and ratably with the other separate creditors;

- (d) to draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business;
- (e) to raise on the security of the assets of the company, any money requisite;
- (f) to take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself;
- (g) to appoint an agent to do any business which the liquidator is unable to do himself;
- (h) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(3) The exercise by the liquidator in a winding up by the court of the powers conferred by this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

**Exercise and control of liquidator's powers.**

*(1929 c.23, s.192).*

242. (1) Subject to the provisions of this Act, the liquidator of a company which is being wound up by the court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

*Act. 1998 No. 8.*

(2) In the case of the liquidation of an institution licensed under the Banking Act in default within the meaning of the Deposit Guarantee Scheme Act, 1997, the liquidator shall—

- (a) distribute to the Gibraltar Deposit Guarantee Board any sums available for distribution to any creditor who had a qualifying deposit in the institution in default and whose rights are



subrogated to the Board, irrespective of whether the Board has pursued those rights; and

- (b) comply with all requests for information about the institution made by the Gibraltar Deposit Guarantee Board, even if that information would normally remain confidential to the liquidator or one or more other creditors.

(3) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing a liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories as the case may be.

(4) The liquidator may apply to the court in manner prescribed for directions in relation to any particular matter arising under the winding up.

(5) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(6) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court, and the court may confirm, reverse or modify the act or decision complained of, and make such order in the premises as it thinks just.

#### **Books to be kept by liquidator.**

243. Every liquidator of a company which is being wound up by the court shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the court, personally or by his agent inspect any such books. *(1929 c.23, s.193).*

#### **Payments of liquidator into Savings Bank.**

244. (1) Every liquidator of a company shall, in such manner and at such times as the court may direct, pay the money received by him into the Government Savings Bank to the credit of a separate account to be opened and kept by the liquidator in his official name and any interest receivable in respect of the account shall be part of the assets of the company, and the Savings Bank shall open and keep such account. *(s.194).*

(2) If any such liquidator at any time retains for more than ten days before it is paid into the separate account mentioned in subsection (1) a sum exceeding £200, or such other amount as the court in any particular case

authorizes him to retain, then, unless he explains the retention to the satisfaction of the court, he shall pay interest on the amount so retained in excess at the rate of twenty per cent per annum, and shall be liable to disallowance of all or such part of his remuneration as the court may think just, and to be removed from his office by the court, and shall be liable to pay any expenses occasioned by reason of his default.

(3) A liquidator of a company shall not pay any sums received by him as liquidator into his private banking account.

#### **Audit of liquidator's accounts.**

*(1929 c.23, s.195).*

245. (1) Every liquidator of a company shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the court an account of his receipts and payments as liquidator.

(2) The account shall be in a prescribed form, shall be made in duplicate and shall be verified by a statutory declaration in the prescribed form.

(3) The accounts so sent shall be audited by the Principal Auditor and for the purpose of the audit the liquidator shall furnish the Principal Auditor with such vouchers and information as he may require, and the Principal Auditor may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4) When the account has been audited, one copy thereof shall be filed with the court, and the other copy shall be returned to the liquidator, and each copy shall be open to the inspection of any creditor, or of any person interested.

(5) The liquidator shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and contributory.

#### **Release of liquidators.**

*(s.197).*

246. (1) When the liquidator has realised all the property of the company, or so much thereof as can, in his opinion, be realized without needlessly protracting the liquidation, and has distributed a final dividend (if any) to the creditors, and adjusted the rights of the contributories among themselves, and made a final return (if any) to the contributories, or has resigned, or has been removed from his office, the court shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the court, shall take into consideration the report, and any objection which may be urged by any creditor or contributory, or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly.

(2) Where the release of a liquidator is withheld, the court may, on the application of any creditor or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(3) An order of the court releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

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

*Committees of Inspection.*

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

247. (1) When a winding-up order has been made by the court, it shall be the business of the separate meetings of creditors and contributories summoned for the purpose of determining whether or not an application should be made to the court for appointing a liquidator in place of the official receiver, to determine further whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator and who are to be members of the committee if appointed. *(1929 c.23, s.198).*

(2) The court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories the court shall decide the difference and make such order thereon as the court may think fit.

**Constitution and proceedings of committee of inspection.**

248. (1) A committee of inspection appointed in pursuance of this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of difference, may be determined by the court. *(s.199).*

(2) A person nominated by the Gibraltar Deposit Guarantee Board shall be entitled to a seat on any committee of inspection or creditors' committee, and to receive any notice addressed to creditors, in respect of an institution

licensed under the Banking Act in default within the meaning of the Deposit Guarantee Scheme Act, 1997.

(3) The committee shall meet at such times as they from time to time appoint, and failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(4) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present.

(5) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(6) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent creditors or contributories, as the case may be, his office shall thereupon become vacant.

(7) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories, of which seven days' notice has been given, stating the object of the meeting.

(8) On a vacancy occurring in the committee the liquidator shall, unless the court otherwise orders, forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy.

(9) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

#### **Powers of court where no committee of inspection.**

*(1929 c.23, s.200).*

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

#### *General Powers of Court in Case of Winding Up by Court.*

#### **Power to stay winding up.**

*(1929 c.23, s.201).*

250. (1) The court may at any time after an order for winding up, on the application either of the liquidator, or the official receiver, or any creditor or contributory, and on proof to the satisfaction of the court that all

proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

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

#### **Settlement of list of contributories and application of assets.**

251. (1) As soon as may be after making a winding-up order, the court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities: *(s.203).*

Provided that, where it appears to the court that it will not be necessary to make calls on or adjust the rights of contributories, the court may dispense with the settlement of a list of contributories.

(2) In settling the list of contributories, the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

#### **Delivery of property to liquidator.**

252. The court may, at any time after making a winding-up order, require any contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer forthwith, or within such time as the court directs, to the liquidator any money, property, or books and papers in his hands to which the company is prima facie entitled. *(s.204).*

#### **Payment of debts due by contributory to company and extent to which set-off allowed.**

253. (1) The court may, at any time after making a winding-up order, make an order on any contributory for the time being on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act. *(1929 c.23, s.205).*

(2) The court in making such an order may—

- (a) in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and
- (b) in the case of a limited company, make to any director or manager whose liability is unlimited or to his estate the like allowance.

(3) In the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

**Power of court to make calls.**

*(s.206).*

254. (1) The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves and make an order for payment of any calls so made.

(2) In making a call the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

**Payment into bank of moneys due to company.**

*(1929 c.23, s.207).*

255. (1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into a bank to be approved of by the court to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) All moneys and securities paid or delivered into such bank in the event of a winding up by the court shall be subject in all respects to the orders of the court.

**Order on contributory conclusive evidence.**

*(s.208).*

256. (1) An order made by the court on a contributory shall, subject to any right of appeal, be conclusive evidence that the money (if any) thereby appearing to be due or ordered to be paid is due.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings.

#### **Appointment of special manager.**

257. (1) Where the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court, and the court may on such application, appoint a special manager of the estate or business to act during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court. (s.209).

(2) The special manager shall give such security and account in such manner as the court may direct.

(3) The special manager shall receive such remuneration as may be fixed by the court.

#### **Exclusion of creditors not proving in time.**

258. The court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved. (s.210).

#### **Adjustment of rights of contributories.**

259. The court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto. (1929 c.23, s.211).

#### **Inspection of books by creditors and contributories.**

260. The court may, at any time after making a winding-up order, make such order for inspection of the books and papers of the company by creditors and contributories as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise. (s.212).

#### **Power to order costs of winding up to be paid out of assets.**

261. The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, (s.213).

charges and expenses incurred in the winding up in such order of priority as the court thinks just.

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

(s.214).

262. (1) The court may, at any time after the appointment of a provisional liquidator or the making of a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company.

(2) The court may examine him on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The court may require him to produce any books and papers in his custody or power relating to the company, but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having a lawful impediment (made known to the court at the time of its sitting, and allowed by it), the court may cause him to be apprehended and brought before the court for examination.

**Power to order public examination of promoters and directors.**

(1929 c.23, s.216).

263. (1) Where an order has been made for winding up a company by the court, and the official receiver has made a further report under this Act stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the court may, after consideration of the report, direct that that person, director or officer shall attend before the court on a day appointed by the court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director or officer thereof.

(2) The official receiver shall take part in the examination, and for that purpose may, if specially authorized by the court in that behalf, employ a solicitor with or without counsel.



(3) The liquidator, where the official receiver is not the liquidator, and any creditor or contributory, may also take part in the examination either personally or by solicitor or counsel.

(4) The court may put such questions to the person examined as the court thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the court may put or allow to be put to him.

(6) A person ordered to be examined under this section shall at his own cost, before his examination, be furnished with a copy of the official receiver's report, and may at his own cost employ a solicitor with or without counsel, who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him:

Provided that, if any such person applies to the court to be exculpated from any charges made or suggested against him, it shall be the duty of the official receiver to appear on the hearing of the application and call the attention of the court to any matters which appear to the official receiver to be relevant, and if the court, after hearing any evidence given or witnesses called by the official receiver, grants the application, the court may allow the applicant such costs as in its discretion it may think fit.

(7) Notes of the examination shall be taken down in writing and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(8) The court may, if it thinks fit, adjourn the examination from time to time.

**Power to restrain fraudulent persons from managing companies.**

264. (1) Where an order has been made for winding up a company by the court, and the official receiver has made a further report under this Act stating that, in his opinion, a fraud has been committed by a person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the court may, on the application of the official receiver, order that that person, director or officer shall not, without the leave of the court, be a director of or in any way, whether directly or indirectly, be concerned in or take part in the management of a company for such period, not exceeding five years, from the date of the report as may be specified in the order. *(1929 c.23, s.217).*

(2) The official receiver shall, where he intends to make an application under subsection (1), give not less than ten days' notice of his intention to the person charged with the fraud, and on the hearing of the application that person may appear and himself give evidence or call witnesses.

(3) It shall be the duty of the official receiver to appear on the hearing of an application by him for an order under this section and on an application for leave under this section and to call the attention of the court to any matters which appear to him to be relevant, and on any such application the official receiver may himself give evidence or call witnesses.

(4) A person who acts in contravention of an order made under this section, is guilty of an offence and is liable on conviction on indictment to imprisonment for two years, or on summary conviction to imprisonment for six months and to a fine of £500.

(5) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made.

#### **Power to arrest absconding contributory.**

*(1929 c.23, s.218).*

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

#### **Powers of court cumulative.**

*(s.219).*

266. Any powers by this Act conferred on the court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

#### **Dissolution of company.**

*(s.221).*

267. (1) When the affairs of a company have been completely wound up, the court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) The order shall within fourteen days from the date thereof be reported by the liquidator to the Registrar who shall make in his books a minute of the dissolution of the company.

(3) A liquidator who makes default in complying with the requirements of this section, is guilty of an offence and is liable on summary conviction to a fine of one half of the amount at level 1 on the standard scale for every day during which he is in default.

### **Companies in default since 1st January 1993.**

267A.(1) Subject to the provisions of subsections (2) to (4), the Registrar may strike off the register the name of any company, other than a public limited company, in respect of which no annual return has been filed contrary to the requirements of section 153 or section 154, as the case may be, in the previous three calendar years.

(2) Where the Registrar proposes to strike off the name of any company he shall publish in the Gazette the name of that company and notice of his intention to strike off the name and shall not strike the name off the register before the expiration of three calendar months from the date of publication.

(3) Unless the Registrar receives within 3 months of the date of publication written representations showing cause to the contrary he may strike off the name of the company.

(4) If the Registrar has received written representations under subsection (3) he may decide not to strike off the name of the company and, if he so decides, he may require the company to take such action and pay such fees as he sees fit to satisfy the requirements of section 153 or section 154, as the case may be, in respect of the years since the annual return was last filed and the date of the publication of the notice in the Gazette under subsection (2).

### **(C) VOLUNTARY WINDING UP.**

#### *Resolutions for, and Commencement of Voluntary Winding Up.*

### **Circumstances in which company may be wound up voluntarily.**

268. (1) A company may be wound up voluntarily—

*(1929 c.23, s.225).*

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

- (c) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

(2) In this Act, “a resolution for voluntary winding up” means a resolution passed under any of the provisions of subsection (1).

**Notice of resolution to wind up voluntarily.**

(s.226). 269. (1) When a company has passed a resolution for voluntary winding up, it shall, within seven days after the passing of the resolution, give notice of the resolution by advertisement in the Gazette.

(2) If default is made in complying with this section, the company and every officer of the company who is in default are guilty of offences and are liable on summary conviction to a default fine, and for the purposes of this subsection the liquidator of the company is to be deemed to be an officer of the company.

**Commencement of voluntary winding up.**

(s.227). 270. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up.

*Consequences of Voluntary Winding Up.*

**Effect of voluntary winding up on company.**

(1929 c.23, s.228). 271. In case of a voluntary winding up, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof:

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

**Transfer after commencement of voluntary winding up.**

(s.229). 272. Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding up, shall be void.

*Declaration of Solvency.*

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

273. (1) Where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors may, at a meeting of the directors held before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out, make a statutory declaration to the effect that they have made a full inquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within a period not exceeding twelve months from the commencement of the winding up. (s.230).

(2) A declaration so made shall have no effect for the purposes of this Act unless it is delivered to the Registrar for registration before the date mentioned in subsection (1).

(3) A winding up in the case of which a declaration has been made and delivered in accordance with this section is in this Act referred to as “a members’ voluntary winding up”, and a winding up in the case of which a declaration has not been made and delivered as aforesaid is in this Act referred to as “a creditors’ voluntary winding up”.

*Provisions applicable to a Members’ Voluntary Winding Up.*

**Application of sections 275 to 279.**

274. The provisions contained in sections 275 to 279 (both inclusive) shall apply in relation to a members’ voluntary winding up. (1929 c.23, s.231).

**Power to appoint and fix remuneration of liquidators.**

275. (1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them. (s.232).

(2) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof.

**Power to fill vacancy in office of liquidator.**

276. (1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy. (s.233).

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner provided by this Act or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

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

(s.234).

277. (1) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Act or not (in this section referred to as “the transferee company”) the liquidator of the first-mentioned company (in this section referred to as “the transferor company”) may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale, shares, policies or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect, or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by this section.

(4) If the liquidator elects to purchase the member’s interest, the purchase money must be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but, if an order is made within a year for winding up the company by or subject to the

supervision of the court, the special resolution shall not be valid unless sanctioned by the court.

(6) For the purposes of an arbitration under this section, the provisions of the Arbitration Act shall be incorporated with this Act, and any appointment of an arbitrator, may be made under the hand of the liquidator, or if there is more than one liquidator, then of any two or more of the liquidators.

*Act. 1895 No.10.*

#### **Duty of liquidator to call general meeting at end of each year.**

278. (1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

*(1929 c.23, s.235).*

(2) A liquidator who fails to comply with this section is guilty of an offence and is liable on summary conviction to a fine at level 1 on the standard scale.

#### **Final meeting and dissolution.**

279. (1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

*(s.236).*

(2) The meeting shall be called by advertisement in the Gazette, specifying the time, place and object thereof, and published one month at least before the meeting.

(3) Within one week after the meeting, the liquidator shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meeting and of its date, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator is guilty of an offence and is liable on summary conviction to a fine of one half of the amount at level 1 on the standard scale for every day during which the default continues:

Provided that, if a quorum is not present at the meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this subsection as to the making of the return shall be deemed to have been complied with.

(4) The Registrar on receiving the account and either of the returns hereinbefore mentioned shall forthwith register them, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved:

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to deliver to the Registrar an office copy of the order for registration, and if that person fails so to do he is guilty of an offence and is liable on summary conviction to a fine of one half of the amount at level 1 on the standard scale for every day during which the default continues.

*Provisions Applicable to a Creditors' Voluntary Winding Up.*

**Application of sections 281 to 288.**

(1929 c.23, s.237).

280. The provisions contained in sections 281 to 288 (both inclusive) shall apply in relation to a creditors' voluntary winding up.

**Meeting of creditors.**

(s.238).

281. (1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised once in the Gazette and once at least in another newspaper published in Gibraltar.

(3) The directors of the company shall—

- (a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of creditors to be held as aforesaid; and
- (b) appoint one of their number to preside at the said meeting.



(4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of subsection (1) shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

(6) If default is made—

- (a) by the company in complying with subsections (1) and (2);
- (b) by the directors of the company in complying with subsection (3);
- (c) by any director of the company in complying with subsection (4),

the company, directors or director, as the case may be, is or are guilty of an offence and liable on summary conviction to a fine of £100, and, in the case of default by the company, every officer of the company who is in default is liable on summary conviction to the like penalty.

#### **Appointment of liquidator.**

282. The creditors and the company at their respective meetings mentioned in section 281 may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company; and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person (if any) nominated by the company shall be liquidator: *(1929 c.23, s.239).*

Provided that in the case of different persons being nominated any director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors.

#### **Appointment of committee of inspection.**

283. (1) The creditors at the meeting to be held in pursuance of section 281 or at any subsequent meeting, may, if they think fit, appoint a committee of inspection consisting of not more than five persons and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time *(1929 c.23, s.240).*

subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number:

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection, and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the court otherwise directs, be qualified to act as members of the committee, and on any application to the court under this provision the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(2) Subject to the provisions of this section and to general rules, the provisions of section 248 (except subsection (1) thereof) shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the court.

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

(s.241). 284. (1) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

(2) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction the continuance thereof.

**Power to fill vacancy in office of liquidator.**

(s.242). 285. If a vacancy occurs by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by, or by the direction of, the court, the creditors may fill the vacancy.

**Application of section 277 to a creditors' voluntary winding up.**

(1929 c.23, s.243). 286. The provisions of section 277 shall apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up, with the modification that the powers of the liquidator under that section shall not be exercised except with the sanction either of the court or of the committee of inspection.

**Duty of liquidator to call meetings of company and of creditors at end of each year.**

(s.244). 287. (1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of creditors at the end of the first year from the commencement of

the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) A liquidator who fails to comply with this section is guilty of an offence and is liable on summary conviction to a fine at level 1 on the standard scale.

### **Final meeting and dissolution.**

288. (1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors, for the purpose of laying the account before the meetings, and giving any explanation thereof. (s.245).

(2) Each such meeting shall be called by advertisement in the Gazette, specifying the time, place and object thereof, and published one month at least before the meeting.

(3) Within one week after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meetings and of their dates, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator is guilty of an offence and is liable on summary conviction to a fine of one half of the amount at level 1 on the standard scale for every day during which the default continues:

Provided that, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this subsection as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.

(4) The Registrar on receiving the account and in respect of each such meeting either of the returns hereinbefore mentioned shall forthwith register them, and on the expiration of three months from the registration thereof the company shall be deemed to be dissolved:

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to deliver to the Registrar an office copy of the order for registration, and if that person fails so to do he is guilty of an offence and is liable on summary conviction to a fine of one half of the amount at level 1 on the standard scale for every day during which the default continues.

*Provisions Applicable to Every Voluntary Winding Up.*

**Application of sections 290 to 297.**

(1929 c.23, s.246).

289. The provisions contained in sections 290 to 297 (both inclusive) shall apply to every voluntary winding up whether a members' or a creditors' winding up.

**Distribution of property of company.**

(s.247).

290. Subject to the provisions of this Act as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu*, and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

**Powers and duties of liquidator in voluntary winding up.**

(1929 c.23, s.248).

291. (1) The liquidator may—

- (a) in the case of a members' voluntary winding up, with the sanction of an extraordinary resolution of the company, and, in the case of a creditors' voluntary winding up, with the sanction of either the court or the committee of inspection, exercise any of the powers given by paragraphs (d), (e) and (f) of section 241(1) to a liquidator in a winding up by the court;
- (b) without sanction, exercise any of the other powers by this Act given to the liquidator in a winding up by the court;
- (c) exercise the power of the court under this Act of settling a list of contributories, and the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories;
- (d) exercise the power of the court of making calls;
- (e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special or

extraordinary resolution or for any other purpose he may think fit.

(2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(3) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two.

#### **Appointment and removal of liquidator by court.**

292. (1) If from any cause whatever there is no liquidator acting, the court may appoint a liquidator. *(s.249).*

(2) The court may, on cause shown, remove a liquidator and appoint another liquidator.

#### **Notice by liquidator of his appointment.**

293. (1) The liquidator shall, within twenty-one days after his appointment, deliver to the Registrar for registration a notice of his appointment in the prescribed form. *(1929 c.23, s.250).*

(2) A liquidator who fails to comply with the requirements of this section, is guilty of an offence and is liable on summary conviction to a fine of one half of the amount at level 1 on the standard scale for every day during which the default continues.

#### **Arrangement when binding on creditors.**

294. (1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors. *(s.251).*

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the court against it, and the court may thereupon, as it thinks just, amend, vary or confirm the arrangement.

#### **Power to apply to court to have questions determined or powers exercised.**

295. (1) The liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls, or any other matter, all or *(s.252).*

any of the powers which the court might exercise if the company were being wound up by the court.

(2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

#### **Costs of voluntary winding up.**

(s.254). 296. All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

#### **Saving for rights of creditors and contributories.**

(1929 c.23, s.255). 297. The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the court, but in the case of an application by a contributory, the court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

### (D) WINDING UP SUBJECT TO SUPERVISION OF COURT.

#### **Power to order winding up subject to supervision.**

(s.256). 298. When a company has passed a resolution for voluntary winding up, the court may make an order that the voluntary winding up shall continue but subject to such supervision of the court, and with such liberty for creditors, contributories or others to apply to the court, and generally on such terms and conditions, as the court thinks just.

#### **Effect of petition for winding up subject to supervision.**

(s.257). 299. A petition for the continuance of a voluntary winding up subject to the supervision of the court shall, for the purpose of giving jurisdiction to the court over actions, be deemed to be a petition for winding up by the court.

#### **Application of sections 225 and 226.**

(s.258). 300. A winding up subject to the supervision of the court shall, for the purposes of sections 225 and 226, be deemed to be a winding up by the court.

#### **Power of court to appoint or remove liquidators.**

(s.259).

301. (1) Where an order is made for a winding up subject to supervision, the court may by that or any subsequent order appoint an additional liquidator.

(2) A liquidator appointed by the court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position, as if he had been duly appointed in accordance with the provisions of this Act with respect to the appointment of liquidators in a voluntary winding up.

(3) The court may remove any liquidator so appointed by the court or any liquidator continued under the supervision order and fill any vacancy occasioned by the removal, or by death or resignation.

**Effect of supervision order.**

302. (1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the court, exercise all his powers, without the sanction or intervention of the court, in the same manner as if the company were being wound up altogether voluntarily: *(1929 c.23, s.260).*

Provided that the powers specified in paragraphs (d), (e) and (f) of section 241(1) shall not be exercised by the liquidator except with the sanction of the court or, in a case where before the order the winding up was a creditors' voluntary winding up, with the sanction of either the court or the committee of inspection.

(2) A winding up subject to the supervision of the court is not a winding up by the court for the purpose of the provisions of this Act which are set out in Schedule 7, but subject as aforesaid, an order for a winding up subject to supervision shall for all purposes be deemed to be an order for winding up by the court:

Provided that, where the order for winding up subject to supervision was made in relation to a creditors' voluntary winding up in which a committee of inspection had been appointed, the order shall be deemed to be an order for winding up by the court for the purpose of section 248 (except subsection (1) thereof), except in so far as the operation of that section is excluded in a voluntary winding up by general rules.

(E) PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP.

*Proof and Ranking of Claims.*

**Debts of all descriptions to be proved.**

(s.261). 303. In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

**Application of bankruptcy rules in winding up.**

(1929 c.23, s.262). 304. In the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section.

**Preferential payments.**

(s.264). 305. (1) In a winding up there shall be paid in priority to all other debts—

- (a) all local rates due from the company at the relevant date and having become due and payable within twelve months next before that date;
- (aa) all taxes specified for this purpose in section 55(2) of the Income Tax Act;
- (b) all wages or salary (whether or not earned wholly or in part by way of commission) of any clerk or servant in respect of services rendered to the company during twelve months next before the relevant date, not exceeding £1000;
- (c) all wages of any workman or labourer not exceeding £1000, whether payable for time or for piece work, in respect of services rendered to the company during twelve months next before the relevant date;

Provided that, where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the



court may decide to be due under the contract, proportionate to the time of service up to the relevant date;

- (d) all amounts, not exceeding in any individual case £500, payable by the company in respect of compensation under the provisions of the Contract and Tort Act, the liability whereof accrued before the relevant date;
- (e) all amounts payable by the company in respect of contributions as the employer of any person under the Social Security (Employment Injuries Insurance) Act and under the Social Security (Insurance) Act.

*Act. 1960 No. 4.*

(2) Where any payment on account of wages or salary has been made to any clerk, servant, workman or labourer in the employment of a company out of money advanced by some person for that purpose, that person shall in a winding up have right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which that clerk, servant, workman or labourer would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

(3) The foregoing debts shall—

- (a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case the debts specified in paragraph (b), (c) and (d) shall have priority and shall abate in equal proportions and once those debts have been paid, the debt specified in paragraph (aa) shall have priority and once that debt has been settled the debts specified in paragraphs (a) and (e) shall rank equally between themselves and be paid in full unless the assets are insufficient to meet them, in which case the debts specified in paragraphs (a) and (e) shall abate in equal proportions; and
- (b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(4) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.

(5) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding-up order, the debts to which priority is given by

this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof:

Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

- (6) In this section “the relevant date” means—
- (a) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding-up order; and
  - (b) in any other case, the date of the commencement of the winding up.

*Effect of Winding Up on Antecedent and Other Transactions.*

**Fraudulent preference.**

(1929 c.23, s.265).

306. (1) Any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property which would, if made or done by or against an individual, be deemed in his bankruptcy a fraudulent preference, shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly.

(2) For the purposes of this section, the commencement of the winding up shall be deemed to correspond with the presentation of the bankruptcy petition in the case of an individual.

(3) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

**Effect of floating charge.**

(1929 c.23, s.266).

307. Where a company is being wound up, a floating charge on the undertaking or property of the company created within six months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent per annum.

**Disclaimer of onerous property in case of company wound up.**

(s.267).

308. (1) Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, may, with the leave of the court and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the court, disclaim the property:

Provided that, where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power under this section of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the court.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the court thinks just.

(4) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any persons interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such further period as may be allowed by the court, given notice to the applicant that he intends to apply to the court for leave to disclaim, and, in the case of a contract, if the liquidator, after such an application as aforesaid, does not within the said period or further period disclaim the contract, the company shall be deemed to have adopted it.

(5) The court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the court thinks just, and any

damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) The court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any person entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the court thinks just, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf, without any conveyance or assignment for the purpose:

Provided that where the property disclaimed is of a leasehold nature, the court shall not make a vesting order in favour of any person claiming under the company, whether as underlessee or as mortgagee by demise, including a chargee by way of legal mortgage, except upon the terms of making that person—

- (a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or
- (b) if the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the court shall have power to vest the estate and interest of the company in the property in any person liable either personally or in a representative character, and either alone or jointly with the company to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company.

(7) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.

**Restriction of rights of creditor as to execution or attachment in case of company being wound up.**

*(1929 c.23, s.268).*

309. (1) Where a creditor has issued execution against the goods or lands of a company or has attached any debt due to the company, and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the company unless he has completed the execution or attachment before the commencement of the winding up:

Provided that—

- (a) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice shall for the purposes of the foregoing provision be substituted for the date of the commencement of the winding up; and
- (b) a person who purchases in good faith under a sale by the marshal any goods of a company on which an execution has been levied shall in all cases acquire a good title to them against the liquidator.

(2) For the purposes of this Act—

- (a) an execution against goods is completed by seizure and sale or by the making of a charge order under section 3 of the Charging Orders Act, 1988;
- (b) an attachment of a debt is completed by the receipt of debt; and
- (c) an execution against land is completed by seizure, by the appointment of a receiver, or by the making of a charging order under the said section 3.

*Act. 1988 No. 34.*

(3) In this section, “goods” include all chattels personal, and “marshal” includes any officer charged with the execution of a writ or other process.

#### **Duties of marshal as to goods taken in execution.**

310. (1) Where any goods of a company are taken in execution and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the marshal that a provisional liquidator has been appointed or that a winding-up order has been made or that a resolution for voluntary winding up has been passed, the marshal shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.

*(1929 c.23, s.269).*

(2) Where under an execution in respect of a judgment for a sum exceeding £200 the goods of a company are sold or money is paid in order to avoid sale, the marshal shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for fourteen days, and if within that time notice is served on him of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up of the company and an order is made or a resolution is passed, as the case may be, for the winding up of the company, the marshal shall pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor.

(3) In this section, “goods” include all chattels personal, and “marshal” includes any officer charged with the execution of a writ or other process.

*Offences Antecedent to or in Course of Winding Up.*

**Offences by officers of companies in liquidation.**

(1929 c.23, s.271).

311. (1) A person who, being a past or present director, manager or other officer of a company which at the time of the commission of the alleged offence is being wound up, whether by or under the supervision of the court or voluntarily, or is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up—

- (a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company; or
- (b) does not deliver up to the liquidator, or as he directs, all such part of the real and personal property of the company as is in his custody or under his control, and which he is required by law to deliver up; or
- (c) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up; or
- (d) within twelve months next before the commencement of the winding up or at any time thereafter conceals any part of the property of the company to the value of £50 or upwards, or conceals any debt due to or from the company; or

- (e) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently removes any part of the property of the company to the value of £50 or upwards; or
- (f) makes any material omission in any statement relating to the affairs of the company; or
- (g) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of a month to inform the liquidator thereof; or
- (h) after the commencement of the winding up prevents the production of any book or paper affecting or relating to the property or affairs of the company; or
- (i) within twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the company; or
- (j) within twelve months next before the commencement of the winding up or at any time thereafter makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company; or
- (k) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company; or
- (l) after the commencement of the winding up or at any meeting of the creditors of the company within twelve months next before the commencement of the winding up attempts to account for any part of the property of the company by fictitious losses or expenses; or
- (m) has within twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for; or

- (n) within twelve months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for; or
- (o) within twelve months next before the commencement of the winding up or at any time thereafter pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing is in the ordinary way of the business of the company; or
- (p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up,

is guilty of an offence and is, in the case of the offences mentioned respectively in paragraphs (m), (n) and (o) of this subsection, liable on conviction on indictment to imprisonment for five years, or on summary conviction to imprisonment for twelve months, and in the case of any other offence is liable on conviction on indictment to imprisonment for two years, or on summary conviction to imprisonment for twelve months:

Provided that it shall be a good defence to a charge under any of paragraphs (a), (b), (c), (d), (f), (n) and (o), if the accused proves that he had no intent to defraud, and to a charge under any of paragraphs (h), (i) and (j), if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under paragraph (o) of subsection (1), a person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid is guilty of an offence and is liable on conviction to be punished in the same way as if he had received the property knowing it to have been obtained in circumstances amounting to an offence.

(3) For the purposes of this section, "director" shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

#### **Penalty for falsification of books.**

(1929 c.23, s.272).

312. A director, manager or other officer, or contributory of any company being wound up who destroys, mutilates, alters or falsifies any books, papers or securities or makes or is privy to the making of any false or



fraudulent entry in any register, book of account or document belonging to the company with intent to defraud or deceive any person, is guilty of an offence, and liable on conviction to imprisonment for two years.

**Frauds by officers of companies which have gone into liquidation.**

313. A person who, being at the time of the commission of the alleged offence a director, manager or other officer of a company which is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up— (s.273).

- (a) has by false pretences or by means of any other fraud induced any person to give credit to the company;
- (b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company;
- (c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against the company,

is guilty of an offence and is liable on conviction on indictment to imprisonment for two years, or on summary conviction to imprisonment for twelve months.

**Liability where proper accounts not kept.**

314. (1) If where a company is wound up it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, every director, manager or other officer of the company who was knowingly a party to or connived at the default of the company is, unless he shows that he acted honestly or that in the circumstances in which the business of the company was carried on the default was excusable, guilty of an offence and is liable on conviction on indictment to imprisonment for one year, or on summary conviction to imprisonment for six months. (1929 c.23, s.274).

(2) For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of any company if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of the annual stocktakings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and

purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

**Responsibility of directors for fraudulent trading.**

(s.275).

315. (1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the court, on the application of the official receiver, or the liquidator or any creditor or contributory of the company, may, if it thinks proper so to do, declare that any of the directors, whether past or present, of the company who were knowingly parties to the carrying on of the business in manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the court may direct.

(2) Where the court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the liability of any such director under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any company or person on his behalf, or any person claiming as assignee from or through the director, company or person, and may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under this subsection.

For the purpose of this subsection, “assignee” includes any person to whom or in whose favour, by the directions of the director, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in subsection (1), every director of the company who was knowingly a party to the carrying on of the business in manner aforesaid, is guilty of an offence and is liable on conviction on indictment to imprisonment for one year.

(4) The court may, in the case of any person in respect of whom a declaration has been made under subsection (1), or who has been convicted of an offence under subsection (3), order that that person shall not, without the leave of the court, be a director of or in any way, whether directly or indirectly, be concerned in or take part in the management of a company for such period, not exceeding five years, from the date of the declaration or of

the conviction, as the case may be, as may be specified in the order, and any person who acts in contravention of an order made under this subsection is, in respect of each offence, liable on conviction on indictment to imprisonment for two years, or on summary conviction to imprisonment for six months and to a fine at level 5 on the standard scale.

(5) For the purposes of this section “director” includes any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

(6) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made, and where the declaration under subsection (1) is made the declaration shall be deemed to be a final judgment within the meaning of paragraph (g) of section 3(1) of the Bankruptcy Act.

*Act. 1934 No. 13.*

(7) It shall be the duty of the official receiver or of the liquidator to appear on the hearing of an application for leave under subsection (4), and on the hearing of an application under that subsection or under subsection (1) the official receiver or the liquidator, as the case may be, may himself give evidence or call witnesses.

#### **Power of court to assess damages against delinquent directors.**

316. (1) If in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager or liquidator, or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of the official receiver, or of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the court thinks just.

*(1929 c.23, s.276).*

(2) The provisions of this section shall have effect notwithstanding that the offence is one for which the offender may be criminally liable.

(3) Where in the case of a winding up an order for payment of money is made under this section, the order shall be deemed to be a final judgment within the meaning of paragraph (g) of section 3(1) of the Bankruptcy Act.

*Act. 1934 No. 13*

#### **Prosecution of delinquent officers and members of company.**

(1929 c.23, s.277).

317.(1) If it appears to the court in the course of a winding up by, or subject to the supervision of, the court that any past or present director, manager or other officer or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator either himself to prosecute the offender or to refer the matter to the Attorney-General.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager or other officer or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable he shall forthwith report the matter to the Attorney-General, and shall furnish to the Attorney-General such information and give to him such access to and facilities for inspecting and taking copies of any documents in the possession or under the control of the liquidator and relating to the matter in question, as he may require.

(3) If on any report to the Attorney-General under subsection (2) it appears to him that the case is not one in which proceedings ought to be taken by him, he shall inform the liquidator accordingly, and thereupon, subject to the previous sanction of the court, the liquidator may himself take proceedings against the offender.

(4) If it appears to the court in the course of a voluntary winding up that any past or present director, manager or other officer or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the Attorney-General under subsection (2), the court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of subsection (2).

(5) If, where any matter is reported or referred to the Attorney-General under this section, he considers that the case is one in which a prosecution ought to be instituted and, further, that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him, he shall institute proceedings accordingly, and it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceeding) to give him all assistance in connection with the prosecution which he is reasonably able to give.

For the purposes of this subsection, “agent” in relation to a company shall be deemed to include any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(6) If any person fails or neglects to give assistance in manner required by subsection (5), the court may, on the application of the Attorney-General, direct that person to comply with the requirements of that subsection, and where any such application is made with respect to a liquidator the court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in hand sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

(7) The court may direct that the whole or any part of any costs and expenses properly incurred by the liquidator in proceedings duly brought by him under this section shall be defrayed out of the public funds.

Subject to any direction under this subsection and to any mortgages or charges on the assets of the company and any debts to which priority is given by section 305, all such costs and expenses shall be payable out of those assets in priority to all other liabilities payable thereout.

*Supplementary Provisions as to Winding Up.*

**Disqualification for appointment as liquidator.**

318. (1) A body corporate shall not be qualified for appointment as liquidator of a company, whether in a winding up by or under the supervision of the court or in a voluntary winding up, and any appointment made in contravention of this provision shall be void. *(1929 c.23, s.278).*

(2) A body corporate which acts as liquidator of a company is guilty of an offence and is liable on summary conviction to a fine at level 3 on the standard scale.

**Enforcement of duty of liquidator to make returns.**

319. (1) If any liquidator, who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the court may, on an application made to the court by any contributory or creditor of the company or by the Registrar, make an order directing the liquidator to make good the default within such time as may be specified in the order. *(1929 c.23, s.279).*

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the liquidator.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a liquidator in respect of any such default.

**Notification that a company is in liquidation.**

(s.280). 320. (1) Where a company is being wound up, whether by or under the supervision of the court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

(2) If default is made in complying with this section, the company and every director, manager or other officer of the company, and every liquidator of the company and every receiver or manager, who knowingly and wilfully authorizes or permits the default, are guilty of offences and are each liable on summary conviction to a fine at level 1 on the standard scale.

**Exemption of certain documents from stamp duty on winding up of companies.**

(s.281). 321. (1) In the case of a winding up by the court or of a creditors' voluntary winding up—

- (a) every assurance relating solely to freehold or leasehold property, or to any mortgage, charge or other encumbrance on, or, any estate, right or interest in, any real or personal property, which forms part of the assets of the company and which, after the execution of the assurance, either at law or in equity, is or remains part of the assets of the company; and
- (b) every power of attorney, proxy paper, writ, order, certificate, affidavit, bond or other instrument or writing relating solely to the property of any company which is being so wound up, or to any proceeding under any such winding up,

shall be exempt from duties chargeable under the enactments relating to stamp duties.

(2) In this section, “assurance” includes deed, conveyance, assignment and surrender.

**Books of company to be evidence.**

(1929 c.23, s.282). 322. Where a company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the

company, be prima facie evidence of the truth of all matters purporting to be therein recorded.

**Disposal of books and papers of company.**

323. (1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows, that is to say:— (s.283).

- (a) in the case of a winding up by, or subject to the supervision of, the court in such way as the court directs;
- (b) in the case of a members' voluntary winding up, in such way as the company by extraordinary resolution directs, and, in the case of a creditors' voluntary winding up, in such way as the committee of inspection or, if there is no such committee, as the creditors of the company, may direct.

(2) After five years from the dissolution of the company no responsibility shall rest on the company, the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

(3) Provision may be made by general rules for enabling the court to prevent, for such period (not exceeding five years from the dissolution of the company) as the court may think proper, the destruction of the books and papers of a company which has been wound up, and for enabling any creditor or contributory of the company to make representations to the court.

(4) A person who acts in contravention of any general rules made for the purposes of this section is guilty of an offence and is liable on summary conviction to a fine at level 3 on the standard scale.

**Information as to pending liquidations.**

324. (1) If where a company is being wound up the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the Registrar a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation. (1929 c.23, s.284).

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom.

(3) A liquidator who fails to comply with this section, is guilty of an offence and is liable on summary conviction to a fine at level 2 on the standard scale for each day during which the default continues, and any person untruthfully stating himself as aforesaid to be a creditor or contributory is guilty of a contempt of court, and shall, on the application of the liquidator or of the official receiver, be punishable accordingly.

**Unclaimed assets to be paid to Companies Liquidation Account.**

(s.285).

325. (1) If it appears either from any statement sent to the Registrar under section 324 or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt, the liquidator shall forthwith pay the money into the Government Savings Bank to the Companies Liquidation Account. The Director of Postal Services shall furnish him with a certificate of receipt for the money so paid and that certificate shall be an effectual discharge to him in respect thereof.

(2) For the purpose of ascertaining and getting in any money payable into the Government Savings Bank in pursuance of this section, the like powers may be exercised, and by the like authority, as are exercisable under section 114 of the Bankruptcy Act, for the purpose of ascertaining and getting in the sums, funds and dividends referred to in that section.

(3) Any person claiming to be entitled to any money paid into the Government Savings Bank in pursuance of this section may apply to the court for payment thereof, and the court may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person, of the sum due.

**Resolutions passed at adjourned meetings of creditors and contributories.**

(1929 c.23, s.287).

326. Where a resolution is passed at an adjourned meeting of any creditors or contributories of a company, the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

*Supplementary Powers of Court.*

**Meetings to ascertain wishes of creditors or contributories.**

(s.288).

327. (1) The court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any sufficient evidence, and may, if it thinks



fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or by the articles of the company.

#### **Judicial notice of signature of officers.**

328. In all proceedings under this Part all courts, judges and persons judicially acting, and all officers, judicial or ministerial, of any court, or employed in enforcing the process of any court, shall take judicial notice of the signature of any officer of the Supreme Court, and also of the official seal or stamp of the office of the Supreme Court appended to or impressed on any document made, issued or signed under the provisions of this Part, or any official copy thereof. *(1929 c.23, s.289).*

#### **Affidavits in Gibraltar, United Kingdom or elsewhere within the Commonwealth, etc.**

329. (1) Any affidavit required to be sworn under the provisions or for the purposes of this Part may be sworn in Gibraltar, the United Kingdom or elsewhere within the Commonwealth, before any court, judge or person lawfully authorized to take and receive affidavits or in any place outside the Commonwealth before any of Her Majesty's consuls or vice-consuls or before any person having authority to administer an oath provided that such authority is certified by one of Her Majesty's consuls or vice-consuls.

(2) All courts, judges, justices, commissioners and persons acting judicially shall take judicial notice of the seal or stamp or signature, as the case may be, of any such court, judge, person, consul or vice-consul attached, appended or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part.

#### *Provisions as to Dissolution.*

#### **Power of court to declare dissolution of company void.**

*(s.294).*

330. (1) Where a company has been dissolved, the Registrar of the Court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the Registrar of the Court to be

interested, make an order, upon such terms as the Registrar of the Court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within seven days after the making of the order, or such further time as the Registrar of the Court may allow, to deliver to the Registrar for registration an office copy of the order, and if that person fails so to do he is guilty of an offence and is liable on summary conviction to a fine of one half of the amount at level 1 on the standard scale for every day during which the default continues.

**Registrar may strike defunct company off register.**

(1929 c.23, s.295).

331. (1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he may send to the company by post a registered letter enquiring whether the company is carrying on business or in operation and stating that if an answer is not received to the letter within one month from the date thereof, a notice will be published in the Gazette with a view to striking the name of the company off the register.

(2) *Omitted*

(3) If the Registrar either—

- (a) receives an answer to the effect that the company is not carrying on business or in operation; or
- (b) does not, within one month after sending the letter, receive any documents in respect of the deposit of which, with the Registrar, a company is in default,

he may publish in the Gazette, and send to the company by post, a notice that at the expiration of three months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months, the Registrar shall publish in the Gazette and send to the company or the liquidator (if any) a like notice as is provided in subsection (3).

(5) At the expiration of the time mentioned in the notice the Registrar may, unless cause to the contrary is previously shown by the company,

strike its name off the register, and shall publish notice thereof in the Gazette, and on the publication in the Gazette of this notice the company shall be dissolved:

Provided that—

- (a) the liability (if any) of every director, managing officer and member of the company shall continue and may be enforced as if the company had not been dissolved; and
- (b) nothing in this subsection shall affect the power of the court to wind up a company the name of which has been struck off the register.

(6) *Omitted*

(7) A notice to be sent under this section or under section 332 to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director or officer of the company, or, if there is no director or officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

#### **Restoration of dissolved companies to the register.**

332. (1) A company or any member or creditor thereof who feels aggrieved by the company having been struck off the register under section 267A or section 331 may, before the expiration of 10 years from the publication of a notice under either section 267A or section 331, as the case may be, make application to the Registrar to restore the company to the register.

(2) An application made under subsection (1) shall be accompanied by—

- (a) an affidavit of—
  - (i) the applicant's interest in the matter;
  - (ii) a statement of the facts on which the application is based;
  - (iii) where the company was—
    - (aa) licensed under the Financial Services Act, 1989; or

(bb) authorized under the Banking Act, 1992 or the Financial Services Act, 1998; or

(cc) licensed or authorized in accordance with a Community requirement other than one falling within article (aa) or (bb),

evidence of the consent of the competent authority under the relevant legislation to the restoration of the company to the register;

(iv) the relief sought; and

(b) the fee prescribed in Schedule 8.

(3) The Registrar may, in his discretion, require that a person making an application under subsection (1), give notice of that application (including the facts on which the application is based and the relief sought) to such other person as the Registrar may specify, being a person who appears to the Registrar to be concerned or to have an interest.

(4) On an application being made to the Registrar to restore a company, the Registrar shall cause a notice to be published in the Gazette to the effect that the applicant has made an application to the Registrar to restore the company to the register and that unless written objection is made to the Registrar within 30 days of the date of publication, the Registrar may restore the company to the register.

(5) The Registrar shall not make a direction under this section to restore the name of the company to the register or otherwise earlier than 30 days after the date of publication of the notice published for the purposes of subsection (4).

(6) On receipt of any written objection to the restoration of the company, the Registrar shall forthwith notify the applicant of the receipt of the objection, the terms of the objection, and of the identity of the objector.

(7) On receipt of an application under this section the Registrar, if satisfied that there are good grounds for restoration of the company to the register, may direct the name of the company to be restored to the register.

(8) A direction given under this section may be made subject to conditions and the Registrar may include such further directions and such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(9) On the Registrar restoring a company to the register the company shall be deemed to have continued in existence as if its name had not been struck off and the Registrar may make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(10) Where an application to restore a company to the register has been made under subsection (1), the Registrar may, in his discretion, refuse to consider the application and require that the person by whom the application was made apply to the Supreme Court for an order to restore the company.

(11) The court may, on application under subsection (10), refuse the application or order the Registrar to restore the company to the register.

(12) In any proceedings under this section, the court may determine any question which may be necessary or expedient to decide in connection with restoration of the company to the register.

(13) The Registrar shall be entitled to appear and be heard on any application to the court under this section and shall appear if so directed by the court.

(14) Any order made by the court under this section shall direct that notice of the order shall be served on the Registrar in the prescribed manner and the Registrar shall, on receipt of the notice, act accordingly.

(15) After the expiration of the period of ten years referred to in subsection (1), if a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the Registrar of the Court on an application made by the company or member or may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and upon an office copy of the order being delivered to the Registrar for registration the company shall be deemed to have continued in existence as if its name had not been struck off; and the Registrar of the Supreme Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

**Property of dissolved company to be bona vacantia.**

333. Where a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (including leasehold property but not including property held by the company on trust for any other person) shall, subject and without prejudice to any order or direction which may at any time be made by the court or *(1929 c.23, s.296).*

Registrar under sections 330 and 332, be deemed to be bona vacantia and shall accordingly belong to the Crown, and shall vest and may be dealt with in the same manner as other bona vacantia accruing to the Crown.

*Rules, Fees and Remuneration of Officers.*

**Rules of court.**

334. Subject to the approval of the Minister responsible for finance the Chief Justice may make rules of court—

- (a) prescribing the fees, percentages and costs to be charged in respect of proceedings under this Act, and the remuneration to be allowed to the official receiver and other officers of the court; and
- (b) generally for carrying into effect the provisions of this Act.

**Remuneration of officers.**

335. The Minister responsible for finance shall direct whether any and what remuneration is to be allowed to any person performing any duties under this Act, and may from time to time vary, increase or diminish such remuneration.

**PART VII.  
RECEIVERS AND MANAGERS.**

**Disqualification for appointment as receiver.**

*(1929 c.23, s.306).*

336. (1) A body corporate shall not be qualified for appointment as receiver of the property of a company.

(2) A body corporate which acts as such receiver is guilty of an offence and is liable on summary conviction to a fine at level 5 on the standard scale.

**Power to appoint official receiver as receiver.**

*(s.307).*

337. Where an application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the court, the official receiver may be so appointed.

**Notification that receiver or manager appointed.**

*(s.308).*

338. (1) Where a receiver or manager of the property of a company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company or the receiver or manager or the liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver or manager has been appointed.

(2) If default is made in complying with the requirements of this section, the company and every director or other officer of the company, and every liquidator of the company, and every receiver or manager, who knowingly and wilfully authorizes or permits the default, are guilty of offences and are each liable on summary conviction to a fine at level 1 on the standard scale.

**Power of court to fix remuneration on application of liquidator.**

339. The court may, on an application made to the court by the liquidator of a company, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the company, and may from time to time, on an application made either by the liquidator or by the receiver or manager, vary or amend any order so made. *(1929 c.23, s.309).*

**Delivery to Registrar of accounts of receivers and managers.**

340. (1) Every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument shall, within one month, or such longer period as the Registrar may allow, after the expiration of the period of six months from the date of his appointment and of every subsequent period of six months, and within one month after he ceases to act as receiver or manager, deliver to the Registrar for registration an abstract in the prescribed form showing his receipts and his payments during that period of six months, or, where he has ceased to act, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and the aggregate amount of his receipts and of his payments during all preceding periods since his appointment. *(s.310).*

(2) A receiver or manager who makes default in complying with the provisions of this section is guilty of an offence and is liable on summary conviction to a fine of one half of the amount at level 1 on the standard scale for every day during which the default continues.

**Enforcement of duty of receiver to make returns.**

341. (1) If— *(s.311).*

- (a) any receiver of the property of a company, who has made default in filing, delivering or making any return, account or

other document or in giving any notice, which a receiver is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so; or

- (b) any receiver or manager of the property of a company who has been appointed under the powers contained in any instrument, has, after being required at any time by the liquidator of the company so to do, failed to render proper accounts of his receipts and payments and to pay over to the liquidator the amount properly payable to him,

the court may, on an application made for the purpose, make an order directing the receiver or manager, as the case may be, to make good the default within such time as may be specified in the order.

(2) In the case of any such default as is mentioned in paragraph (a) of subsection (1) an application for the purposes of this section may be made by any member or creditor of the company or by the Registrar, and the order may provide that all costs of and incidental to the application shall be borne by the receiver, and in the case of any such default as is mentioned in paragraph (b) of that subsection the application shall be made by the liquidator.

(3) Nothing in this section shall be taken to prejudice the operation of any enactments imposing penalties on receivers in respect of such default as is mentioned in paragraph (a) of subsection (1).

### **PART VIII.**

#### **GENERAL PROVISIONS AS TO REGISTRATION.**

##### **Registration office.**

*(1929 c.23, s.312).*

342. For the purposes of the registration of companies under this Act there shall be an office at such address as the Minister responsible for finance may think fit.

##### **Appointment of Registrar.**

343.(1) The Minister responsible for finance may appoint a Registrar of Companies for the purposes of this Act and in default of such appointment the Registrar of the Supreme Court shall be such Registrar, and where the Registrar of the Supreme Court is the Registrar of Companies the registry of the Supreme Court shall be the office for the registration of companies under this Act.



(2) The Registrar of Companies shall have a seal and such seal shall bear the words “Registrar of Companies, Gibraltar”.

(3) The Minister responsible for finance may appoint one or more Assistant Registrars of Companies, and any Assistant Registrar so appointed may, subject to any directions given to him by the Registrar of Companies, exercise all the powers and perform all the duties of the Registrar of Companies

### **Delivery to the Registrar of documents in printed form.**

344.(1) This section applies to the delivery to the Registrar under any provision of this Act of documents in printed form.

- (2) The document must—
- (a) state in a prominent position the name and the registered number of the company to which it relates;
  - (b) satisfy any requirements prescribed by Schedule 5 for the purposes of this section; and
  - (c) conform to such requirements as the Registrar may specify for the purpose of enabling him to copy the document.

(3) If a document is delivered to the Registrar which does not comply with the requirements of this section, he may serve on the person by whom the document was delivered (or if there are two or more such persons, on any of them), a notice indicating the respect in which the document does not comply.

(4) Where the Registrar serves such a notice as is specified in subsection (3), then, unless a replacement document—

- (a) is delivered to him within 14 days after the service of the notice; and
- (b) complies with the requirements of this section (or section 345) or is not rejected by him for failure to comply with those requirements,

the original document shall be deemed not to have been delivered to him:

Provided that for the purposes of any enactment imposing a penalty for failure to deliver, so far as it imposes a penalty for continued contravention, no account shall be taken of the period between the delivery of the original

document and the end of the period of 14 days after service of the Registrar's notice.

(5) The provisions in Schedule 5 made for the purposes of this section may make different provision with respect to different descriptions of document.

**Delivery to the Registrar of documents otherwise than in printed form.**

345.(1) This section applies to the delivery to the Registrar under any provision of this Act of documents other than in printed form.

(2) Any requirement to deliver a document to the Registrar, or to deliver a document in the prescribed form, is satisfied by the communication to the Registrar of the requisite information in any non-printed form prescribed for the purposes of this section by the provisions of Schedule 5 or approved by the Registrar.

(3) Where the document is required to be signed or sealed, it shall instead be authenticated in such manner as may be prescribed by the provisions of Schedule 5 or approved by the Registrar.

(4) A document must—

- (a) contain in a prominent position the registered number of the company to which it relates;
- (b) satisfy any requirements prescribed in Schedule 5 for the purposes of this section; and
- (c) be furnished in such manner, and conform to such requirements, as the Registrar may specify for the purpose of enabling him to read and copy the document.

(5) If a document is delivered to the Registrar which does not comply with the requirements of this section, he may serve on the person by whom the document was delivered (or, if there were two or more such persons, on any of them), a notice indicating the respect in which the document does not comply.

(6) Where the Registrar serves such a notice, then, unless a replacement document—

- (a) is delivered to him within 14 days after service of the notice; and

- (b) complies with the requirements of this section (or section 344) or is not rejected by him for failure to comply with those requirements,

the original document shall be deemed not to have been delivered to him:

Provided that for the purposes of any enactment imposing a penalty for failure to deliver, so far as it imposes a penalty for continued contravention, no account shall be taken of the period between the delivery of the original document and the end of the period of 14 days after service of the Registrar's notice.

- (7) Provisions made in Schedule 5 for the purposes of this section may make different provision with respect to different descriptions of document and different forms of communication.

### **Keeping of company records by the Registrar.**

346.(1) The information contained in a document delivered to the Registrar under this Act, may be recorded and kept by him in any form he thinks fit, provided it is possible to inspect the information and to produce a copy of it in printed form and this shall be sufficient compliance with any duty of his to keep, file or register the document.

- (2) The originals of documents delivered to the Registrar in printed form shall be kept by him for 10 years, after which they may be destroyed.

### **Fees.**

347. (1) There shall be paid to the Registrar in respect of the several matters mentioned in the Table set out in Schedule 8 the several fees therein specified and without prejudice to the generality of the foregoing a fee may be so specified in respect of the performance by the Registrar of any function under this Act including the receipt by him of any notice or other document which under this Act is required to be given, delivered, sent or forwarded to him. *(1929 c.23, s.313).*

- (2) Provision may be made in the Table set out in Schedule 8 in respect of supplementary fees payable where any notice or document which, under this Act is required to be given, delivered, sent or forwarded to the Registrar within a specified time, is given, delivered, sent or forwarded to him outside of the specified time.

- (3) The Registrar may charge a fee for any services provided by him otherwise than in pursuance of an obligation imposed on him by law.

### **Inspection, production and evidence of documents kept by Registrar.**

(1929 c.23, s.314).

348. (1) Any person may inspect any records kept by the Registrar for the purposes of this Act and may require—

- (a) a copy in such form as the Registrar considers appropriate of any information contained in those records; or
- (b) a certified copy of, or extract from any such record.

(2) The right of inspection extends to the originals of documents delivered to the Registrar in printed form only where the record kept by the Registrar of the contents of the document is illegible or unavailable.

(3) A copy of an extract from a record certified in writing by the Registrar (whose official position it is unnecessary to prove), to be an accurate record of the contents of any document delivered to him under this Act, is in all legal proceedings, admissible in evidence as of equal validity with the original document and as evidence of any facts stated therein, of which direct oral evidence would be admissible.

(4) Copies of or extracts from records furnished by the Registrar may, instead of being certified by him in writing to be an accurate record, be sealed with his official seal.

(5) Any person may require a certificate of the incorporation of a company, signed by the Registrar or authenticated by his official seal.

(6) Any requirement of the Act as to the supply by the Registrar of a document may, if the Registrar thinks fit, be satisfied by the communication by the Registrar of the requisite information in any non-printed form prescribed for this purpose by Schedule 5 or approved by him.

(7) Where the document is required to be signed by him or sealed with his official seal and is a communication in a non-printed form, it shall instead be authenticated in such manner as may be prescribed by Schedule 5 or approved by the Registrar.

(8) No process for compelling the production of a record by the Registrar shall issue from any court except with the leave of the court, and any such process shall bear on it a statement that it is issued with the leave of the court.

#### **Enforcement of duty of company to make returns to Registrar.**

(1929 c.23, s.315).

349. (1) If a company, having made default in complying with any provision of this Act which requires it to file with, deliver or send to the Registrar any return, account or other document, or to give notice to him of any matter, fails to make good the default within fourteen days after the service of a notice on the company requiring it to do so, the court may, on

an application made to the court by any member or creditor of the company or by the Registrar, make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of the company responsible for the default.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default.

**Official notification.**

*(1972 c.68, s.9(3) and (4)).*

350. (1) The Registrar shall cause to be published in the Gazette notice of the issue or receipt by him of documents of any of the following descriptions (stating in the notice the name of the company, the description of document and the date of issue or receipt), that is to say—

- (a) any certificate of incorporation of a company;
- (b) any document making or evidencing an alteration in the memorandum or articles of association of a company;
- (c) any return relating to a company's register of directors or secretary, or notification of a change among its directors or secretary;
- (d) a company's annual return;
- (dd) any balance sheet or profit and loss account of a company;
- (e) any notice of the situation of a company's registered office, or of any change therein;
- (f) any copy of a winding-up order in respect of a company;
- (g) any order for the dissolution of a company on a winding up;
- (h) any return by a liquidator of the final meeting of a company on a winding up;
- (j) any return relating to a company's register of members, or notification of a change among its members including any notification of a purchase of own shares by the company;

- (k) any application made under sections 29, 31, 33, 35 and 37 and any certificate issued under sections 30, 32, 34, 36 and 38;
- (l) a copy of the draft of the terms of the scheme delivered to the Registrar under paragraph 2(1) of Schedule 16;
- (m) any copy of an order under section 205 or 206 in respect of a compromise or arrangement to which section 207(1) applies.

(2) A company shall not be entitled to rely against other persons on the happening of any of the following events, that is to say—

- (a) the making of a winding-up order in respect of the company, or the appointment of a liquidator in a voluntary winding up of the company; or
- (b) any alteration of the company's memorandum or articles of association; or
- (c) any change among the company's directors or secretary; or
- (d) (as regards service of any document on the company) any change in the situation of the company's registered office,

if the event had not been officially notified at the material time and is not shown by the company to have been known at that time to the person concerned, or if the material time fell on or before the fifteenth day after the date of official notification (or, where the fifteenth day was a non-business day, on or before the next day that was not) and it is shown that the person concerned was unavoidably prevented from knowing of the event at that time.

For this purpose “non-business day” means a Saturday or Sunday, Christmas Day, Good Friday and any other day which is a public holiday under section 55 of the Interpretation and General Clauses Act or a bank holiday under section 2 of the Banking and Financial Dealings Act.

*Act. 1962 No. 8.*

*Act. 1973 No. 20.*

- (3) In subsection (2), “official notification” means—
- (a) in relation to the appointment of a liquidator the notice thereof under section 293(1); and
  - (b) in the case of any other event, the notification of the document relating to that event in the Gazette under subsection (1);

and “officially notified” shall be construed accordingly.

**PART IX.****WINDING UP OF UNREGISTERED COMPANIES.****Meaning of unregistered company.***(1929 c.23, s.337).*

351. For the purposes of this Part, the expression “unregistered company” includes any partnership, whether limited or not, any association and any company other than a registered company.

**Winding up of unregistered companies.**

352. (1) Subject to the provisions of this Part, any unregistered company may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the following exceptions and additions:— *(s.338).*

- (a) no unregistered company shall be wound up under this Act voluntarily or subject to supervision;
- (b) the circumstances in which an unregistered company may be wound up are as follows:—
  - (i) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;
  - (ii) if the company is unable to pay its debts;
  - (iii) if the court is of opinion that it is just and equitable that the company should be wound up;
- (c) an unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts—
  - (i) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding £500 then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary or some director, manager or principal officer of the company, or by otherwise serving in such manner as the court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditors;
  - (ii) if any action or other proceeding has been instituted against any member for any debt or demand due, or

claimed to be due, from the company, or from him in his character of member, and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business, or by delivering it to the secretary, or some director, manager or principal officer of the company, or by otherwise serving the same in such manner as the court may approve or direct, the company has not within ten days after service of the notice paid, secured or compounded for the debt or demand, or procured the action or proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the action or proceeding and against all costs, damages and expenses to be incurred by him by reason of the same;

- (iii) if execution or other process issued on a judgment, decree or order obtained in any court in favour of a creditor against the company, or any member thereof as such, or any person authorized to be sued as nominal defendant on behalf of the company, is returned unsatisfied;
- (iv) if it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts.

(2) Where a company incorporated outside Gibraltar which has been carrying on business in Gibraltar ceases to carry on business in Gibraltar, it may be wound up as an unregistered company under this Part, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.

#### **Contributories in winding up of unregistered company.**

*(1929 c.23, s.339).*

353. (1) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the costs and expenses of winding up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability.

(2) In the event of the death, bankruptcy or insolvency, of any contributory, or marriage of any female contributory, the provisions of this Act with respect to the personal representatives, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply.



**Power of court to stay or restrain proceedings.**

354. The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company. (s.340).

**Actions stayed on winding-up order.**

355. Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose. (s.341).

**Provisions of Part IX cumulative.**

356. The provisions of this Part with respect to unregistered companies shall be in addition to and not in restriction of any provisions hereinbefore in this Act contained with respect to winding up companies by the court, and the court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Act: (s.342).

Provided that an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part.

**PART X.****COMPANIES INCORPORATED OUTSIDE GIBRALTAR CARRYING  
ON BUSINESS WITHIN GIBRALTAR.****Companies to which Part X applies.**

357. This Part shall apply to all companies incorporated outside Gibraltar which, after the commencement of this Act, establish a place of business within Gibraltar, and to all companies incorporated outside Gibraltar which have, before the commencement of this Act, established a place of business within Gibraltar and continue to have an established place of business within Gibraltar at the commencement of this Act. (1929 c.23, s.343).

**Documents to be delivered to Registrar by companies carrying on  
business in Gibraltar.**

(s.344).

358. Companies incorporated outside Gibraltar which establish a place of business within Gibraltar, shall, within one month from the establishment of the place of business, deliver to the Registrar for registration,—

- (a) a certified copy of the charter, statutes or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the English language, a certified translation thereof;
- (b) a list of the directors of the company, containing such particulars with respect to the directors as are by this Act required to be contained with respect to directors in the register of the directors of a company;
- (c) the names and addresses of some one or more persons resident in Gibraltar authorized to accept on behalf of the company service of process and any notices required to be served on the company.

**Return to be delivered to Registrar where documents altered.**

(s.346).

359. If in the case of any company to which this Part applies any alteration is made in—

- (a) the charter, statutes or memorandum and articles of the company or any such instrument as aforesaid; or
- (b) the directors of the company or the particulars contained in the list of the directors; or
- (c) the names or addresses of the persons authorized to accept service on behalf of the company,

the company shall, within the prescribed time, deliver to the Registrar for registration a return containing the prescribed particulars of the alteration.

**Application of sections 358 and 359.**

360. Sections 358 and 359 shall not apply to any limited company which—

- (a) is incorporated outside the United Kingdom and Gibraltar; and
- (b) has a branch in Gibraltar.

**Obligation to state name of company, whether limited, and country where incorporated.**

361. Every company to which this Part applies shall—

*(1929 c.23, s.348).*

- (a) in every prospectus inviting subscriptions for its shares or debentures in Gibraltar state the country in which the company is incorporated; and
- (b) conspicuously exhibit on every place where it carries on business in Gibraltar the name of the company and the country in which the company is incorporated; and
- (c) cause the name of the company and of the country in which the company is incorporated to be stated in legible characters in all bill-heads and letter paper, and in all notices, advertisements and other official publications of the company; and
- (d) if the liability of the members of the company is limited, cause notice of that fact to be stated in legible characters in every such prospectus as aforesaid and in all bill-heads, letter paper, notices, advertisements and other official publications of the company in Gibraltar, and to be affixed on every place where it carries on its business.

### **Service on company to which Part X applies.**

362. Any process or notice required to be served on a company to which this Part applies shall be sufficiently served if addressed to any person whose name has been delivered to the Registrar under this Part and left at or sent by post to the address which has been so delivered:

*(1929 c.23, s.349).*

Provided that—

- (a) where any such company makes default in delivering to the Registrar the name and address of a person resident in Gibraltar who is authorized to accept on behalf of the company service of process or notice; or
- (b) if at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on behalf of the company, or for any reason cannot be served,

a document may be served on the company by leaving it at or sending it by post to any place of business established by the company in Gibraltar.

### **Penalties.**

363. If a company to which this Part applies fails to comply with any of the foregoing provisions of this Part the company, and every officer or agent of

*(s.351).*

the company, are guilty of offences and are each liable on summary conviction to a fine at level 2 on the standard scale, or, in the case of a continuing offence, of one tenth of the amount at that level for every day during which the default continues.

### **Interpretation of Part X.**

*(1929 c.23, s.352).*

364. For the purposes of this Part,—

”branch” means a branch within the meaning of Council Directive 89/666/EEC on the disclosure requirements in respect of branches opened in a member State by certain types of company governed by the law of another member State;

“certified” means certified in the prescribed manner to be a true copy or a correct translation;

“director”, in relation to a company, includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;

“place of business” includes a share transfer or share registration office;

“prospectus” has the same meaning as when used in relation to a company incorporated under this Act.

## **PART XI. RE-DOMICILIATION.**

### **Companies to which Part XI applies.**

365.(1) This part shall apply to companies—

- (a) incorporated outside Gibraltar in a relevant State which re-domicile in Gibraltar;
- (b) incorporated in Gibraltar which re-domicile to a relevant State.

(2) The Minister responsible for finance may by regulation in respect of a company incorporated outside Gibraltar in a relevant State make provision for—

- (a) eligibility of a company to re-domicile in Gibraltar;
- (b) the form of application for registration as a company re-domiciled in Gibraltar;

- (c) evidence to be submitted in support of an application for registration in accordance with paragraph (b);
  - (d) the form and effect of registration as a company re-domiciled in Gibraltar.
- (3) The Minister responsible for finance may in respect of a company incorporated in Gibraltar by regulation make provision for—
- (a) the eligibility of a company to re-domicile into a relevant State;
  - (b) the form of application for re-domiciliation into a relevant State;
  - (c) the evidence to be submitted in support of an application for re-domiciliation in accordance with paragraph (b);
  - (d) conditions to be satisfied by a company prior to and during re-domiciliation;
  - (e) the form and effect of registration as a company incorporated in Gibraltar and re-domiciled in a relevant State.
- (4) Notwithstanding, the provisions of this Act, regulations made by virtue of subsection (2) may provide for the application of this Act to companies to which this Part applies.
- (5) In this part “relevant State” means a State having regulation of companies compatible with the provisions of this Part and regulations made under this section and which State is prescribed by the Minister responsible for finance for the purposes of this Part.

## **PART XII.**

### **RESTRICTIONS ON SALE OF SHARES AND OFFERS OF SHARES FOR SALE.**

#### **Prospectuses of foreign companies inviting subscriptions for shares or offering shares for sale.**

366. (1) It shall not be lawful for any person— *(1929 c.23, s.354).*
- (a) to issue, circulate or distribute in Gibraltar any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Gibraltar, whether the company has or has not established, or when formed will or will not establish a place of business in Gibraltar, unless—

- (i) before the issue, circulation or distribution of the prospectus in Gibraltar a copy thereof certified by the chairman and two other directors of the company as having been approved by resolution of the managing body, has been delivered for registration to the Registrar;
  - (ii) the prospectus states on the face of it that the copy has been so delivered;
  - (iii) the prospectus is dated;
  - (iv) the prospectus otherwise complies with this Part; or
- (b) to issue to any person in Gibraltar a form of application for shares in or debentures of such a company or intended company as aforesaid, unless the form is issued with a prospectus which complies with this Part:

Provided that this provision shall not apply if it is shown that the form of application was issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

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

(3) Where any document by which any shares in or debentures of a company incorporated outside Gibraltar are offered for sale to the public would, if the company concerned had been a company within the meaning of this Act, have been deemed by virtue of section 56 to be a prospectus issued by the company, that document shall be deemed to be for the purposes of this section, a prospectus issued by the company.

(4) An offer of shares or debentures for subscription or sale to any person whose ordinary business or part of whose ordinary business it is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this section.

(5) Section 55 shall extend to every prospectus to which this section applies.

(6) A person who is knowingly responsible for the issue, circulation or distribution of any prospectus, or for the issue of a form of application for

shares or debentures, in contravention of the provisions of this section is guilty of an offence and is liable on summary conviction to a fine at level 5 on the standard scale.

(7) In this section and section 367, “prospectus”, “shares”, and “debentures” have the same meanings as when used in relation to a company incorporated under this Act.

(8) With the exception of the requirements contained in paragraph (a) (i), the provisions of subsection (1) shall not apply to a prospectus or form of application which—

- (a) is issued in a member State of the European Economic Communities in accordance with the laws of that state regulating the issue of such a prospectus or form of application; and
- (b) is in the English language or if not in the English language is accompanied by a certified translation into the English language; and
- (c) contains or is accompanied by details of the name and address of the competent authority in the member State in which the prospectus or form of application was issued and with which it is registered or by which its issue, circulation or distribution was authorised.

#### **Requirements as to prospectus.**

367. (1) In order to comply with this Part a prospectus in addition to complying with the provisions of subparagraphs (ii) and (iii) of paragraph (a) of section 366(1) must— *(1929 c.23, s.355).*

- (a) contain particulars with respect to the following matters:—
  - (i) the objects of the company;
  - (ii) the instrument constituting or defining the constitution of the company;
  - (iii) the enactments, or provisions having the force of an enactment, by or under which the company was incorporated;
  - (iv) an address in Gibraltar where such instrument, enactments or provisions, or copies thereof, and if the same are in a foreign language a translation thereof certified in the prescribed manner, can be inspected;

- (v) the date on which and the country in which the company was incorporated;
- (vi) whether the company has established a place of business in Gibraltar, and, if so, the address of its principal office in Gibraltar:

Provided that the provisions of subparagraphs (i), (ii), (iii) and (iv) of this paragraph shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

- (b) subject to the provisions of this section, state the matters specified in Part I of Schedule 3 (other than those specified in paragraph 1 of Part I) and set out the reports specified in Part II of that Schedule subject always to the provisions contained in Part III of that Schedule:

Provided that—

- (i) where any prospectus is published as a newspaper advertisement, it shall be a sufficient compliance with the requirement that the prospectus must specify the objects of the company if the advertisement specifies the primary object with which the company was formed, and
- (ii) in paragraph 3 of Part I of Schedule 3 a reference to the constitution of the company shall be substituted for the reference to the articles; and
- (iii) paragraph I of Part III of that Schedule shall have effect as if the reference to the memorandum were omitted therefrom.

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

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

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



- (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or
- (c) the non-compliance or contravention was in respect of matters which, in the opinion of the court dealing with the case, were immaterial or were otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters contained in paragraph 15 of Part I of Schedule 3, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(4) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act, apart from this section.

(5) The provisions of subsection (1) shall not apply to a prospectus which is—

- (a) issued in a member State of the European Economic Communities in accordance with the laws of that state regulating the issue of such a prospectus; and
- (b) is in the English language or if not in the English language is accompanied by a certified translation into the English language; and
- (c) contains or is accompanied by details of the name and address of the competent authority in the member State in which the prospectus was issued and with which it is registered or by which its issue, circulation or distribution was authorised.

#### **Restrictions on offering of shares for subscription or sale.**

368. (1) It shall not be lawful for any person to go from house to house offering shares for subscription or purchase to the public or any member of the public. *(1929 c.23, s.356).*

In this subsection, “house” shall not include an office used for business purposes.

(2) Subject as hereinafter provided in this subsection, it shall not be lawful to make an offer in writing to any member of the public (not being a person whose ordinary business or part of whose ordinary business it is to buy or sell shares, whether as principal or agent) of any shares for purchase, unless the offer is accompanied by a statement in writing (which must be

signed by the person making the offer and dated) containing such particulars as are required by this section to be included therein and otherwise complying with the requirements of this section, or, in the case of shares in a company incorporated outside Gibraltar, either by such a statement as aforesaid, or by such a prospectus as complies with this Part:

Provided that the provisions of this subsection shall not apply—

- (a) where the shares to which the offer relates are shares which are quoted on, or in respect of which permission to deal has been granted by, any recognized stock exchange in Gibraltar and the offer so states and specifies the stock exchange; or
- (b) where the shares to which the offer relates are shares which a company has allotted or agreed to allot with a view to their being offered for sale to the public; or
- (c) where the offer was made only to persons with whom the person making the offer has been in the habit of doing regular business in the purchase or sale of shares.

(3) The statement shall not contain any matter other than the particulars required by this section to be included therein, and shall not be in characters less large or less legible than any characters used in the offer or in any document sent therewith.

(4) The statement shall contain particulars with respect to the following matters:—

- (a) whether the person making the offer is acting as principal or agent, and if as agent the name of his principal and an address in Gibraltar where that principal can be served with process;
- (b) the date on which and the country in which the company was incorporated and the address of its registered or principal office in Gibraltar;
- (c) the authorized share capital of the company and the amount thereof which has been issued, the classes into which it is divided and the rights of each class of share-holders in respect of capital, dividends and voting;
- (d) the dividends (if any) paid by the company on each class of shares during each of the three financial years immediately preceding the offer, and if no dividend has been paid in respect of shares of any particular class during any of those years, a statement to that effect;

- (e) the total amount of any debentures issued by the company and outstanding at the date of the statement, together with the rate of interest payable thereon;
- (f) the names and addresses of the directors of the company;
- (g) whether or not the shares offered are fully paid up, and, if not, to what extent they are paid up;
- (h) whether or not the shares are quoted on, or permission to deal therein has been granted by, any recognized stock exchange in Gibraltar or elsewhere, and, if so, which, and, if not, a statement that they are not so quoted or that no such permission has been granted;
- (i) where the offer relates to units, particulars of the names and addresses of the persons in whom the shares represented by the units are vested, the date of and the parties to any document defining the terms on which those shares are held, and an address in Gibraltar where that document or a copy thereof can be inspected.

In this subsection, “company” means the company by which the shares to which the statement relates were or are to be issued.

(5) A person who acts, or incites, causes or procures any person to act, in contravention of this section, is guilty of an offence and is liable on summary conviction to imprisonment for six months and to a fine at level 4 on the standard scale, and in the case of a second or subsequent offence to imprisonment for twelve months and to a fine at level 5 on the standard scale.

(6) Where a person convicted of an offence against this section is a company (whether a company within the meaning of this Act or not), every director and every officer concerned in the management of the company is guilty of the like offence unless he proves that the act constituting the offence took place without his knowledge or consent.

(7) In this section, unless the context otherwise requires, “shares” mean the shares of a company, whether a company within the meaning of this Act or not, and includes debentures and units, and “unit” means any right or interest (by whatever name called) in a share, and for the purposes of this section a person shall not in relation to a company be regarded as not being a member of the public by reason only that he is a holder of shares in the company or a purchaser of goods from the company.

(8) Where any person is convicted of having made an offer in contravention of the provisions of this section, the court before which he is

convicted may order that any contract made as a result of the offer shall be void, and where it makes any such order, may give such consequential directions as it thinks proper for the repayment of any money or the retransfer of any shares.

**PART XIII.**  
**MISCELLANEOUS.**

*Prohibition of Partnerships with More than Twenty Members.*

**Prohibition of partnerships with more than twenty members.**

(1929 c.23, s.357).

369. No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Act, or of letters patent.

*Miscellaneous Offences.*

**Penalty for false statement.**

(s.362).

370. A person who in any return, report, certificate, balance sheet or other document, required by or for the purpose of any of the provisions of this Act specified in Schedule 9 wilfully makes a statement false in any material particular, knowing it to be false, is guilty of an offence, and is liable on summary conviction to imprisonment for four months, and to a fine in lieu of or in addition to such imprisonment as aforesaid:

Provided that—

- (a) the fine imposed on summary conviction shall not exceed level 3 on the standard scale; and
- (b) nothing in this section shall affect the provisions of Part XX of the Criminal Offences Act.

Act. 1960 No. 17.

**Penalty for improper use of word “Limited”.**

(1929 c.23, s.364).

371. If any person or persons trade or carry on business under any name or title of which “Limited”, or any contraction or imitation of that word, is the last word, that person or those persons are, unless duly incorporated with limited liability, guilty of an offence and are liable on summary conviction to a fine of one half of the amount at level 1 on the standard scale for every day upon which that name or title has been used.

*General Provisions as to Offences.***Provision with respect to default fines and meaning of “officer in default”.**

(s.365).

372. (1) Where by any enactment in this Act it is provided that a company and every officer of the company who is in default are liable to a default fine, the company and every such officer are, for every day during which the default, refusal or contravention continues, liable to a fine not exceeding such amount as is specified in the enactment, or, if the amount of the fine is not so specified, to a fine of one half of the amount at level 1 on the standard scale.

(2) For the purpose of any enactment in this Act which provides that an officer of a company who is in default is liable to a fine or penalty, the expression “officer who is in default” means any director, manager or other officer of the company, who knowingly and wilfully authorizes or permits the default, refusal or contravention mentioned in the enactment.

**Application of fines.**

373. The court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards rewarding the person on whose information or at whose suit the fine is recovered, and subject to any such direction all fines under this Act shall be paid into the Consolidated Fund.

(s.367).

**Saving as to private prosecutors.**

374. Nothing in this Act relating to the institution of criminal proceedings by the Attorney-General shall be taken to preclude any person from instituting or carrying on any such proceedings.

(1929 c.23, s.368).

**Saving for privileged communications.**

375. Where proceedings are instituted under this Act against any person by the Attorney-General, nothing in this Act shall be taken to require any person who has acted as solicitor for the defendant to disclose any privileged communication made to him in that capacity.

(s.369).

*Service of Documents and Legal Proceedings.***Service of documents on company.**

(s.370).

376. A document may be served on a company by leaving it at or sending it by post to the registered office of the company.

**Costs in actions by certain limited companies.**

(s.371). 377. Where a limited company is plaintiff in any action or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

**Power of court to grant relief in certain cases.**

(s.372). 378. (1) If in any proceedings for negligence, default, breach of duty or breach of trust against a person to whom this section applies it appears to the court hearing the case that that person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that, having regard to all circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that court may relieve him, either wholly or partly, from his liability on such terms as the court thinks fit.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the court for relief, and the court on any such application shall have the same power to relieve him as under this section it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

(3) Where any case to which subsection (1) applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge may think proper.

(4) The persons to whom this section applies are the following:

- (a) directors of a company;
- (b) managers of a company;
- (c) officers of a company;

- (d) persons employed by a company as auditors, whether they are or are not officers of the company.

**Power to enforce orders.**

379. Orders made by the Supreme Court under this Act may be enforced in the same manner as orders made in an action pending therein. (1929 c.23, s.373).

*General Provisions.*

**Authentication of documents.**

380. Any approval, sanction or licence, or revocation of licence, which under this Act may be given or made by the Minister responsible for finance or any other act or thing required or authorized by this Act to be done by the Minister responsible for finance may be given, made or done by the Financial Secretary or any person authorized in that behalf by the Minister responsible for finance. (s.377).

**Orders and certificates of the Minister responsible for finance or the Financial Secretary to be evidence.**

381. All documents purporting to be orders or certificates made or issued by the Minister responsible for finance for the purposes of this Act or to be signed by the Minister responsible for finance or the Financial Secretary or any person authorized in that behalf by the Minister responsible for finance, shall be received in evidence and deemed to be such orders or certificates without further proof, unless the contrary is shown. (1929 c.23, s.378).

**Mode of payment of fees.**

382. All fees and percentages payable in pursuance of this Act or in pursuance of any rules of court made under this Act shall be payable in stamps.

**Power to alter tables, forms and fees.**

383.(1) The Minister responsible for finance may by order alter Table A, the forms in Schedule 1 and prescribed matters contained in other Schedules.

(2) Any such table or form, when altered, shall be published in the Gazette and thenceforth shall have the same force as if it were included in one of the Schedules to this Act, but no alteration made by the Minister responsible for finance in Table A shall affect any company registered before the alteration or repeal, as respects that company, any portion of that Table.

(3) *Omitted.*

**Designation of capital.**

384. Notwithstanding anything to the contrary in this Act contained, the capital of a company may be expressed in a currency other than sterling.

**European Economic Community Law.**

385.(1) The Minister responsible for finance may make regulations to give effect in Gibraltar to the law of the European Economic Communities relating to any of the matters contained in this Act, or having as its intention the regulation of companies and their affairs.

(2) Regulations made under this section may make provision for the repeal or modification of any provision of this Act where such provision is—

- (a) in conflict with;
- (b) made unclear by; or
- (c) rendered unnecessary by,

a regulation made hereunder.

**PART XIV.**  
**BRANCH DISCLOSURE.**

**Application of Part XIV.**

386. This Part shall apply to any limited company which—

- (a) is incorporated outside the United Kingdom and Gibraltar; and
- (b) has a branch in Gibraltar.

**Registration of branches of companies.**

387. (1) For each company to which this Part applies, the Registrar shall keep, in such form as he thinks fit, a register of branches registered by the company under section 388.

(2) The Registrar shall allocate to every branch registered by him under this section a number, which shall be known as the branch's registered number.



(3) Branches' registered numbers shall be in such form, consisting of one or more sequences of figures or letters, as the Registrar may from time to time determine.

(4) The Registrar may, upon adopting a new form of registered number, make such changes of existing registered numbers as appear to him necessary.

(5) A change of a branch's registered number has effect from the date on which the company is notified by the Registrar of the change, but for a period of three years beginning with the date on which that notification is sent by the Registrar the requirement of section 399(1) as to the use of the branch's registered number on business letters and order forms is satisfied by the use of either the old number or the new.

(6) Where a company to which this Part applies files particulars, in any circumstances permitted by or under the Act, by—

- (a) adopting particulars already filed in respect of another branch;  
or
- (b) including in one document particulars which relate to two or more branches,

the Registrar shall ensure that the particulars concerned become part of the registered particulars of each branch concerned.

**Duty to register.**

388. (1) A company shall, within one month of having opened a branch in Gibraltar, deliver to the Registrar for registration a return containing—

- (a) such particulars about the company as are specified in section 389;
- (b) such particulars about the branch as are specified in section 390;
- (c) if the company is one to which section 403 applies, such particulars in relation to the registration of documents under Schedule 12 as are specified in section 391.

(2) The return shall, except where subsection (3) applies, be accompanied by the documents specified in section 392 and, if the company is one to which Part I of Schedule 12 applies, the documents specified in section 393.

- (3) This section applies where–
- (a) at the time the return is delivered, the company has another branch in the United Kingdom or Gibraltar;
  - (b) the return contains a statement to the effect that the documents specified in section 392 and, if the company is one to which Part I of Schedule 12 applies, section 393, are included in the material registered in respect of the other branch; and
  - (c) the return states where the other branch is registered and what its registered number is.

(4) In subsection (1), the reference to having opened a branch in Gibraltar includes a reference to a branch having become situated there on ceasing to be situated elsewhere.

(5) If at the date on which the company opens a branch in Gibraltar the company is subject to any proceedings referred to in section 404(1) (winding up) or 405(1) (insolvency proceedings etc), the company shall deliver a return under section 404(1) or (as the case may be) 405(1) within one month of that date.

(6) If on or before that date a person has been appointed to be liquidator of the company and continues in that office at that date, section 404(3) and (4) (liquidator to make return within 14 days of appointment) shall have effect as if it required a return to be made under that section within one month of the date of the branch being opened.

**Particulars required.**

389. (1) The particulars referred to in section 388(1)(a) are–
- (a) the corporate name of the company;
  - (b) its legal form;
  - (c) if it is registered in the country of its incorporation, the identity of the register in which it is registered and the number with which it is so registered;
  - (d) a list of the company’s directors and secretary, containing–
    - (i) with respect to each director, the particulars specified in subsection (3), and

- 
- (ii) with respect to the secretary (or where there are joint secretaries, with respect to each of them) the particulars specified in subsection (4);
  - (e) the extent of the powers of the directors to represent the company in dealings with third parties and in legal proceedings, together with a statement as to whether they may act alone or must act jointly and, if jointly, the name of any other person concerned; and
  - (f) whether the company is an institution to which Schedule 11 applies.
- (2) In the case of a company which is not incorporated in a member State, those particulars also include–
- (a) the law under which the company is incorporated;
  - (b) (in the case of a company to which paragraphs 2 and 3 of Part I of Schedule 12 applies) the period for which the company is required by the law under which it is incorporated to prepare accounts, together with the period allowed for the preparation and public disclosure of accounts for such a period; and
  - (c) unless disclosed by the documents specified in section 392–
    - (i) the address of its principal place of business,
    - (ii) its objects, and
    - (iii) the amount of its issued share capital.
- (3) The particulars referred to in subsection (1)(d)(i) are–
- (a) in the case of an individual–
    - (i) his name,
    - (ii) any former name,
    - (iii) his usual residential address,
    - (iv) his nationality,
    - (v) his business occupation (if any),
    - (vi) particulars of any other directorships held by him, and

- (vii) his date of birth;
  - (b) in the case of a corporation or Scottish firm, its corporate or firm name and registered or principal office.
- (4) The particulars referred to in subsection (1)(d)(ii) are—
- (a) in the case of an individual, his name, any former name and his usual residential address;
  - (b) in the case of a corporation or Scottish firm, its corporate or firm name and registered or principal office;

Provided that where all the partners in a firm are joint secretaries of the company, the name and principal office of the firm may be stated instead of the particulars required by paragraph (a).

- (5) In subsections (3)(a) and (4)(a)—
- (a) “name” means a person’s forename and surname, except that in the case of a peer, or an individual usually known by a title, the title may be stated instead of his forename and surname, or in addition to either or both of them; and
  - (b) the reference to a former name does not include—
    - (i) in the case of a peer, or an individual normally known by a title, the name by which he was known previous to the adoption of or succession to the title;
    - (iii) in the case of any person, a former name which was changed or disused before he attained the age of 18 years or which has been changed or disused for 20 years or more;
    - (iii) in the case of a married woman, the name by which she was known previous to the marriage.
- (6) Where—
- (a) at the time a return is delivered under section 388(1) the company has another branch in Gibraltar; and
  - (b) the company has delivered the particulars required by subsections (1)(b) to (f) and (2) to (5) to the Registrar with respect to that branch (or to the extent it is required to do so by virtue of section 397 or 398) and has no outstanding obligation

to make a return to the Registrar in respect of that branch under section 394 in relation to any alteration to those particulars,

the company may adopt the particulars so delivered as particulars which the Registrar is to treat as having been filed by the return by referring in the return to the fact that the particulars have been filed in respect of that other branch and giving the number with which the other branch is registered.

**Further particulars.**

390. The particulars referred to in section 388(1)(b) are–

- (a) the address of the branch,
- (b) the date on which it was opened,
- (c) the business carried on at it,
- (d) if different from the name of the company, the name in which that business is carried on,
- (e) a list of the names and addresses of all persons resident in Gibraltar authorised to accept on the company's behalf service of process in respect of the business of the branch and of any notices required to be served on the company in respect of the business of the branch,
- (f) a list of the names and usual residential addresses of all persons authorised to represent the company as permanent representatives of the company for the business of the branch,
- (g) the extent of the authority of any person falling within subparagraph (f), including whether that person is authorised to act alone or jointly, and
- (h) if a person falling within subparagraph (f) is not authorised to act alone, the name of any person with whom he is authorised to act.

**Further particulars.**

391. The particulars referred to in section 388(1)(c) are–

- (a) whether it is intended to register documents under section 389(2) or, as the case may be, paragraph 9(1) of Schedule 12 in respect of the branch or in respect of some other branch in Gibraltar or the United Kingdom, and

- (b) if it is, where that other branch is registered and what is its registered number.

**Documents required.**

392. The first documents referred to in section 388(2) are–

- (a) a certified copy of the charter, statutes or memorandum and articles of the company (or other instrument constituting or defining the company's constitution), and
- (b) if any of the documents mentioned in subparagraph (a) is not written in the English language, a translation of it into English certified in accordance with rule 5 of the Companies Rules to be a correct translation.

**Further documents required.**

393. (1) The second documents referred to in section 388(2) are–

- (a) copies of the latest accounting documents prepared in relation to a financial period of the company to have been publicly disclosed in accordance with the law of the country in which it is incorporated before the end of the period allowed for compliance with section 388 in respect of the branch or, if earlier, the date on which the company complies with section 388 in respect of the branch, and
- (b) if any of the documents mentioned in paragraph (a) is not written in the English language, a translation of it into English certified in accordance with rule 5 of the Companies Rules to be a correct translation.

(2) In subsection (1)(a) “financial period” and “accounting documents” shall be construed in accordance with paragraph 6 of Schedule 12.

**Alterations.**

394. (1) If, after a company has delivered a return under section 388(1), any alteration is made in–

- (a) its charter, statutes or memorandum and articles (or other instrument constituting or defining its constitution), or
- (b) any of the particulars referred to in section 388(1),

the company shall, within the time specified in subsection (2), deliver to the Registrar for registration a return containing particulars of the alteration:

provided that in the case of an alteration to any of the documents referred to in paragraph (a), the return shall be accompanied by a certified copy of the document as altered, together with, if the document is not written in the English language, a translation of it into English certified in accordance with rule 5 of the Companies Rules to be a correct translation.

- (2) The time for the delivery of the return required by subsection (1) is—
  - (a) in the case of an alteration in any of the particulars specified in section 390, 21 days after the alteration is made; or
  - (b) in the case of any other alteration, 21 days after the date on which notice of the alteration in question could have been received in Gibraltar in due course of post (if despatched with due diligence).
- (3) Where—
  - (a) a company has more than one branch in Gibraltar, and
  - (b) an alteration relates to more than one of those branches,

subsection (1) shall have effect to require the company to deliver a return in respect of each of the branches to which the alteration relates.

- (4) For the purposes of subsection (3)—
  - (a) an alteration in any of the particulars specified in section 389 shall be treated as relating to every branch of the company (though where the company has more than one branch in Gibraltar a return in respect of an alteration in any of those particulars which gives the branch numbers of two or more such branches shall be treated as a return in respect of each branch whose number is given) but
  - (b) an alteration in the company's charter, statutes or memorandum and articles (or other instrument constituting or defining its constitution) shall only be treated as relating to a branch if the document altered is included in the material registered in respect of it.

### **Time periods.**

395. (1) Subsection (2) applies where—
- (a) a company's return under section 388(1) includes a statement to the effect mentioned in section 388(3)(b), and

- (b) the statement ceases to be true so far as concerns the documents specified in section 392.

(2) The company shall, within the time specified in subsection (3), deliver to the Registrar for registration in respect of the branch to which the return relates—

- (a) the documents specified in section 392, or
- (b) a return—
  - (i) containing a statement to the effect that those documents are included in the material which is registered in respect of another branch of the company in Gibraltar or the United Kingdom, and
  - (ii) stating where the other branch is registered and what is its registered number.

(3) The time for complying with subsection (2) is 21 days after the date on which notice of the fact that the statement in the earlier return has ceased to be true could have been received in Gibraltar in due course of post (if despatched with due diligence).

(4) Subsection (2) shall also apply where, after a company has made a return under subsection (2)(b), the statement to the effect mentioned in subsection (2)(b)(i) ceases to be true.

(5) For the purposes of subsection (2)(b), where the company has more than one branch in Gibraltar a return which gives the branch numbers of two or more such branches shall be treated as a return in respect of each branch whose number is given.

## **PART XV.**

### **CHANGE IN REGISTRATION REGIME.**

#### **Change in registration regime.**

396. (1) Where a company ceases to be a company to which Part XIV applies and, immediately after ceasing to be such a company continues to have in Gibraltar a place of business which it had immediately before ceasing to be such a company, it shall be treated for the purposes of Part X of the Act as having established the place of business on the date when it ceased to be a company to which Part XIV applies.

(2) Where a limited company incorporated outside the United Kingdom and Gibraltar –



- (a) ceases to have a branch in the United Kingdom, and
- (b) both immediately before and immediately after ceasing to do so, has a place of business, but not a branch, in Gibraltar,

it shall be treated for the purposes of Part X of the Act as having established the place of business on the date when it ceased to have a branch in the United Kingdom.

(3) Section 397 and 398 (transitional provisions in relation to change in registration regime) shall have effect.

**Change in registration regime: transitional provisions.**

397. (1) This section applies where a company which becomes a company to which Part XIV applies was, immediately before becoming such a company (referred to in this section as the relevant time), a company to which Part X of the Act applies.

(2) The company need not include the particulars specified in section 389(1)(d) in the first return to be delivered under section 388(1) to the Registrar if at the relevant time—

- (a) it had an established place of business in Gibraltar,
- (b) it had complied with its obligations under section 358(b) of the Act, and
- (c) it had no outstanding obligation to make a return to the Registrar under section 359 of the Act, so far as concerns any alteration of the kind mentioned in paragraph (b) of that section,

and if it states in the return that the particulars have been previously filed in respect of a place of business of the company, giving the company's registered number.

(3) The company shall not be required to deliver the documents mentioned in section 392 with the first return to be delivered under section 388(1) to the Registrar if at the relevant time—

- (a) it had an established place of business in Gibraltar,
- (b) it had delivered the documents mentioned in section 358(a) of the Act to the Registrar, and

- (c) it had no outstanding obligation to make a return to the Registrar under section 359 of the Act so far as concerns any alteration in any of the documents mentioned in paragraph (a) of that section,

and if it states in the return that the documents have been previously filed in respect of a place of business of the company, giving the company's registered number.

**Change in registration regime: further transitional provisions.**

398. (1) This section applies where a company which becomes a company to which Part X of the Act applies was, immediately before becoming such a company (referred to in this section as the relevant time), a company to which Part XIV applies.

(2) The company shall not be required to deliver the documents mentioned in section 358(a) of the Act to the Registrar if at the relevant time—

- (a) it had a branch in Gibraltar,
- (b) the documents mentioned in section 391 were included in the material registered in respect of the branch, and
- (c) it had no outstanding obligation to make a return to the Registrar under section 394, so far as concerns any alteration in any of the documents mentioned in sub-section (1)(a) of that section,

and if it states in the return that the documents have previously been filed in respect of a branch of the company, giving the branch's registered number.

(3) The company need not include the particulars mentioned in section 358(b) of the Act in the return to be delivered under that section to the Registrar if at the relevant time—

- (a) it had a branch in Gibraltar,
- (b) it had complied with its obligations under section 388(1)(a) in respect of the branch, so far as the particulars required by section 389(1)(d) are concerned, and
- (c) it had no outstanding obligation to make a return to the Registrar under section 394, so far as concerns any alteration in any of the particulars required by section 389(1)(d),

and if it states in the return that the particulars have been previously filed in respect of a branch of the company, giving the branch's registered number.

(4) Where subsection (3) applies, the reference in section 359(b) of the Act to the list of the directors shall be construed as a reference to the list contained in the return under section 388(1) with any alterations in respect of which a return under section 394(1) has been made.

**Duty to state name, etc.**

399. (1) Every company to which Part XIV applies shall, in the case of each branch of the company registered under section 388, cause the following particulars to be stated in legible characters in all letter paper and order forms used in carrying on the business of the branch—

- (a) the place of registration of the branch, and
- (b) the registered number of the branch.

(2) Every company to which Part XIV applies, which is not incorporated in a member State and which is required by the law of the country in which it is incorporated to be registered under section 388, shall, in the case of each branch of the company, cause the following particulars to be stated in legible characters in all letter paper and order forms used in carrying on the business of the branch—

- (a) the identity of the registry in which the company is registered in its country of incorporation, and
- (b) the number with which it is registered.

(3) Every company to which Part XIV applies and which is not incorporated in a member State shall, in the case of each branch of the company registered under section 388, cause the following particulars to be stated in legible characters in all letter paper and order forms used in carrying on the business of the branch—

- (a) the legal form of the company,
- (b) the location of its head office, and
- (c) if applicable, the fact that it is being wound up.

**Service of documents: companies to which Part XIV applies.**

400. (1) This section applies to any company to which Part XIV applies.

(2) Any process or notice required to be served on a company to which this section applies in respect of the carrying on of the business of a branch registered by it under section 388 is sufficiently served if –

- (a) addressed to any person whose name has, in respect of the branch, been delivered to the Registrar as a person falling within section 390(e), and
- (b) left at or sent by post to the address for that person which has been so delivered.

(3) Where –

- (a) a company to which this section applies makes default, in respect of a branch, in delivering to the Registrar the particulars mentioned in section 390(e), or
- (b) all the persons whose names have, in respect of a branch, been delivered to the Registrar under section 388 as persons falling within section 390(e) are dead or have ceased to reside in Gibraltar, or refuse to accept service on the company's behalf, or for any reason cannot be served,

a document may be served on the company in respect of the carrying on of the business of the branch by leaving it at, or sending it by post to, any place of business established by the company in Gibraltar.

(4) Where a company to which this section applies has more than one branch in Gibraltar, any notice or process required to be served on the company which is not required to be served in respect of the carrying on of the business of one branch rather than another shall be treated for the purposes of this section as required to be served in respect of the carrying on of the business of each of its branches.

**Documents to be filed on cessation of business: companies to which Part XIV applies.**

401. If a company to which Part XIV applies closes a branch in Gibraltar, it shall forthwith give notice of that fact to the Registrar; and from the date on which notice is so given it is no longer obliged to deliver documents to the Registrar in respect of that branch.

**Penalties for non-compliance.**

402. If a company fails to comply with sections 388 to 396 or section 401, the company and every officer or agent of the company who knowingly and wilfully authorises or permits the default is liable on summary conviction to a fine not exceeding level 3 on the standard scale, and in the case of a

continuing offence, to a daily default fine not exceeding level 1 on the standard scale for continued contravention.

**Delivery of accounts and reports: companies to which the Eleventh Company Law Directive applies.**

403. (1) This section applies to any limited company which—

- (a) is incorporated outside the United Kingdom and Gibraltar,
- (b) has a branch in Gibraltar, and
- (c) is not an institution to which Schedule 11 applies.

(2) Schedule 12 (delivery of accounts and reports) shall have effect in relation to any company to which this section applies.

**PART XVI.**

**PARTICULARS TO BE DELIVERED TO REGISTRAR:  
WINDING UP, ETC.**

**Particulars to be delivered to the Registrar: winding up.**

404. (1) Subject to subsection (8), where a company to which Part XIV applies is being wound up, it shall deliver to the Registrar for registration a return in the prescribed form containing the following particulars—

- (a) the name of the company;
- (b) whether the company is being wound up by an order of a court and, if so, the name and address of the court and the date of the order;
- (c) if the company is not being so wound up, as a result of what action the winding up has commenced;
- (d) whether the winding up has been instigated by—
  - (i) the company's members;
  - (ii) the company's creditors; or
  - (iii) some other person or persons,

and, in the case of (iii) the identity of that person or those persons shall be given; and

(e) the date on which the winding up became or will become effective.

(2) The period allowed for delivery of a return under subsection (1) is 14 days from the date on which the winding up begins.

(3) Subject to subsection (8), a person appointed to be the liquidator of a company to which Part XIV applies, shall deliver to the Registrar for registration a return in the prescribed form containing the following particulars—

- (a) his name and address,
- (b) the date of his appointment, and
- (c) a description of such of his powers, if any, as are derived otherwise than from the general law or the company's constitution.

(4) The period allowed for delivery of a return under subsection (3) is 14 days from the date of the liquidator's appointment.

(5) Subject to subsection (8), the liquidator of a company to which Part XIV applies, shall deliver to the Registrar for registration a return in the prescribed form upon the occurrence of the following events—

- (a) the termination of the winding up of the company, and
- (b) the company ceasing to be registered, in circumstances where ceasing to be registered is an event of legal significance:

Provided that the following particulars shall be given—

- (i) in the case of subparagraph (a), the name of the company and the date on which the winding up terminated; and
- (ii) in the case of subparagraph (b), the name of the company and the date on which the company ceased to be registered.

(6) The period allowed for delivery of a return under subsection (5) is 14 days from the date of the event concerned.

(7) The obligation to deliver a return under subsections (1), (3) or (5) shall apply in respect of each branch which the company has in Gibraltar, (though where the company has more than one branch in Gibraltar, a return

which gives the branch numbers of two or more such branches is to be regarded as a return in respect of each branch whose number is given).

(8) No return is required under subsections (1), (3) or (5) in respect of a winding up under Part IX of the Act.

**Particulars to be delivered to the Registrar: insolvency proceedings, etc.**

405. (1) Where a company to which Part XIV applies becomes subject to any of the following proceedings (other than proceedings for the winding up of the company), that is to say, insolvency proceedings or an arrangement or composition or any analogous proceedings, it shall deliver to the Registrar for registration in the prescribed form, a return containing the following particulars—

- (a) the name of the company;
- (b) whether the proceedings are by order of a court and, if so, the name and address of the court and the date of the order;
- (c) if the proceedings are not by order of a court, as a result of what action the proceedings have been commenced;
- (d) whether the proceedings have been instigated by—
  - (i) the company's members;
  - (ii) the company's creditors; or
  - (iii) some other person or persons,  
and in the case of (iii), the identity of that person or those persons shall be given; and
- (e) the date on which the proceedings became or will become effective.

(2) Where a company to which Part XIV applies ceases to be subject to any of the proceedings mentioned in subsection (1), it shall deliver to the Registrar for registration a return containing the following particulars—

- (a) the name of the company; and
- (b) the date on which it ceased to be subject to the proceedings.

(3) The period allowed for delivery of a return under subsection (1) or (2) is 14 days from the date on which the company becomes subject or, as the case may be, ceases to be subject to the proceedings concerned.

(4) The obligation to deliver a return under this section shall apply in respect of each branch which the company has in Gibraltar (though where the company has more than one branch in Gibraltar, a return which gives the branch number of two or more such branches is to be regarded as a return in respect of each branch whose number is given).

**Penalty for non-compliance.**

406. (1) If a company fails to comply with section 404(1) or 405(1) or (2) within the period allowed for compliance, it, and every person who immediately before the end of that period was a director of it, is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale and, for continued contravention, to a daily default fine not exceeding level 1 on the standard scale.

(2) If a liquidator fails to comply with section 404(3) or (5) within the period allowed for compliance, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale and, for continued contravention, to a daily default fine not exceeding level 1 on the standard scale.

(3) It is a defence for a person charged with an offence under this section to prove that he took all reasonable steps for securing compliance with the requirements concerned.

**Disclosure of branches.**

407. (1) A director's report prepared in accordance with section 8 of the Companies (Accounts) Act, 1999 shall contain an indication of the existence of branches of the company outside Gibraltar.

*Act. 1999 No. 29.*

(2) Subsection (1) shall not apply in relation to an unlimited company.

(3) The directors of a company need not comply with this section in preparing a director's report for a financial year of the company commencing before the 1st day of July, 1997.

**Transitional provisions.**

408. Schedule 13 (Transitional provisions) shall have effect.

**Consequential amendments.**

409. The provisions of Schedule 14 (Consequential amendments) shall have effect.



**SCHEDULE 1**Sections 2, 10, 160  
and 383**TABLE A.****REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED  
BY SHARES.***Preliminary.*

1. (1) In these Regulations,—

“the Act” means the Companies Act.

(2) When any provision of the Act is referred to, the reference is to that provision as modified by any statute for the time being in force.

(3) Unless the context otherwise requires, expressions defined in the Act or any statutory modification thereof in force at the date at which these Regulations become binding on the company, shall have the meanings so defined.

*Shares.*

2. Subject to the provisions (if any) in that behalf of the memorandum of association, and without prejudice to any special rights previously conferred on the holders of existing shares, any share may be issued with such preferred, deferred or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital or otherwise, as the company may from time to time by special resolution determine, and any preference share may, with the sanction of a special resolution, be issued on the terms that it is, or at the option of the company is liable, to be redeemed.

3. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these Regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of

the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.

4. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the seal of the company, if the company has a seal for use in Gibraltar, or otherwise signed by the authorized signatories of the company specifying the share or shares held by him and the amount paid up thereon, provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

5. If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee (if any) not exceeding five pence, and on such terms (if any) as to evidence and indemnity, as the directors think fit.

6. No part of the funds of the company shall directly or indirectly be employed in the purchase of, or in loans upon the security of, the company's shares, but nothing in this regulation shall prohibit transactions mentioned in the proviso to section 72(1) of the Act.

*Lien.*

7. The company shall have a lien on every share (not being a fully-paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares (other than fully-paid shares) standing registered in the name of a single person for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this regulation. The company's lien (if any) on a share shall extend to all dividends payable thereon.

8. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death or bankruptcy.

9. For giving effect to any such sale the directors may authorize some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

10. The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale.

*Calls on Shares.*

11. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than one month from the last call; and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payment) pay to the company at the time or times so specified the amount called on his shares.

12. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

13. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of £5 per cent per annum from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

14. The provisions of these Regulations as to the liability of joint holders and as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

15. The directors may make arrangements on the issue of shares for difference between the holders in the amount of calls to be paid and in times of payment.

16. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, six per cent) as may be agreed upon between the member paying the sum in advance and the directors.

*Transfer and Transmission of Shares.*

17. The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee, and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

18. Shares shall be transferred in the following form, or in any usual or common form which the directors shall approve:—

“I, A.B., of \_\_\_\_\_, in consideration of the sum of £ \_\_\_\_\_, paid to me, by C. D. of \_\_\_\_\_ (hereinafter called ‘the said transferee’) do hereby transfer to the said transferee the share [or shares] numbered \_\_\_\_\_ in the undertaking called the \_\_\_\_\_ Company Limited, to hold unto the said transferee, subject to the several conditions on which I hold the same: and I, the said transferee, do hereby agree to take the said share [or shares] subject to the conditions aforesaid. As witness our hands the \_\_\_\_\_ day of \_\_\_\_\_

Witness to the signatures of \_\_\_\_\_ etc.”

19. The directors may decline to register any transfer of shares, not being fully paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognize any instrument of transfer unless—

- (a) a fee not exceeding thirteen pence is paid to the company in respect thereof; and
- (b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

If the directors refuse to register a transfer of any shares, they shall within two months after the date on which the transfer was lodged with the company send to the transferee notice of the refusal.

20. The legal personal representatives of a deceased sole holder of a share shall be the only persons recognized by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the legal personal representatives of the deceased survivor, shall be the only persons recognized by the company as having any title to the share.

21. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be properly required by the directors, have the right, either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy.

22. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

*Forfeiture of Shares.*

23. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

24. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

25. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

26. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

27. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company receive payment in full of the nominal amount of the shares.

28. A statutory declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share. The company may receive the consideration (if any) given for the share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money (if any) nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

29. The provisions of these Regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

*Conversion of Shares into Stock.*

30. The company may by ordinary resolution convert any paid-up shares into stock and reconvert any stock into paid-up shares of any denomination.

31. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as, and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

32. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company, and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

33. Such of the regulations of the company as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder."

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*Alteration of Capital.*

34. The company may from time to time by ordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

35. Subject to any direction to the contrary that may be given by the company in general meeting, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of those shares in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

36. The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture and otherwise as the shares in the original share capital.

37. The company may by ordinary resolution—

- (a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
- (b) sub-divide its existing shares, or any of them, into shares of smaller amount than is fixed by the memorandum of association subject, nevertheless, to the provisions of section 98(1)(d) of the Act;
- (c) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

38. The company may by special resolution reduce its share capital and any capital redemption reserve fund in any manner and with, and subject to, any incident authorized, and consent required, by law.

*General Meetings.*

39. A general meeting shall be held once in every calendar year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the third month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

40. The above-mentioned general meetings shall be called ordinary general meetings; all other general meetings shall be called extraordinary general meetings.

41. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or in default, may be convened by such requisitionists, as provided by section 159 of the Act. If at any time there are not in Gibraltar sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

*Notice of General Meetings.*

42. Subject to the provisions of section 163(2) of the Act relating to special resolutions, seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and, in case of special business, the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner (if any) as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but with the consent of all the members entitled to receive notice of some particular meeting, that meeting may be convened by such shorter notice and in such manner as those members may think fit.

43. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any member shall not invalidate the proceedings at any meeting.

*Proceedings at General Meetings.*

44. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with



the exception of sanctioning a dividend, the consideration of the accounts, balance sheets and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

45. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a quorum.

46. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour for the time appointed for the meeting the members present shall be a quorum.

47. The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the company.

48. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose someone of their number to be chairman.

49. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

50. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands), demanded by at least three members present in person or by proxy entitled to vote or by one member or two members so present and entitled, if that member or those two members together hold not less than fifteen per cent of the paid-up capital of the company, and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

51. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

52. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

53. A poll demanded on the election of a chairman or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

*Votes of Members.*

54. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

55. In the case of joint holders the vote of the senior who tenders a vote whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

56. If a member is suffering from mental disorder, a person authorized in that behalf under section 47 of the Mental Health Act or a receiver appointed under section 49 of that Act may vote on behalf of the member, either on a show of hands or on a poll.

57. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

58. On a poll votes may be given either personally or by proxy.

59. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorized in writing, or, if the appointor is a corporation, either under seal, or under the hand of an officer or attorney duly authorized. A proxy need not be a member of the company.

60. The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than forty-eight hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument



*Powers and Duties of Directors.*

67. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company, as are not, by the Act, or by these articles, required to be exercised by the company in general meeting, subject, nevertheless, to any regulation of these articles, to the provisions of the Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

68. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term and at such remuneration (whether by way of salary, or commission, or participation in profits or partly in one way and partly in another) as they think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation of retirement of directors; but his appointment shall be subject to determination ipso facto if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined.

69. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

70. The directors shall cause minutes to be made in books provided for the purpose—

- (a) of all appointments of officers made by the directors;
- (b) of the names of the directors present at each meeting of the directors and of any committee of the directors;
- (c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors,

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

*The Seal.*

71. Any seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of a director and of the secretary or such other person as the directors may appoint for the purpose; and that director and the secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

*Disqualification of Directors.*

72. The office of director shall be vacated, if the director:
- (a) ceases to be a director by virtue of section 191 of the Act; or
  - (b) without the consent of the company in general meeting holds any other office of profit under the company except that of managing director or manager; or
  - (c) becomes bankrupt; or
  - (d) becomes prohibited from being a director by reason of any order made under section 264 or 315 of the Act; or
  - (e) is suffering from mental disorder; or
  - (f) resigns his office by notice in writing to the company; or
  - (g) is directly or indirectly interested in any contract with the company or participates in the profits of any contract with the company:

Provided, however, that a director shall not vacate his office by reason of his being a member of any corporation which has entered into contracts with or done any work for the company if he shall have declared the nature of his interest in manner required by section 200 of the Act, but the director shall not vote in respect of any such contract or work or any matter arising thereout, and if he does so vote his vote shall not be counted.

*Rotation of Directors.*

73. At the first ordinary general meeting of the company the whole of the directors shall retire from office, and at the ordinary general meeting in every subsequent year one third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

74. The directors to retire in every year shall be those who have been longest in office since their last election but as between persons who

became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

75. A retiring director shall be eligible for re-election.

76. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto and in default the retiring director shall be deemed to have been re-elected unless at such meeting it is resolved not to fill up such vacated office.

77. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

78. Any casual vacancy occurring in the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

79. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

80. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

*Proceedings of Directors.*

81. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

82. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall when the number of directors exceeds three, be three, and when the number of directors does not exceed three, be two.

83. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number

fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

84. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

85. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.

86. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

87. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

88. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

#### *Dividends and Reserve.*

89. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

90. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

91. No dividend shall be paid otherwise than out of profits.

92. Subject to the rights of persons (if any) entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is

paid up on any of the shares in the company dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

93. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalising dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion either be employed in the business of the company, or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

94. If several persons are registered as joint holders of any share, any one of them may give effectual receipts for any dividend or other moneys payable on or in respect of the share.

95. Any dividend may be paid by cheque or warrant sent through the post to the registered address of the member or person entitled thereto or in the case of joint holders to any one of such joint holders at his registered address or to such person and such address as the member or person entitled or such joint holders, as the case may be, may direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent or to the order of such other person as the member or person entitled or such joint holders, as the case may be, may direct.

96. No dividend shall bear interest against the company.

*Accounts.*

97. The directors shall cause proper books of account to be kept with respect to—

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

98. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

99. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or



regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorized by the directors or by the company in general meeting.

100. The directors shall from time to time in accordance with section 171 of the Act, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets and reports as are referred to in that section.

101. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting together with a copy of the auditors' report shall not less than seven days before the date of the meeting be sent to all persons entitled to receive notices of general meetings of the company.

*Audit.*

102. Auditors shall be appointed and their duties regulated in accordance with sections 180, 181 and 182 of the Act.

*Notices.*

103. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address in Gibraltar) to the address (if any) in Gibraltar supplied by him to the company for the giving of notices to him.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of twenty-four hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

104. If a member has no registered address in Gibraltar and has not supplied to the company an address in Gibraltar for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in Gibraltar shall be deemed to be duly given to him at noon on the day on which the advertisement appears.

105. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register of members in respect of the share.

106. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address (if any) in Gibraltar supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

107. Notice of every general meeting shall be given in some manner hereinbefore authorized to every member except those members who (having no registered address in Gibraltar) have not supplied to the company an address in Gibraltar for the giving of notices to them, and also to every person entitled to a share in consequence of the death or bankruptcy of a member, who, but for his death or bankruptcy, would be entitled to receive notice of the meeting. No other persons shall be entitled to receive notices of general meetings.

**TABLE B.**

Section 13

FORM OF MEMORANDUM OF ASSOCIATION OF A COMPANY  
LIMITED BY SHARES.

1st. The name of the company is "The Eastern Steam Packet Company, Limited."

2nd. The registered office of the company will be situate in Gibraltar.

3rd. The objects for which the company is established are the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing of all such other things as are incidental or conducive to the attainment of the above object.

4th. The liability of the members is limited.

5th. The share capital of the company is two hundred thousand pounds divided into one thousand shares of two hundred pounds each.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

*Names, Addresses and Descriptions  
of Subscribers.*

*Number of shares  
taken by each*

			<i>Subscriber.</i>
John Jones of	Gibraltar	Merchant	200
John Smith of	“	“	25
Thomas Green of	“	“	30
John Thompson of	“	“	40
Caleb White of	“	“	15
Andrew Brown of	“	“	5
Caesar White of	“	“	10
Total shares taken			325

Dated the                      day of                      20                      .  
 Witness to the above signatures,  
 A. B., No.13, Main Street, Gibraltar.

**TABLE C.**

Section 13

FORM OF MEMORANDUM AND ARTICLES OF ASSOCIATION OF A  
 COMPANY LIMITED BY GUARANTEE, AND NOT HAVING A  
 SHARE CAPITAL.

*Memorandum of Association.*

- 1st. The name of the company is “The Kent School Association, Limited.”
- 2nd. The registered office of the company will be situate in Gibraltar.
- 3rd. The objects for which the company is established are the carrying on a school for boys in Gibraltar and the doing of all such other things as are incidental or conducive to the attainment of the above object.
- 4th. The liability of the members is limited.
- 5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding £10.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

*Names, Addresses and Descriptions of Subscribers.*

1. John Jones of	Gibraltar	Schoolmaster
2. John Smith of	“	“
3. Thomas Green of	“	“
4. John Thompson of	“	“
5. Caleb White of	“	“
6. Andrew Brown of	“	“
7. Caesar White of	“	“

Dated the        day of                    20    .

Witness to the above signatures,

A. B., No.13, Main Street, Gibraltar.

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING  
MEMORANDUM OF ASSOCIATION.

*Preliminary.*

1. (1) In these Regulations,—

“the Act” means the Companies Act.

(2) When any provision of the Act is referred to the reference is to such provision as modified by any law for the time being in force.

(3) Unless the context otherwise requires, expressions defined in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined.

*Members.*

2. The number of members with which the company proposes to be registered is 500, but the directors may from time to time register an increase of members.

3. The subscribers to the memorandum of association and such other persons as the directors shall admit to membership shall be members of the company.

*General Meetings.*

4. The first general meeting shall be held at such time not being less than one month nor more than three months after the incorporation of the company, and at such place, as the directors may determine.
5. A general meeting shall be held once in every calendar year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the third month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.
6. The above-mentioned general meetings shall be called ordinary general meetings; all other general meetings shall be called extraordinary general meetings.
7. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitions, as proved by section 159 of the Act. If at any time there are not in Gibraltar sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

*Notice of General Meetings.*

8. Subject to the provisions of section 163(2) of the Act relating to special resolutions, seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and in case of special business, the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner (if any) as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but with the consent of all the members entitled to receive notice of some particular meeting, that meeting may be convened by such shorter notice and in such manner as those members may think fit.
9. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any member shall not invalidate the proceedings at any meeting.

*Proceedings at General Meetings.*

10. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

11. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a quorum.

12. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum.

13. The chairman (if any) of the board of directors shall preside as chairman at every meeting of the company.

14. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.

15. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting, from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

16. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least two members present in person or by proxy entitled to vote and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the

number or proportion of the votes recorded in favour of, or against, that resolution.

17. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

18. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

19. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

*Votes of Members.*

20. Every member shall have one vote.

21. If a member is suffering from mental disorder, a person authorized in that behalf under section 47 of the Mental Health Act or a receiver appointed under section 49 of that Act may vote on behalf of the member, either on a show of hands or on a poll.

22. No member shall be entitled to vote at any general meeting unless all moneys presently payable by him to the company have been paid.

23. On a poll votes may be given either personally or by proxy.

24. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorized in writing, or, if the appointor is a corporation, either under the seal, or under the hand of an officer or attorney so authorized. A proxy need not be a member of the company.

25. The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than forty-eight hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

26. An instrument appointing a proxy may be in the following form, or any other form which the directors shall approve:—

“  
 I of Company, Limited.  
 being a member of the  
 Company, Limited, hereby appoint of as my  
 proxy to vote for me and on my behalf at the [ordinary or  
 extraordinary, *as the case may be*] general meeting of the company to  
 be held on the day of and at any adjournment  
 thereof.

Signed this day of 20 .”

27. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

*Corporations acting by Representatives at Meetings.*

28. Any corporation which is a member of the company may by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of the company and the person so authorized shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

*Directors.*

29. The number of directors and the names of the first directors shall be determined in writing by a majority of the subscribers to the memorandum.

30. The remuneration of the directors shall from time to time be determined by the company in general meeting.

*Powers and Duties of Directors.*

31. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by the Act, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulation of these articles, to the provisions of the Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

32. The directors shall cause minutes to be made in books provided for the purpose—



- (a) of all appointments of officers made by the directors;
- (b) of the names of the directors present at each meeting of the directors and of any committee of the directors;
- (c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors,

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

*The Seal.*

33. Any seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of a director and of the secretary or such other person as the directors may appoint for the purpose; and that director and the secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

*Disqualifications of Directors.*

34. The office of director shall be vacated, if the director—
- (a) without the consent of the company in general meeting holds any other office of profit under the company; or
  - (b) becomes bankrupt; or
  - (c) becomes prohibited from being a director by reason of any order made under section 264 or 315 of the Act;
  - (d) is suffering from mental disorder; or
  - (e) resigns his office by notice in writing to the company; or
  - (f) is directly or indirectly interested in any contract with the company and fails to declare the nature of his interest in manner required by section 200 of the Act.

A director shall not vote in respect of any contract in which he is interested or any matter arising thereout, and if he does so vote his vote shall not be counted.

*Rotation of Directors.*

35. At the first ordinary general meeting of the company the whole of the directors shall retire from office, and at the ordinary general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

36. The directors to retire in every year shall be those who have been longest in office since their last election but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

37. A retiring director shall be eligible for re-election.

38. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto and in default the retiring director shall be deemed to have been re-elected unless at such meeting it is resolved not to fill up such vacated office.

39. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

40. Any casual vacancy occurring in the board of directors may be filled up by the directors but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

41. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

42. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

*Proceedings of Directors.*

43. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

44. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall, when the number of directors exceeds three, be three and shall, when the number of directors does not exceed three, be two.

45. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

46. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but, if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

47. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall, in the exercise of the power so delegated, conform to any regulations that may be imposed on it by the directors.

48. A committee may elect a chairman of its meetings; but, if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

49. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

50. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

#### *Accounts.*

51. The directors shall cause proper books of accounts to be kept with respect to—

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

52. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

53. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorized by the directors or by the company in general meeting.

54. The directors shall from time to time in accordance with section 171 of the Act, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets and reports as are referred to in that section.

55. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting together with a copy of the auditor's report shall not less than seven days before the date of the meeting be sent to all persons entitled to receive notices of general meetings of the company.

*Audit.*

56. Auditors shall be appointed and their duties regulated in accordance with sections 180, 181 and 182 of the Act.

*Notices.*

57. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address in Gibraltar) to the address (if any) in Gibraltar supplied by him to the company for the giving of notices to him.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing

the notice, and to have been effected at the expiration of twenty-four hours after the letter containing the same was posted.

58. If a member has no registered address in Gibraltar and has not supplied to the company an address in Gibraltar for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in Gibraltar shall be deemed to be duly given to him on the day on which the advertisement appears.

59. Notice of every general meeting shall be given in some manner hereinbefore authorized to every member except those members who (having no registered address in Gibraltar) have not supplied to the company an address in Gibraltar for the giving of notices to them. No other persons shall be entitled to receive notices of general meetings.

*Names, Addresses and Descriptions of subscribers.*

1. John Jones of	Gibraltar	Schoolmaster
2. John Smith of	“	“
3. Thomas Green of	“	“
4. John Thompson of	“	“
5. Caleb White of	“	“
6. Andrew Brown of	“	“
7. Caesar White of	“	“

Dated the                      day of                      20                      .

Witness to the above signature,  
A. B., No. 20, Main Street, Gibraltar.

\_\_\_\_\_ -

**TABLE D.**

Section 13

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A  
COMPANY LIMITED BY GUARANTEE, AND HAVING A SHARE  
CAPITAL.

*Memorandum of Association.*

- 1st. The name of the company is “The Rock Hotel Company Limited.”
- 2nd. The registered office of the company will be situate in Gibraltar.

3rd. The object for which the company is established is “to encourage people to come to Gibraltar, by providing hotels and conveyances by sea and by land for the accommodation of travellers, and the doing of all such other things as are incidental or conducive to the attainment of the above object.”

4th. The liability of the members is limited.

5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company, contracted before he ceases to be a member, and the costs, charges and expenses of winding up the same and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding £20.

6th. The share capital of the company shall consist of five hundred thousand pounds, divided into five thousand shares of one hundred pounds each.

WE, the several persons whose names and addresses are subscribed are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

<i>Names, Addresses and Descriptions of Subscribers.</i>			<i>Number of shares taken by each Subscriber.</i>
1.	John Jones of	Gibraltar Merchant	200
2.	John Smith of	“ “	25
3.	Thomas Green of	“ “	30
4.	John Thompson of	“ “	40
5.	Caleb White of	“ “	15
6.	Andrew Brown of	“ “	5
7.	Caesar White of	“ “	10
<i>Total shares taken</i>			325

Dated the      day of                      20   .

Witness to the above signatures,  
A. B., No. 13, Main Street, Gibraltar.

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING  
MEMORANDUM OF ASSOCIATION.

The Articles of Table A set out in Schedule 1 to the Companies Act, shall be the articles of association of the company and apply to the company.

*Names, Addresses and Descriptions of Subscribers.*

1. John Jones of	Gibraltar	Merchant
2. John Smith of	“	“
3. Thomas Green of	“	“
4. John Thompson of	“	“
5. Caleb White of	“	“
6. Andrew Brown of	“	“
7. Caesar White of	“	“

Dated the      day of                      20      .

Witness to the above signatures,  
A. B., No. 13, Main Street, Gibraltar.

**TABLE E.**

Section 13

MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY HAVING A SHARE CAPITAL.

*Memorandum of Association.*

- 1st. The name of the company is “The Patent Stereotype Company.”
- 2nd. The registered office of the company will be situate in Gibraltar.
- 3rd. The objects for which the company is established are “the working of a patent method of founding and casting stereotype plates, of which method John Smith of Gibraltar, is the sole patentee, and the doing of all such things as are incidental or conducive to the attainment of the above objects.”

WE, the several persons whose names are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

<i>Names, Addresses and Descriptions of Subscribers.</i>	<i>Number of shares taken by each</i>
--	---

			<i>Subscriber.</i>
1. John Jones of	Gibraltar	Merchant	3
2. John Smith of	“	“	2
3. Thomas Green of	“	“	1
4. John Thompson of	“	“	2
5. Caleb White of	“	“	2
6. Andrew Brown of	“	“	1
7. Abel Brown of	“	“	1
Total shares taken			12

Dated the                      day of                      20                      .

Witness to the above signatures,  
A. B., No. 20, Main Street, Gibraltar.

ARTICLES OF ASSOCIATION TO ACCOMPANY THE PRECEDING  
MEMORANDUM OF ASSOCIATION.

1. The share capital of the company is two thousand pounds divided into twenty shares of one hundred pounds each.
2. The company may by special resolution—
  - (a) increase the share capital by such sum to be divided into shares of such amount as the resolution may prescribe;
  - (b) consolidate its shares into shares of a larger amount than its existing shares;
  - (c) sub-divide its shares into shares of a smaller amount than its existing shares;
  - (d) cancel any shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person;
  - (e) reduce its share capital in any way.
3. The Articles of Table A set out in Schedule I to the Companies Act (other than Articles 30, 31, 32, 33, 34, 37 and 38), shall be deemed to be incorporated with these articles and shall apply to the company.

*Names, Addresses and Descriptions of Subscribers.*

- |                  |           |          |
|------------------|-----------|----------|
| 1. John Jones of | Gibraltar | Merchant |
| 2. John Smith of | “         | “        |





## SCHEDULE 2

Section 41

**FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE  
DELIVERED TO REGISTRAR BY A PRIVATE COMPANY ON  
BECOMING A PUBLIC COMPANY.**

THE COMPANIES ACT.

Statement in lieu of Prospectus delivered for registration by  
[ *Insert the name of the Company.* ]

Pursuant to section 41 of the Companies Act.

<p>Delivered for registration by The nominal share capital of the company.</p>	<p>£</p>	
<p>Divided into . . . . .</p>	<p>Shares of £      each “            “ “            “</p>	
<p>Amount (if any) of above capital which consists of redeemable preferences shares. The date on or before which these shares are, or are liable, to be redeemed.</p>	<p>Shares of £      each</p>	
<p>Names, descriptions and addresses of directors or proposed directors.</p>		
<p>Amount of shares issued . . . . .</p>	<p>Shares</p>	
<p>Amount of commissions paid in connection therewith.</p>		
<p>Amount of discount (if any) allowed on the issue of any shares, or so much thereof as has not been written off at the date of the statement.</p>		
<p>Unless more than one year has elapsed sine the date on which the company was entitled to commence business:—</p>		
<p>    Amount of preliminary expenses</p>	<p>£</p>	
<p>    Amount paid to any promoter.</p>	<p>Name of promoter.</p>	
<p>    Consideration for the payment.</p>	<p>Amount £</p>	
<p>If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the</p>	<p>Consideration:—</p>	

<p>several classes of shares respectively. Number and amount of shares and debentures issued within the two years preceding the date of this statement as fully or partly paid up otherwise than for cash or agreed to be so issued at the date of this statement.</p>	<p>1. shares of £ fully paid. 2. shares upon which £ per share credited as paid.</p>
<p>Consideration for the issue of those shares or debentures.</p>	<p>3. debenture £ 4. Consideration:—</p>
<p>Names and addresses of Vendors of Property (1) purchased or acquired by the company within the two years preceding the date of this statement or (2) agreed or proposed to be purchased or acquired by the company.</p>	
<p>Amount (in cash, shares or debentures) paid or payable to each separate vendor.</p>	
<p>Amount paid or payable in cash, shares or debentures for any such property, specifying the amount paid or payable for goodwill.</p>	<p>Total purchase price £ Cash... .. £ Shares £ Debentures £ Goodwill £</p>
<p>Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of business or entered into more than two years before the delivery of this statement).</p>	
<p>Time and place at which the contracts or copies thereof may be inspected.</p>	
<p>Names and addresses of the auditors of the company.</p>	
<p>Full particulars of the nature and extent of the interest of every director in any property purchased or acquired by the company within the two years preceding the date of this statement or proposed to be purchased or acquired by the company or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become or to qualify him as, a director, or otherwise for services rendered or to be</p>	

rendered to the company by him or by the firm.

Rates of the dividends (if any) paid by the company in respect of each class of shares in the company in each of the three financial years immediately preceding the date of this statement or since the incorporation of the company whichever period is the shorter.

Particulars of the cases in which no dividends have been paid in respect of any class of shares in any of these years.

If any of the unissued shares or debentures are to be applied in the purchase of any business the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement, provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year the above requirement shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on.

(Signatures of the persons above-named as directors or proposed directors or of their agents authorized in writing)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date

*Note.*—In this Form, “vendor” includes a vendor as defined in Part III of Schedule 3 to the Act, and “financial year” has the meaning assigned to it in that Part of that Schedule.

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**SCHEDULE 3**

Sections 53 and 367

**PART I.****MATTERS REQUIRED TO BE STATED IN PROSPECTUS.**

1. Except where the prospectus is published as a newspaper advertisement, the contents of the memorandum, with the names, descriptions and addresses of the signatories, and the number of shares subscribed for by them respectively.
2. The number of founders or management or deferred shares (if any) and the nature and extent of the interest of the holders in the property and profits of the company.
3. The number of shares (if any) fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors.
4. The names, descriptions and addresses of the directors or proposed directors.
5. Where shares are offered to the public for subscription particulars as to—
  - (a) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters:—
    - (i) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;
    - (ii) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company;
    - (iii) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters;
    - (iv) working capital; and

- (b) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

6. (1) Subject to subparagraphs (2) to (4) inclusive the amount payable on application and allotment on each share, and, in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, the amount actually allotted, and the amount (if any) paid on the shares so allotted.

(2) The requirements of subparagraph (1) shall not apply to a prospectus issued by an open-ended investment company inviting the public to subscribe for the company's redeemable preference shares.

(3) The prospectus of an open-ended investment company inviting the public to subscribe for the company's redeemable preference shares shall—

- (a) in the case of the first such prospectus issued by the company state—

- (i) the period during which the subscription lists for the shares being offered shall remain open (“the initial subscription period”); and

- (ii) the amounts payable on application and allotment on each share offered during the initial subscription period; and

- (b) in the case of any subsequent prospectus issued by the company state—

- (i) the number of shares offered for subscription on each previous issue made within the two preceding years; and

- (ii) the number of shares of the company remaining unallotted or unredeemed on a date not earlier than 14 days prior to the date on which such prospectus was published; and

- (c) in either case shall specify the method by which the amount payable on the redemption of the company's shares will be determined.

(4) For the purpose of subparagraphs (2) and (3) an open-ended investment company means a company—

- (a) the sole object of which is to invest its funds in property of any description, including money, with the aim of spreading

investment risk and giving its shareholders the benefit of the results of the management of those funds by, or on behalf of, the company; and

- (b) which gives to the holders of redeemable preference shares in the company the right to have such shares redeemed by or out of the funds of the company at a price related to the net asset value of the company, for the purposes of which it has established regular dealing days.

7. The number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.

8. The names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares or debentures, to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor.

9. The amount (if any) paid or payable as purchase money in cash, shares or debentures, for any such property as aforesaid, specifying the amount (if any) payable for goodwill.

10. The amount (if any) paid within the two preceding years, or payable, as commission (but not including commission to sub-underwriters) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, or the rate of any such commission.

11. The amount or estimated amount of preliminary expenses.

12. The amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment.

13. The dates of and parties to every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than two years before the date of issue of the prospectus, and a reasonable time and place at which any such material contract or a copy thereof may be inspected.

14. The names and addresses of the auditors (if any) of the company.

15. Full particulars of the nature and extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.

16. If the prospectus invites the public to subscribe for shares in the company and the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

17. In the case of a company which has been carrying on business, or of a business which has been carried on for less than three years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.

#### **PART II.**

##### **REPORTS TO BE SET OUT IN PROSPECTUS.**

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

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

#### **PART III.**

##### **PROVISIONS APPLYING TO PARTS I AND II OF SCHEDULE.**

1. The provisions of this Schedule with respect to the memorandum and the qualification, remuneration and interest of directors, the names, descriptions and addresses of directors or proposed directors, and the amount or



estimated amount of the preliminary expenses, shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

2. Every person shall for the purposes of this Schedule be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

- (a) the purchase money is not fully paid at the date of the issue of the prospectus;
- (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus;
- (c) the contract depends for its validity or fulfilment on the result of that issue.

3. Where any property to be acquired by the company is to be taken on lease, this Schedule shall have effect as if “vendor” included the lessor, “purchase money” included the consideration for the lease, and “sub-purchaser” included a sub-lessee.

4. For the purposes of paragraph 8 of Part I of this Schedule where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors.

5. If in the case of a company which has been carrying on business, or of a business which has been carried on for less than three years, the accounts of the company or business have only been made up in respect of two years or one year, Part II of this Schedule shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years.

6. The expression “financial year” in Part II of this Schedule means the year in respect of which the accounts of the company or of the business, as the case may be, are made up, and where by reason of any alteration of the date on which the financial year of the company or business terminates the accounts of the company or business have been made up for a period greater or less than a year, that greater or less period shall for the purpose of the said Part of this Schedule be deemed to be a financial year.

## SCHEDULE 4

Section 58

**FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE DELIVERED TO REGISTRAR BY A COMPANY WHICH DOES NOT ISSUE A PROSPECTUS OR WHICH DOES NOT GO TO ALLOTMENT ON A PROSPECTUS ISSUED.**

THE COMPANIES ACT.

Statement in lieu of Prospectus delivered for registration by  
[ *Insert the name of the company.* ]

Pursuant to section 58 of the Companies Act.

Delivered for registration by			
The nominal share capital of the company.	£		
Divided into ... ..	Shares of £		each
Amount (if any) of above capital which consists of redeemable preference shares.	Shares of £		each
The date on or before which these shares are, or are liable, to be redeemed.			
Names, descriptions and addresses of directors or proposed directors.			
If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.			
Number and amount of shares and debentures agreed to be issued as fully or partly paid-up otherwise than in cash.	1. shares of £		fully paid.
The consideration for the intended issue of those shares and debentures.	2. shares upon		which £
			per share credited as paid.
	3. debenture £		.
	4. Consideration:—		
Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the company.			
Amount (in cash, shares or debentures) payable to each separate vendor.			
Amount (if any) paid or payable (in cash, shares	Total purchase		

or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.	price £ Cash ... £ Shares ... .. £ Debentures ... £ Goodwill £ _____
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company; or	Amount paid “ payable
Rate of the commission ...	Rate per cent
The number of shares (if any) which persons have agreed for a commission to subscribe absolutely.	
Estimated amount of preliminary expenses ...	£
Amount paid or intended to be paid to any promoter.	Name of promoter. Amount £
Consideration for the payment.	Consideration:—
Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the delivery of this statement).	
Time and place at which the contracts or copies thereof may be inspected.	
Names and addresses of the auditors of the company (if any).	
Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.	
If it is proposed to acquire any business, the amount, as certified by the persons by whom the accounts of the business have been audited,	

of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year the above requirement shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on.

(Signatures of the persons above-named as directors or proposed directors or of their agents authorized in writing)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date

*Note.*—In this Schedule, “vendor” includes a vendor as defined in Part III of Schedule 3 to the Act, and “financial year” has the meaning assigned to it in that Part of that Schedule.

## SCHEDULE 5

Section 153

**FORM OF ANNUAL RETURN OF A COMPANY HAVING  
A SHARE CAPITAL.**

Annual Return of the \_\_\_\_\_ Company Limited, made up to the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ (being the fourteenth day after the date of the first or only ordinary general meeting in 20\_\_\_\_).

The address of the registered office of the company is as follows:—

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*Summary of Share Capital and Shares.*

Nominal Share Capital of	}	£	shares of
divided			each
into*		£	shares of
			each

Total number of shares taken up\* to the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, being the date of the return (which number must agree with the total shown in the list as held by existing members).

Number of shares issued subject to payment wholly in cash.

Number of shares issued as fully paid up otherwise than in cash.

Number of shares issued as partly paid up to the extent of \_\_\_\_\_ per share otherwise than in cash.

† Number of \_\_\_\_\_ shares (if any) issued at a discount.

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\* *Where there are shares of different kinds or amounts (e.g. Preference and Ordinary or £1 and 5p) state the number and nominal values separately.*

† *If the shares are of different kinds, state them separately.*

Total amount of discount on the issue of shares £ \_\_\_\_\_ which has not been written off at the date of this

Return.		
†There has been called up on each of	shares	£
†There has been called up on each of	shares	£
†There has been called up on each of	shares	£
§Total amount of calls received, including payments on application and allotment.		£
Total amount (if any) agreed to be considered as paid on	shares which have been issued as fully paid up otherwise than in cash.	£
Total amount (if any) agreed to be considered as paid on	shares which have been issued as partly paid up to the extent of per share, otherwise than in cash.	£
Total amount of calls unpaid ... ..		£
Total amount of the sums (if any) paid by way of commission in respect of any shares or debentures or allowed by way of discount in respect of any debentures since the date of the last Return.		£
Total number of shares forfeited		
Total amount paid (if any) on shares forfeited		£
Total amount of shares for which share warrants to bearer are outstanding.		£
Total amount of share warrants to bearer issued and surrendered respectively since the date of the last Return.		Issued £ Surrendered £
Number of shares comprised in each share warrant to bearer.		
Total amount of the indebtedness of the company in respect of all mortgages and charges of the kind which are required to be registered with the Registrar of Companies under the Companies Act.		£

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† *Where various amounts have been called, or there are shares of different kinds, state them separately.*

§ *Include what has been received on forfeited as well as on existing shares.*

*Copy of last audited Balance Sheet of the Company.*

*Note.*—Except where the company is a private company within the meaning of section 40 of the Companies Act, this Return must include a written copy, certified by a director or by a manager or secretary of the company to be a true copy, of the last balance sheet which has been audited by the company's auditors (including every document required by law to be annexed thereto) together with a copy of the report of the auditors thereon (certified as aforesaid), and if any such balance sheet is in a foreign language there must also be annexed to it a translation thereof in English certified in the prescribed manner to be a correct translation. If the said last balance sheet did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets there must be made such additions to and corrections in the said copy as would have been required to be made in the said balance sheet in order to make it comply with the said requirements, and the fact that the said copy has been so amended must be stated thereon.

*Private Company.*

Certificates to be given by a Private Company.

A. "I certify that the company has not since the date of the \* last Annual Return issued any invitation to the public to subscribe for any shares or debentures of the company."

(Signature)

(State whether Director or Secretary.)

B. Should the number of members of the company exceed fifty the following certificate is also required:—

"I certify that the excess of members of the company above fifty consists wholly of persons who are in the employment of the company and/or of persons who, having been formerly in the employment of the company were while in such employment, and have continued after the determination of such employment to be, members of the company."

Companies

(Signature).

(State whether Director or Secretary).

The Return must be signed at the end by a Director or by the Manager or Secretary of the company.

Delivered for filing by

*\* In the case of the first Annual Return strike out the words “last Annual Return” and substitute therefor the words “Incorporation of the Company.”*

Particulars of the \* Directors of the Company, Limited, at the date of the Annual Return.

† The present Fore name or Names and Surname	Any former Fore name or Names or Surname	Nationality	Nationality of origin (if other than the present nationality)	Usual residential address	§Other business occupation (if any). If none state so



\* *“Director” includes any person who occupies the position of a director by whatever name called and any person in accordance with whose directions or instructions the directors of a company are accustomed to act.*

† *In the case of a corporation its corporate name and registered or principal office should be shown.*

§ *In the case of an individual who has no business occupation but holds any other directorship or directorships particulars of that directorship or of some one of those directorships must be entered.*

1930-07

## Companies

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List of Persons holding Shares in the \_\_\_\_\_ Company, Limited, on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ and \_\_\_\_\_ of Persons who have held Shares therein at any time since the date of the Return, or (in the case of the first Return) of the incorporation of the Company, showing their Names and Addresses, and an account of the Shares so held.

*N.B.* – If the names in this list are not arranged in alphabetical order, an index sufficient to enable the name of any person in this list to be readily found must be annexed to this list.

Folio in Register Ledger containing particulars	Names, Addresses and Occupations.				Account of Shares				Remarks	
	Surname	Fore name	Address	Occupation	* Number of Shares held by existing members at date of Return †	§ Particulars of shares transferred since the date of the last Return, or (in the case of the first Return) of the incorporation of the Company, by persons who are still members.		§ Particulars of shares transferred since the date of the last Return or (in the case of the first Return) of incorporation of the Company, by persons who are still members.		
						Number †	Date of Registration of Transfer	Number †		Date of Registration of Transfer

(Signature)  
(state whether Director or Manager or Secretary)

*\* The aggregate number of shares held, and not the distinctive numbers, must be stated, and the column must be added up throughout so as to make one total to agree with that stated in the summary to have been taken up.*

*† When the shares are of different classes these columns may be subdivided so that the number of each class held, or transferred, may be shown separately. Where any shares have been converted into stock the amount of stock held by each member, must be shown.*

*§ The date of registration of each transfer should be given as well as the number of shares transferred on each date, the particulars should be placed opposite the name of the transferor, and not opposite that of the transferee, but the name of the transferee may be inserted in the "Remarks" column immediately opposite the particulars of each transfer.*

# Companies

1930-07

Particulars of the Secretaries of the \_\_\_\_\_ Company, Limited, at the date of the Annual Return.

†The present Fore name or Names and Surname	Any former Fore name or Names or Surname	Nationality	Nationality of origin (if other than the present nationality)	Usual residential address	Other business occupation (if any).

† *In the case of a corporation its corporate name and registered or principal office should be shown.*

## SCHEDULE 6

Section 179

**FORM OF STATEMENT TO BE PUBLISHED BY INSURANCE  
COMPANIES AND DEPOSIT, PROVIDENT, OR BENEFIT  
SOCIETIES.**

\* The share capital of the company is \_\_\_\_\_, divided into  
shares of \_\_\_\_\_ each.

The number of shares issued is \_\_\_\_\_

Calls to the amount of \_\_\_\_\_ pounds per share have been made,  
under which the sum of \_\_\_\_\_ pounds has been received.

The liabilities of the company on the first day of January (or July) were—

Debts owing to sundry persons by the company.

- On judgment, £
- On specialty, £
- On notes or bills, £
- On simple contracts, £
- On estimated liabilities, £

The assets of the company on that day were—

- Government securities (*stating them*)
- Bills of exchange and promissory notes, £
- Cash at the bankers, £
- Other securities, £

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\* *If the company has no share capital the portion of the statement relating to capital and shares must be omitted.*

## SCHEDULE 7

Section 302

**PROVISIONS WHICH DO NOT APPLY IN THE CASE OF A  
WINDING UP SUBJECT TO SUPERVISION OF THE COURT.**

Statement of company's affairs to be submitted to official receiver.	s.232.
Report by official receiver.	s.233.
Power of court to appoint liquidator.	s.234.
Appointment and powers of provisional liquidator.	s.235.
Appointment and style of liquidators.	s.236.
Provisions where person other than official receiver is appointed liquidator.	s.237.
General provisions as to liquidators.	s.238 except subs. (5)
Exercise and control of liquidators' powers.	s.242.
Books to be kept by liquidator.	s.243.
Payments of liquidator into Savings Bank.	s.244.
Audit of liquidator's accounts.	s.245.
Release of liquidators.	s.246.
Meetings of creditors and contributories to determine whether committee of inspection shall be appointed.	s.247.
Constitution and proceedings of committee of inspection.	s.248.
Powers of court where no committee of inspection.	s.249.
Appointment of special manager.	s.257.
Power to order public examination of promoters and directors.	s.263.
Power to restrain fraudulent persons from managing companies.	s.264.
Power to appoint official receiver as receiver for debenture holders or creditors.	s.337.

## SCHEDULE 8

Section 347, 348 and 383

**TABLE OF FEES TO BE PAID TO THE REGISTRAR OF  
COMPANIES BY OR IN RESPECT OF COMPANIES HAVING A  
SHARE CAPITAL, COMPANIES NOT HAVING A SHARE  
CAPITAL, COMPANIES TO WHICH PARTS X AND XI OF THE  
ACT APPLY AND COMPANIES TO WHICH REGULATION (EC)  
No 2157/2001 (THE “EC REGULATION”) APPLIES**

<b>ITEM</b>	<b>FEE</b> <b>£</b>
1. (a) Incorporation, registration (including registration under Part X of the Act) or submission of any change in status of a company, that is to say, the fact of its being public or private or limited or unlimited or limited by shares or by guarantee or de-registering on registering as limited partnership (except on re-domiciliation) regardless of share capital	£50.00
(b) Same day urgency fee for incorporation or registration of a company including registration or re-registration under Part X (including registration) (correct documents to be lodged with the Registrar before 12.00 midday)	£100.00
(c) Registration of a company as re-domiciled in Gibraltar under section 365(1) or re-domiciling outside Gibraltar under section 365(3)	£100.00
(d) Registration of Prospectus	£100.00
(e) Registration of change of name	£30.00
(f) Same day urgency fee for registration of a change of name of a company (correct documents to be lodged with the Registrar before 12.00 midday)	£100.00
(g) Lodging of annual return for the current year then, with effect from 1st January 2008	£30.00 £45.00
(h) Lodging of the late Annual Return or substitution of an annual return after date due for the filing of that return	£65.00
(i) Lodging of particulars of directors and/or secretaries or any change in directors and/or secretaries	£10.00

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(j)	Lodging any document required to be given, delivered, sent, forwarded, lodged or filed by the Registrar (except where otherwise specified) or to lodge a substitute document for a document lodged or filed in the Register (other than an Annual Return)	£10.00
(k)	Mortgage	
	(i) Lodging prescribed particulars for registration of a charge or any other forms of security	£10.00
	(ii) The fee prescribed under section 131(1) for entry in the Register of Charges and issue of certificate of registration of charge	£30.00
	(iii) Entry of memorandum of satisfaction under section 133	£10.00
	(iv) Certificate of discharge under section 133	£15.00
(l)	Filing of accounts	£10.00
(m)	Application to Registrar to file Return of Allotments out of time	£50.00
(n)	Lodging with the Registrar information for the purposes of enabling the Registrar to commence the procedure to strike off a Company or in compliance with regulation 10(2) of the Companies (Re-domiciliation) Regulations 1996 (as amended)	£15.00
(o)	Application to the Registrar to restore to the register a company which has been struck off	£100.00
(p)	Application for a licence under section 18	£100.00
(q)	Certificate of good standing	£30.00
(r)	<b>Inspection of document -</b>	
	(i) personal search	£10.00
	(ii) electronic archive copy of company record	£10.00
	(iii) electronic archive copy of company record (within same day)	£20.00

(iv)	<b>Certified copy of a certificate:-</b>	
	(aa) if available from the original record (exclusive of search)	£2.00
	(bb) 1 <sup>st</sup> copy produced from electronic archive	£10.00
	(cc) each subsequent copy supplied on the same occasion and of the same company from electronic archive	£10.00
(v)	<b>Certified copy of any other document</b>	
	(aa) If available from the original record, per page (exclusive of search)	00.20
	(bb) 1 <sup>st</sup> copy produced from electronic archive; per document	£10.00
	(cc) 1 <sup>st</sup> copy produced from electronic archive; per document (within same day), per document	£20.00
	(dd) each subsequent copy supplied on the same occasion and of the same company from electronic archive, per document	£10.00
(vi)	<b>Copy of any document</b>	
	(aa) If available from the original record, per page (exclusive of search)	00.10
	(bb) 1 <sup>st</sup> copy produced from electronic archive; per document (inclusive of search)	£10.00
	(cc) 1 <sup>st</sup> copy produced from electronic archive; per document (within same day), per document	£10.00
	(dd) each subsequent copy supplied on the same occasion and of the same company from electronic archive, per document	£2.50
(s)	Postal search (electronic archive copy of company record)	£10.00



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**2. For Registration of an SE whose registered office is in Gibraltar on its formation**

2(a)	By merger in accordance with Article 2(1) of the EC Regulation	£100
(b)	By the formation of a holding SE in accordance with Article 2(2) of the EC Regulation	£100
(c)	By the formation of a subsidiary SE in accordance with Article 2(3) of the EC Regulation	£100
(d)	By the transference of a public company in accordance with Article 2(4) of the EC Regulation	£100
(e)	By the formation of a subsidiary SE in accordance with Article 3(2) of the EC Regulation	£100
3	For Registration of a public company by the conversion of an SE in accordance with Article 66 of the EC Regulation	£100
4	For registration of an SE on the transfer of its registered office to Gibraltar in accordance with Article 8 of the EC Regulation	£250
5	For an application for a certificate under article 8(8) of the EC Regulation attesting to the completion of the acts and formalities to be accomplished before the transfer of the registered office of an SE from Gibraltar	£250

**SCHEDULE 9****PROVISIONS REFERRED TO IN SECTION 370 OF THE ACT.**

Provisions relating to–	
Conclusiveness of certificate of incorporation;	s.16.
Specific requirements as to particulars in prospectus;	s.53.
Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to Registrar;	s.58.
Return as to allotments;	s.60.
Registration of charges created by companies registered in Gibraltar;	s.128.
Duty of company to register charges created by company;	s.129(1).
Duty of company to register charges existing on property acquired;	s.130.
Application of Part III to companies incorporated outside Gibraltar;	s.139.
Restrictions on commencement of business;	s.143.
The particulars as to directors and indebtedness of the company;	s.153(3).
Statutory meeting and statutory report;	153(3)(m) and (n).
Auditors' report and right to information and explanations;	s. 158.
Restrictions on appointment or advertisement of director;	s.182(1).
Notice by liquidator of his appointment;	s.293.
Delivery to Registrar of accounts of receivers and managers;	s.340.
Documents to be delivered to Registrar by companies carrying on business in Gibraltar;	s.358.
Return to be delivered to Registrar where documents altered;	s.359.
Obligation to state name of company.	s.361.

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**SCHEDULE 10****INVESTIGATION OF COMPANIES AND THEIR AFFAIRS:  
REQUISITION OF DOCUMENTS***Appointment and Functions of Inspectors***Investigation of a company on its own application or that of its members.**

1.(1) The Minister responsible for finance may appoint one or more competent inspectors to investigate the affairs of a company and to report on them in such manner as he may direct.

(2) The appointment may be made—

- (a) in the case of a company having a share capital, on the application either of not less than 200 members or of members holding not less than one-tenth of the shares issued,
- (b) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members, and
- (c) in any case, on application of the company.

(3) The application shall be supported by such evidence as the Minister responsible for finance may require for the purpose of showing that the applicant or applicants have good reason for requiring the investigation.

(4) The Minister responsible for finance may, before appointing inspectors, require the applicant or applicants to give security, to such amount as he may by order specify, for payment of the costs of the investigation.

**Other company investigations.**

2. (1) The Minister responsible for finance shall appoint one or more competent inspectors to investigate the affairs of a company and report on them in such manner as he directs, if the court by order declares that its affairs ought to be so investigated.

(2) The Minister responsible for finance may make such an appointment if it appears to him that there are circumstances suggesting—

- (a) that the company's affairs are being or have been conducted with intent to defraud its creditors or the creditors of any other

person, or otherwise for a fraudulent or unlawful purpose, or in a manner which is unfairly prejudicial to some part of its members, or

- (b) that any actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial, or that the company was formed for any fraudulent or unlawful purpose, or
- (c) that persons concerned with the company's formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members, or
- (d) that the company's members have not been given all the information with respect to its affairs which they might reasonably expect, or
- (e) that the company's affairs are being or have been conducted in a manner detrimental to the reputation of Gibraltar as a financial centre or otherwise contrary to the public interest.

(3) Subparagraphs (1) and (2) are without prejudice to the powers of the Minister responsible for finance under paragraph 1; and the power conferred by subparagraph (2) is exercisable with respect to a body corporate notwithstanding that it is in course of being voluntarily wound up.

(4) The reference in subparagraph (2)(a) to a company's members includes any person who is not a member but to whom shares in the company have been transferred or transmitted by operation of law.

#### **Inspectors' powers during investigation.**

3. (1) If inspectors appointed under paragraph 1 or 2 to investigate the affairs of a company think it necessary for the purposes of their investigation to investigate also the affairs of another body corporate which is or at any relevant time has been the company's subsidiary or holding company, or a subsidiary of its holding company or a holding company of its subsidiary, they have power to do so; and they shall report on the affairs of the other body corporate so far as they think that the results of their investigation of its affairs are relevant to the investigation of the affairs of the company first mentioned above.

(2) Inspectors appointed under either paragraph may at any time in the course of their investigation, without the necessity of making an interim report, inform the Minister responsible for finance of matters coming to their knowledge as a result of the investigation tending to show that an offence has been committed.

**Production of documents and evidence to inspectors.**

4. (1) When inspectors are appointed under paragraph 1 or 2, it is the duty of all officers and agents of the company, and of all officers and agents of any other body corporate whose affairs are investigated under paragraph 3(1)–

- (a) to produce to the inspectors all books and documents of or relating to the company or, as the case may be, the other body corporate which are in their custody or power;
- (b) to attend before the inspectors when required to do so; and
- (c) otherwise to give the inspectors all assistance in connection with the investigation which they are reasonably able to give.

(2) If the inspectors consider that a person other than an officer or agent of the company or other body corporate is or may be in possession of information concerning its affairs, they may require that person to produce to them any books or documents in his custody or power relating to the company or other body corporate, to attend before them and otherwise to give them all assistance in connection with the investigation which he is reasonably able to give; and it is that person's duty to comply with the requirement.

(3) An inspector may examine on oath the officers and agents of the company or other body corporate, and any such person as is mentioned in subparagraph (2), in relation to the affairs of the company or other body, and may administer an oath accordingly.

(4) In this paragraph a reference to officers or to agents includes past, as well as present, officers or agents (as the case may be); and "agents", in relation to a company or other body corporate, includes its bankers and solicitors and persons employed by it as auditors, whether these persons are or are not officers of the company or other body corporate.

(5) An answer given by a person to a question put to him in exercise of powers conferred by this paragraph (whether as it has effect in relation to an investigation under any of paragraphs 1 to 3, or as applied by any other paragraph in this Schedule) may be used in evidence against him.

**Power of inspector to call for directors' bank accounts.**

5. If an inspector has reasonable grounds for believing that a director, or past director, of the company or other body corporate whose affairs he is investigating maintains or has maintained a bank account of any description

(whether alone or jointly with another person and whether in Gibraltar or elsewhere), into or out of which there has been paid—

- (a) the emoluments or part of the emoluments of his office as such director particulars of which have not been disclosed to the shareholders of the company or other body corporate, or
- (b) any money which has resulted from or been used in the financing of any transaction, arrangement or agreement, entered into by the company or other body corporate and which has not been recorded in the annual accounts, or
- (c) any money which has been in any way connected with an act or omission, or series of acts or omissions, which on the part of that director constituted misconduct (whether fraudulent or not) towards the company or body corporate or its members,

the inspector may require the director to produce to him all documents in the director's possession, or under his control, relating to that bank account.

**Obstruction of inspectors treated as contempt of court.**

6. (1) When inspectors are appointed under paragraph 1 or 2 to investigate the affairs of a company, the following applies in the case of—

- (a) any officer or agent of the company,
- (b) any officer or agent of another body corporate whose affairs are investigated under paragraph 3,
- (c) any such person as is mentioned in paragraph 4(2).

Paragraph 4(4) applies with regard to references in this subparagraph to an officer or agent.

(2) If that person—

- (a) refuses to produce any book or document which it is his duty under paragraph 4 or 5 to produce, or
- (b) refuses to attend before the inspectors when required to do so, or
- (c) refuses to answer any question put to him by the inspectors with respect to the affairs of the company or other body corporate (as the case may be),

the inspectors may certify the refusal in writing to the court.

(3) The court may thereupon enquire into the case; and after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, the court may punish the offender in like manner as if he had been guilty of contempt of the court.

**Inspectors' reports.**

7. (1) The inspectors may, and if so directed by the Minister responsible for finance shall, make interim reports to the Minister responsible for finance, and on the conclusion of their investigation shall make a final report to him, and shall forward a copy of every such report to the Attorney-General.

Any such report shall be written or printed, as the Minister responsible for finance directs.

(2) If the inspectors were appointed under paragraph 2 in pursuance of an order of the court, the Minister responsible for finance shall furnish a copy of any report of theirs to the court.

(3) In any case the Minister responsible for finance may, if he thinks fit—

- (a) forward a copy of any report made by the inspectors to the company's registered office,
- (b) furnish a copy on request and on payment of the prescribed fee to—
  - (i) any member of the company or other body corporate which is the subject of the report,
  - (ii) any person whose conduct is referred to in the report,
  - (iii) the auditors of that company or body corporate,
  - (iv) the applicants for the investigation,
  - (v) any other person whose financial interests appear to the Minister responsible for finance to be affected by the matters dealt with in the report, whether as a creditor of the company or body corporate, or otherwise, and
- (c) cause any such report to be printed and published.

**Power to bring civil proceedings on company's behalf.**

8. (1) If, from any report made under paragraph 7 or from information or documents obtained under paragraph 15 or 16 below, it appears to the Attorney-General that any civil proceedings ought in the public interest to be brought by any body corporate, he may himself bring such proceedings in the name and on behalf of the body corporate.

(2) The Attorney-General shall indemnify the body corporate against any costs or expenses incurred by it in or in connection with proceedings brought under this paragraph.

**Expenses of investigating a company's affairs.**

9. (1) The expenses of and incidental to an investigation by inspectors appointed by the Minister responsible for finance shall, in the first instance, be a charge to the Consolidated Fund; but shall be recoverable from the persons mentioned in the following four subparagraphs, to the extent there specified.

(2) A person who is convicted on a prosecution instituted as a result of the investigation, or is ordered to pay the whole or any part of the costs of proceedings brought under paragraph 8, may in the same proceedings be ordered to pay those expenses to such extent as may be specified in the order.

(3) A body corporate in whose name proceedings are brought under that paragraph is liable to repay to the Consolidated Fund the amount or value of any sums or property recovered by it as a result of those proceedings; and any amount for which a body corporate is liable under this subparagraph is a first charge on the sums or property recovered.

(4) A body corporate dealt with by the inspectors' report, where the inspectors were appointed otherwise than of the Minister responsible for finance's own motion, is liable except where it was the applicant for the investigation to repay to the Consolidated Fund the full amount of those expenses except so far as the Minister responsible for finance otherwise directs.

(5) The applicant or applicants for the investigation, where the inspectors were appointed under paragraph 1, is or are liable to repay to the Consolidated Fund the full amount of those expenses except so far as the Minister responsible for finance otherwise directs.

(6) The report of inspectors appointed otherwise than of the Minister responsible for finance's own motion may, if they think fit, and shall if the Minister responsible for finance so directs, include a recommendation as to the directions (if any) which they think appropriate, in the light of their investigation, to be given under subparagraph (4) or (5) above.



(7) For purposes of this paragraph, any costs or expenses charged to the Consolidated Fund in or in connection with proceedings brought under paragraph 8 (including expenses incurred under subparagraph (2) of it) are to be treated as expenses of the investigation giving rise to the proceedings.

(8) Any liability to repay to the Consolidated Fund imposed by subparagraphs (2) and (3) above is (subject to satisfaction of his right to repayment) a liability also to indemnify all persons against liability under subparagraphs (4) and (5); and any such liability imposed by subparagraph (2) is (subject as mentioned above) a liability also to indemnify all persons against liability under subparagraph (3).

(9) A person liable under any one of those subparagraphs is entitled to contribution from any other person liable under the same subparagraph, according to the amount of their respective liabilities under it.

**Power of the Minister responsible for finance to present winding-up petition.**

10. If in the case of a body corporate liable to be wound up under this Act it appears to the Minister responsible for finance from a report made by inspectors under paragraph 7, or from information or documents obtained under paragraphs 15 or 16 below, that it is expedient in the public interest that the body should be wound up, he may (unless the body is already being wound up by the court) present a petition for it to be so wound up if the court thinks it just and equitable for it to be so.

**Inspectors' report to be evidence.**

11. (1) A copy of any report of inspectors appointed under paragraph 1 or 2, certified by the Minister responsible for finance to be a true copy, is admissible in any legal proceedings as evidence of the opinion of the inspectors in relation to any matter contained in the report.

(2) A document purporting to be such a certificate as is mentioned above shall be received in evidence and be deemed to be such a certificate, unless the contrary is proved.

*Other Powers of Investigation Available to the Minister responsible for finance.*

**Power to investigate company ownership.**

12. (1) Where it appears to the Minister responsible for finance that there is good reason to do so, he may appoint one or more competent inspectors to investigate and report on the membership of any company, and otherwise with respect to the company, for the purpose of determining the true persons who are or have been financially interested in the success or failure

(real or apparent) of the company or able to control or materially to influence its policy.

(2) The appointment of inspectors under this paragraph may define the scope of their investigation (whether as respects the matter or the period to which it is to extend or otherwise) and in particular may limit the investigation to matters connected with particular shares or debentures.

(3) If application for an investigation under this paragraph with respect to particular shares or debentures of a company is made to the Minister responsible for finance by members of the company, and the number of applicants or the amount of the shares held by them is not less than that required for an application for the appointment of inspectors under paragraph 1(2)(a) and (b)–

- (a) the Minister responsible for finance shall appoint inspectors to conduct the investigation (unless he is satisfied that the application is vexatious), and
- (b) the inspectors' appointment shall not exclude from the scope of their investigation any matter which the application seeks to have included, except in so far as the Minister responsible for finance is satisfied that it is unreasonable for that matter to be investigated.

(4) Subject to the terms of their appointment, the inspectors' powers extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of the investigation.

**Provisions applicable on investigation under paragraph 12.**

13. (1) For purposes of an investigation under paragraph 12, paragraphs 3(1), 4, 6 and 7 apply with the necessary modifications of references to the affairs of the company or to those of any other body corporate, subject however to the following subparagraphs.

- (2) Those paragraphs apply to–
  - (a) all persons who are or have been, or whom the inspector has reasonable cause to believe to be or have been, financially interested in the success or failure or the apparent success or failure of the company or any other body corporate whose membership is investigated with that of the company, or able to control or materially influence its policy (including persons concerned only on behalf of others), and

- (b) any other person whom the inspector has reasonable cause to believe possesses information relevant to the investigation,

as they apply in relation to officers and agents of the company or the other body corporate (as the case may be).

(3) If the Minister responsible for finance is of opinion that there is good reason for not divulging any part of a report made by virtue of paragraph 12 and this paragraph, he may under paragraph 7 disclose the report with the omission of that part; and he may cause to be kept by the Registrar of Companies a copy of the report with that part omitted or, in the case of any other such report, a copy of the whole report.

(4) The expenses of an investigation under paragraph 12 shall be defrayed by the Consolidated Fund.

**Power to obtain information as to those interested in shares, etc.**

14. (1) If it appears to the Minister responsible for finance that there is good reason to investigate the ownership of any shares in or debentures of a company and that it is unnecessary to appoint inspectors for the purpose, he may require any person whom he has reasonable cause to believe to have or to be able to obtain any information as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures to give any such information to the Minister responsible for finance.

(2) For this purpose a person is deemed to have an interest in shares or debentures if he has any right to acquire or dispose of them or of any interest in them, or to vote in respect of them, or if his consent is necessary for the exercise of any of the rights of other persons interested in them, or if other persons interested in them can be required, or are accustomed, to exercise their rights in accordance with his instructions.

(3) A person who fails to give information required of him under this paragraph, or who in giving such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, is liable to imprisonment for 5 years and a fine.

*Requisition and Seizure of Books and Papers.*

**Minister responsible for finance's power to require production of documents.**

15. (1) The powers of this paragraph are exercisable in relation to the following bodies—

- (a) a company, formed and registered under this Act;
- (b) an unregistered company as defined in section 351 having its principal place of business in Gibraltar; and
- (c) a body corporate, whether or not registered under Part X of this Act which is carrying on business in Gibraltar or has at any time carried on business in Gibraltar.

(2) The Minister responsible for finance may at any time, if he thinks there is good reason to do so, give directions to any such body requiring it, at such time and place as may be specified in the directions, to produce such books or papers as may be so specified.

(3) The Minister responsible for finance may at any time, if he thinks there is good reason to do so, authorise a public officer to require any such body to produce to him (the officer) forthwith any books or papers which the officer may specify, provided that such officer shall, if required by such a body, produce evidence of his authority.

(4) Where by virtue of subparagraph (2) or (3) the Minister responsible for finance or public officer has power to require the production of books or papers from any body, he or the officer has the like power to require production of those books or papers from any person who appears to him or the officer to be in possession of them; but where any such person claims a lien on books or papers produced by him, the production is without prejudice to the lien.

(5) The power under this paragraph to require a body or other person to produce books or papers includes power—

- (a) if the books or papers are produced—
  - (i) to take copies of them or extracts from them, and
  - (ii) to require that person, or any other person who is a present or past officer of, or is or was at any time employed by, the body in question, to provide an explanation of any of them;
- (b) if the books or papers are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(6) If the requirement to produce books or papers or provide an explanation or make a statement is not complied with, the body or other person on whom the requirement was so imposed is guilty of an offence and liable to a fine.

(7) However, where a person is charged with an offence under subparagraph (6) in respect of a requirement to produce any books or papers, it is a defence to prove that they were not in his possession or under his control and that it was not reasonably practicable for him to comply with the requirement.

(8) A statement made by a person in compliance with such a requirement may be used in evidence against him.

### **Entry and search of premises.**

16. (1) The following applies if a justice of the peace is satisfied on information on oath laid by a public officer authorised under paragraph 15(3), that there are reasonable grounds for suspecting that there are on any premises any books or papers of which production has been required under paragraph 15 and which have not been produced in compliance with that requirement.

(2) The justice may issue a warrant authorising any police officer, together with any other persons named in the warrant and any other police officers, to enter the premises specified in the information (using such force as is reasonably necessary for the purpose) and to search the premises and take possession of any books or papers appearing to be such books or papers as are mentioned above, or to take, in relation to any books or papers so appearing, any other steps which may appear to be necessary for preserving them and preventing interference with them.

(3) A warrant so issued continues in force until the end of one month after the date on which it is issued.

(4) Any books or papers of which possession is taken under this paragraph may be retained—

- (a) for a period of 3 months, or
- (b) if within that period there are commenced any such criminal proceedings as are mentioned in paragraph 17 (1)(a) or (b) (being proceedings to which the books or papers are relevant), until the conclusion of those proceedings.

(5) A person who obstructs the exercise of a right of entry or search conferred by a warrant issued under this paragraph, or who obstructs the

exercise of a right so conferred to take possession of any books or papers, is guilty of an offence and liable to a fine.

**Provision for security of information obtained.**

17. (1) No information or document relating to a body which has been obtained under paragraph 15 or 16 shall, without the previous consent in writing of that body, be published or disclosed, except to a competent authority, unless the publication or disclosure is required—

- (a) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings for an offence entailing misconduct in connection with the management of the body's affairs or misapplication or wrongful retainer of its property;
- (b) for the purposes of the examination of any person by inspectors appointed under paragraph 1, 2 or 12 in the course of their investigation;
- (c) for the purpose of enabling the Minister responsible for finance or any other public officer to exercise, in relation to that or any other body, any of his functions under this Act or any other law;
- (d) for the purposes of proceedings under paragraph 16.

(2) A person who publishes or discloses any information or document in contravention of this paragraph is guilty of an offence and liable to imprisonment for 2 years and a fine.

(3) For the purposes of this paragraph in relation to information or document relating to a body, each of the following is a competent authority—

- (a) an inspector appointed by the Minister responsible for finance under this Schedule,
- (b) the Attorney-General,
- (c) the Financial Secretary and any officer authorised by him,
- (d) the Commissioner of Banking and the Banking Supervisor,
- (e) the Commissioner of Insurance and the Insurance Supervisor,
- (f) the Registrar of Companies, and
- (g) any police officer.

**Punishment for destroying, mutilating etc., company documents.**

18. (1) A person, being an officer of any such body as is mentioned in subparagraphs (a) to (c) of paragraph 15(1) who—

- (a) destroys, mutilates or falsifies, or is privy to the destruction, mutilation or falsification of a document affecting or relating to the body's property or affairs, or
- (b) makes, or is privy to the making of, a false entry in such a document,

is guilty of an offence, unless he proves that he had no intention to conceal the state of affairs of the body or to defeat the law.

(2) Such a person as above mentioned who fraudulently either parts with, alters or makes an omission in any such document or is privy to fraudulent parting with, fraudulent altering or fraudulent making of an omission in, any such document, is guilty of an offence.

(3) A person guilty of an offence under this paragraph is liable to imprisonment for 10 years and a fine.

**Punishment for furnishing false information.**

19. A person who, in purported compliance with a requirement imposed under paragraph 15 to provide an explanation or make a statement, provides or makes an explanation or statement which he knows to be false in a material particular or recklessly provides or makes an explanation or statement which is so false, is guilty of an offence and liable to imprisonment for 10 years and a fine.

*Supplementary.*

**Privileged information.**

20. (1) Nothing in paragraphs 1 to 14 requires the disclosure to the Minister responsible for finance or to an inspector appointed by him—

- (a) by any person of information which he would in an action in the Supreme Court be entitled to refuse to disclose on grounds of legal professional privilege except, if he is a lawyer, the name and address of his client,
- (b) by a company's bankers (as such) of information as to the affairs of any of their customers other than the company.

(2) Nothing in paragraphs 15 to 19 compels the production by any person of a document which he would in an action in the Supreme Court be entitled to refuse to produce on grounds of legal professional privilege, or authorises the taking of possession of any such document which is in the person's possession.

(3) The Minister responsible for finance shall not under paragraph 15 require, or authorise a public officer to require, the production by a person carrying on the business of banking of a document relating to the affairs of a customer of his unless either it appears to the Minister responsible for finance that it is necessary to do so for the purpose of investigating the affairs of the first-mentioned person, or the customer is a person on whom a requirement has been imposed under that section, or under section 98 of the Insurance Companies Act, 1987.

(4) Subject to the provisions of this paragraph, any requirement or direction made under paragraphs 4 or 15, or any duty or obligation imposed by the provisions of either paragraph, shall have effect notwithstanding any obligation as to secrecy or other restriction on the disclosure of information or the production of documents imposed by legislation, contract or otherwise.

**Investigation of overseas companies.**

21. Paragraphs 2 to 7, 9, 11 and 20(1) apply to all bodies corporate incorporated outside Gibraltar which are carrying on business in Gibraltar or have at any time carried on business there as if they were companies under this Act, but subject to such (if any) adaptations and modifications as may be specified by regulations made by the Minister responsible for finance.



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**SCHEDULE 11**

Sections 389(1) and 403(1)

**CREDIT AND FINANCIAL INSTITUTIONS TO WHICH THE BANK BRANCHES DIRECTIVE (89/117/EEC) APPLIES**

1. This Schedule applies to any credit or financial institution—
  - (a) which is incorporated or otherwise formed outside the United Kingdom and Gibraltar;
  - (b) whose head office is outside the United Kingdom and Gibraltar; and
  - (c) which has a branch in Gibraltar.

2. In this Schedule—

“branch”, in relation to a credit or financial institution, means a place of business which forms a legally dependent part of the institution and which conducts directly all or some of the operations inherent in its business;

“credit institution” means a credit institution as defined in Article 1 of the First Council Directive on the coordination of laws, sections and administrative provisions relating to the taking up and pursuit of the business of credit institutions (77/780/EEC), that is to say, an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account; and

“financial institution” means a financial institution within the meaning of Article 1 of the Council Directive on the obligations of branches established in a member State of credit and financial institutions having their head offices outside that member State regarding the publication of annual accounting documents (the Bank Branches Directive 89/117/EEC).

## SCHEDULE 12

Section 403(2)

**DELIVERY OF REPORTS AND ACCOUNTS: COMPANIES TO WHICH THE ELEVENTH COMPANY LAW DIRECTIVE APPLIES****PART I****COMPANIES REQUIRED TO MAKE DISCLOSURE UNDER PARENT LAW****Scope of Part.**

1. (1) This Part applies to any company to which section 403 applies which is required by its parent law to prepare, have audited and disclose accounts.

(2) This Part of this Schedule also applies to any company to which section 386 applies which is incorporated in a member State and –

- (a) is required by its parent law to prepare and disclose accounts but, by virtue of Article 51 of the Fourth Council Directive, is not required by that law to have those accounts audited; or
- (b) is not required by its parent law to prepare, have audited and disclose accounts if–
  - (i) its parent undertaking prepares, had audited and discloses consolidated accounts; and
  - (ii) in pursuance of Article 57 of that Directive, its accounts are included in those consolidated accounts.

**Duty to deliver copies in Gibraltar.**

2. (1) This paragraph applies in respect of each branch which a company to which this Part applies has in Gibraltar.

(2) The company shall deliver to the Registrar for registration in respect of the branch copies of all the accounting documents prepared in relation to a financial period of the company which are disclosed in accordance with its parent law on or after the end of the period allowed for compliance in respect of the branch with section 388 or, if earlier, the date on which the company complies with that section in respect of the branch.

(3) Where the company's parent law permits it to discharge its obligation with respect to the disclosure of accounting documents by disclosing documents in a modified form, it may discharge its obligation

under subparagraph (2) by delivering copies of documents modified as permitted by that law.

(4) If any document, a copy of which is delivered under subparagraph (2), is in a language other than English, the company shall annex to the copy delivered a translation of it into English, certified in accordance with rule 5 of the Companies Rules to be a correct translation.

3. Paragraph 2 shall not require documents to be delivered in respect of a branch if –

- (a) before the end of the period allowed for compliance with that paragraph, they are delivered in respect of another branch in the United Kingdom, and
- (b) the particulars registered under sections 388 to 396 in respect of the branch indicate an intention that they are to be registered in respect of that other branch and include the details of that other branch mentioned in section 391(b).

**Time for delivery.**

4. The period allowed for delivery, in relation to a document required to be delivered under paragraph 2, is 3 months from the date on which the document is first disclosed in accordance with the company's parent law.

**Penalty for non-compliance.**

5. (1) If a company fails to comply with paragraph 2 before the end of the period allowed for compliance, it, and every person who immediately before the end of that period was a director of it, is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale and for continued contravention, to a daily default fine not exceeding level 1 on the standard scale.

(2) It is a defence for a person charged with an offence under this paragraph to prove that he took all reasonable steps for securing compliance with paragraph 2.

**Interpretation.**

6. (1) In this Part–

“financial period”–

- (a) in relation to a company falling within paragraph (2)(a) above, means a period for which the company is required or permitted by its parent law to prepare accounts; and

- (b) in relation to a company falling within paragraph (2)(b) above, means a period for which its parent undertaking is required or permitted by the undertaking's parent law to prepare consolidated accounts;

“the Fourth Council Directive” means the Fourth Council Directive of 25th July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies (78/660/EEC);”.

“parent law”, in relation to a company, means the law of the country in which the company is incorporated;

and references to disclosure are to public disclosure.

(2) For the purposes of this Part of this Schedule, the following are accounting documents in relation to a financial period of a company falling within paragraph (1) above—

- (a) the accounts of the company for the period, including, if it has one or more subsidiaries, any consolidated accounts of the group;
- (b) any annual report of the directors for the period; and
- (c) in the case of a company falling within paragraph 1 above—
- (i) any report of the auditors on the accounts mentioned in paragraph (a) above; and
- (ii) any report of the auditors on the report mentioned in paragraph (b) above.

(3) For the purposes of this Part of this Schedule, the accounting documents in relation to a financial period of a company falling within paragraph (2)(b) above are the consolidated accounts of its parent undertaking.

**PART II**  
COMPANIES NOT REQUIRED TO MAKE DISCLOSURE UNDER  
PARENT LAW

**Scope of Part.**

7. (1) This Part of this Schedule applies to any company to which section 403 applies which does not fall within Part I above.

(2) This Part applies to any company to which section 403 applies which is not required by the law of the country in which it is incorporated to prepare, have audited and to disclose publicly accounts.

**Preparation of accounts and reports.**

8. A company to which this Part applies shall in respect of each financial year of the company prepare the like accounts and directors' report, and cause to be prepared such an auditor's report as would be required if the company were a company to which section 10 of the Companies (Accounts) Act, 1999 applied.

**Duty to deliver accounts and reports.**

9. (1) A company to which this Part applies shall, in respect of each financial year of the company, deliver to the Registrar copies of the accounts and reports prepared in accordance with paragraph 8.

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**NB.** Section 3(2)(b) of Act. 1998-31 referred to the "Companies (Accounts Directive) Regulations, 1997"; Those Regulations were never brought into force and were overtaken by the Companies (Accounts) Act, 1999 (1999-29) as from 1.4.2000.

(2) If any document comprised in those accounts or reports is in a language other than English, the company shall annex to the copy delivered a translation of it into English, certified in accordance with rule 5 of the Companies Rules to be a correct translation.

(3) A company required to deliver documents under this paragraph in respect of a financial year shall deliver them in respect of each branch which it has in Gibraltar at the end of that year.

(4) Subparagraph (3) is without prejudice to section 401.

10. Paragraph 9 shall not require documents to be delivered in respect of a branch if—

- (a) before the end of the period allowed for compliance with that paragraph, they are delivered in respect of another branch in Gibraltar or the United Kingdom, and
- (b) the particulars registered under section 388 in respect of the branch indicate an intention that they are to be registered in respect of that other branch and include the details of that other branch mentioned in section 391(b).

**Time for delivery.**

11. (1) The period allowed for delivering accounts and reports under paragraph 9 is 13 months after the end of the relevant accounting reference period, subject to the following provisions of this paragraph.

(2) If the relevant accounting reference period is the company's first and is a period of more than 12 months, the period allowed is 13 months from the first anniversary of the company becoming a company to which this Part applies.

(3) In this paragraph "the relevant accounting reference period" means the accounting reference period by reference to which the financial year for the accounts in question was determined.

**Penalty for non-compliance.**

12. (1) If the requirements of paragraph 9 are not complied with before the end of the period allowed for delivering accounts and reports, or if the accounts and reports delivered do not comply with the requirements made by or under the Act, the company and every person who immediately before the end of that period was a director of the company is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale and for continued contravention to a daily default fine not exceeding level 1 on the standard scale.

(2) It is a defence for a person charged with such an offence to prove that he took all reasonable steps for securing that the requirements in question would be complied with.

(3) It is not a defence in relation to a failure to deliver copies to the Registrar to prove that the documents in question were not in fact prepared as required by or under the Act.

## SCHEDULE 13

Section 408

## TRANSITIONAL PROVISIONS

**Branch registration.**

1. (1) This paragraph applies to any limited company incorporated outside the United Kingdom and Gibraltar which, immediately after one day before the date of the coming into force of the Act, has a branch in Gibraltar which it had there immediately before the date of coming into force of the Act.

(2) A company to which this paragraph applies shall be treated for the purposes of section 388(1) as having opened on the date of the coming into force of the Act any branch which it has in Gibraltar immediately after and it had there immediately before the date of the coming into force of the Act.

(3) Where a company to which this paragraph applies was a registered company immediately before the date of the coming into force of the Act section 388(1) shall have effect in its application by virtue of subsection (2), with the substitution for “one month” of “six months”.

(4) For the purposes of subparagraph (3), a company is a registered company if it has duly delivered documents to the Registrar under section 358 of the Act and has not subsequently given notice to him that it has ceased to have an established place of business in Gibraltar.

(5) Subject to subparagraph (c) hereof, sections 358 and 359 of the Act shall continue to apply to a company to which this paragraph applies until such time as it has—

- (a) complied with section 387 in respect of a branch, or
- (b) ceased to have a branch in Gibraltar,
- (c) sections 358 and 359 of the Act shall not however apply to any company to which this paragraph applies,

if the company had no place of business in Gibraltar immediately prior to one month before the date of the coming into force of the Act.

2. (1) This paragraph applies to any limited company incorporated outside the United Kingdom and Gibraltar which—

- (a) has an established place of business in Gibraltar both immediately before the date of the coming into force of the Act and immediately after,
- (b) does not have a branch there immediately after the date of the coming into force of the Act.

(2) Where, immediately after the date of the coming into force of the Act, a company to which this paragraph applies has a branch in Gibraltar, sections 358 and 359 of the Act shall continue to apply to the company until such time as it gives the Registrar notice of the fact that it is a company to which Part XIV applies.

3. (1) Where—

- (a) a company to which paragraph 1 applies delivers a return under section 388(1) in respect of a branch,
- (b) the return is the first which the company has delivered under that provision in respect of a branch in Gibraltar,
- (c) immediately before delivering the return, the company was a registered company, and
- (d) the company states in the return that the particulars have previously been delivered in respect of a place of business of the company, giving the company's registered number,

the documents previously registered under section 358(a) of the Act shall be treated as registered under section 387 in respect of the branch to which the return relates.

(2) For the purposes of this paragraph, a company is a registered company if—

- (a) it has duly delivered documents to the Registrar under section 358 of the Act,
- (b) it has duly complied with any obligation to make a return to the Registrar under section 359 of the Act, and
- (c) it has not subsequently given notice to the Registrar that it has ceased to have an established place of business in Gibraltar.

**Delivery of accounts and reports.**



4. (1) This paragraph applies to any company which immediately after one day before the date of the coming into force of the Act is a company to which Part II of Schedule 12 applies.

(2) Paragraphs 8 and 9(1) of that Schedule shall have effect in relation to a company to which the paragraph applies, with the insertion after “each financial year of the company” of “ending after one day before the date of the coming into force of the Act”.

(3) In its application to a company to which this paragraph applies, paragraph 11(2) of Schedule 12 shall have effect with the substitution for “becoming a company to which this Part applies” of “establishing a place of business in Gibraltar”.

5. (1) This paragraph applies to a company to which Part I of Schedule 12 applies.

(2) Section 388(2) and the provisions of Schedule 12 shall only have effect to require a company to which this paragraph applies to deliver accounting documents for registration if they have been prepared with reference to a period commencing on or after the date of the coming into force of the Act.

**SCHEDULE 14**

Section 409

**CONSEQUENTIAL AMENDMENTS**

*Paragraph 1 inserts section 360 in the Companies Act.*

*Paragraph 2 inserts a definition in section 364 of the Companies Act.*

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**SCHEDULE 15**

Section 64

**VALUATION PROVISIONS****PART I.**

1. The valuation and report required by section 64 shall be made by an independent person, that is to say a person qualified at the time of the report to be appointed, or continue to be, an auditor of the company.

2. However, where it appears to the independent person (in this Schedule referred to as “the valuer”) to be reasonable for the valuation of the consideration, or part of it, to be made (or for him to accept such a valuation) by another person who—

- (a) appears to him to have the requisite knowledge and experience to value the consideration or that part of it; and
- (b) is not an officer or employee of the company or any other body corporate which is that company’s subsidiary or holding company or a subsidiary of that company’s holding company or a partner or employee of such an officer or employee;

he may arrange for or accept such a valuation, together with a report which will enable him to make his own report under this Part and provide the note required by paragraph 6.

3. The reference in paragraph 2(b) to an officer or employee does not include an auditor.

4. The valuer’s report shall state—

- (a) the nominal value of the shares to be wholly or partly paid for by the consideration in question;

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- (b) the amount of any premium payable on the shares;
  - (c) the description of the consideration and, as respects so much of the consideration as he himself has valued, a description of that part of the consideration, the method used to value it and the date of the valuation; and
  - (d) the extent to which the nominal value of the shares and any premium are to be treated as paid up—
    - (i) by the consideration; and
    - (ii) in cash.
5. Where the consideration or part of it is valued by a person other than the valuer himself, the latter's report shall state that fact and also—
- (a) state the former's name and what knowledge and experience he has to carry out the valuation; and
  - (b) describe so much of the consideration as was valued by the other person, and the method used to value it, and specify the date of the valuation.
6. The valuer's report shall contain or be accompanied by a note by him—
- (a) in the case of a valuation made by a person other than himself, that it appeared to himself reasonable to arrange for it to be so made or to accept a valuation so made;
  - (b) whoever made the valuation, that the method of valuation was reasonable in all the circumstances;
  - (c) that it appears to the valuer that there has been no material change in the value of the consideration in question since the valuation; and
  - (d) that on the basis of the valuation the value of the consideration, together with any cash by which the nominal value of the shares or any premium payable on them is to be paid up, is not less than so much of the total of the nominal value and the whole of any such premium as is treated as paid up by the consideration and any such cash.
7. Where the consideration to be valued is accepted partly in payment up of the nominal value of the shares and any premium and partly for some other consideration given by the company, section 64 and the foregoing provisions of this Part apply as if references to the consideration accepted

by the company included the proportion of that consideration, which is properly attributable to the payment up of that value and any premium and–

- (a) the valuer shall carry out, or arrange for, such other valuations as will enable him to determine that proportion; and
- (b) his report shall state what valuations have been made under this paragraph and also the reason for, and method and date of any such valuation and any other matters which may be relevant to that determination.

## **PART II.**

1. Paragraphs 1 to 3 and 5 of Part I apply to the valuation and report for the purposes of section 65.

2. The valuer's report for those purposes shall–

- (a) state the consideration to be received by the company, describing the asset in question (specifying the amount to be received in cash) and the consideration to be given by the company (specifying the amount to be given in cash);
- (b) state the method and date of valuation;
- (c) contain or be accompanied by a note as to the matters mentioned in paragraph 6(a) to (c) of Part 1; and
- (d) contain or be accompanied by a note that on the basis of the valuation the value of the consideration to be received by the company is not less than the value of the consideration to be given by it.

3. A reference in section 65 or this Part to consideration given for the transfer of an asset includes consideration given partly for its transfer; but–

- (a) the value of any consideration partly so given shall be taken as the proportion of the consideration properly attributable to its transfer;
- (b) the valuer shall carry out or arrange for such valuations of anything else as will enable him to determine that proportion; and
- (c) his report for the purposes of section 65 shall state what valuation has been made under this paragraph and also the

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reason for, and method and date of, any such valuation and any other matters which may be relevant to that determination.

**PART III.**

**ENTITLEMENT OF VALUER TO FULL DISCLOSURE.**

1. A person carrying out a valuation or making a report under section 64 or 65, with respect to any consideration proposed to be accepted or given by a company, is entitled to require from the officers of the company such information and explanation as he thinks necessary to enable him to carry out the valuation or make the report and provide a note under paragraph 6 of Part I or (as the case may be) paragraph 2(c) of Part II.

2. A person who knowingly or recklessly makes a statement which—

- (a) is misleading, false or deceptive in a material particular; and
- (b) is a statement to which this paragraph applies,

is guilty of an offence and liable on summary conviction to imprisonment for a term of six months or to a fine up to a maximum of level 5 on the standard scale or both.

3. Paragraph 2 applies to any statement made (whether orally or in writing) to a person carrying out a valuation or making a report under Part I or II, being a statement which conveys or purports to convey any information or explanation which that person requires, or may require, under paragraph 1.

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**SCHEDULE 16**

Section 207

**PROVISIONS SUBJECT TO WHICH SECTIONS 205-207 HAVE  
EFFECT IN THEIR APPLICATION TO MERGERS AND  
DIVISIONS OF PUBLIC COMPANIES**

**Meeting of transferee company.**

1. Subject to paragraphs 10(1), 12(4) and 14(2), the court shall not sanction a compromise or arrangement under section 205 unless a majority in number representing three-fourths in value of each class of members of every pre-existing transferee company concerned in the scheme, present and voting either in person or by proxy at a meeting, agree to the scheme.

**Draft terms of merger.**

2. (1) The court shall not sanction the compromise or arrangement under section 205 unless—

- (a) a draft of the proposed terms of the scheme (from hereon referred to as the “draft terms”) has been drawn up and adopted by the directors of all the transferor and pre-existing transferee companies concerned in the scheme;
- (b) subject to paragraph 11(3), in the case of each of those companies the directors have delivered a copy of the draft terms to the Registrar of Companies and the Registrar has published in the Gazette notice of receipt by him of a copy of the draft terms from that company; and
- (c) subject to paragraphs 10 to 14, that notice was so published at least one month before the date of any meeting of that company summoned under section 205 or for the purposes of paragraph 1.

(2) Subject to paragraph 12(2), the draft terms shall give particulars of at least the following matters—

- (a) in respect of each transferor company and transferee company concerned in the scheme, its name, the address of its registered office and whether it is a company limited by shares or a company limited by guarantee and having a share capital;
- (b) the number of shares in any transferee company to be allotted to members of any transferor company for a given number of their shares (from hereon referred to as the “share exchange ratio”) and the amount of any cash payment;
- (c) the terms relating to the allotment of shares in any transferee company;
- (d) the date from which the holding of shares in a transferee company will entitle the holders to participate in profits and any special conditions affecting that entitlement;
- (e) the date from which the transactions of any transferor company are to be treated for accounting purposes as being those of any transferee company;
- (f) any rights or restrictions attaching to shares or other securities in any transferee company to be allotted under the scheme to

the holders of shares to which any special rights or restrictions attach, or of other securities, in any transferor company, or the measures proposed concerning them; and

- (g) any amount or benefit paid or given or intended to be paid or given to the experts referred to in paragraph 5 or to any director of a transferor company or pre-existing transferee company, and the consideration for the payment of benefit.
- (3) Where the scheme is a Case 3 Scheme the draft terms shall also–
- (a) give particulars of the property and liabilities to be transferred (to the extent these are known to the transferor company) and their allocation among the transferee companies;
  - (b) make provision for the allocation among and transfer to the transferee companies of any other property and liabilities which the transferor has or may subsequently acquire; and
  - (c) specify the allocation to members of the transferor company of shares in the transferee companies and the criteria upon which that allocation is based.

**Documents and information to be made available.**

3. Subject to paragraphs 10 to 14, the court shall not sanction the compromise or arrangement under section 205 unless–

- (a) in the case of each transferor company and each pre-existing transferee company the directors have drawn up and adopted a report complying with paragraph 4 (from hereon referred to as a “directors report”);
- (b) where the scheme is a Case 3 Scheme, the directors of the transferor company have reported to every meeting of the members or any class of members of that company summoned under section 205 and to the directors of each transferee company, any material changes in the property and liabilities of the transferor company between the date when the draft terms were adopted and the date of the meeting in question;
- (c) where the directors of a transferor company have reported to the directors of a transferee company such a change as is mentioned in subparagraph (b) above, the latter have reported that change to every meeting of the members or any class of members of that transferee company summoned for the purposes of paragraph 1; or have sent a report of that change to

every member who would have been entitled to receive a notice of such a meeting;

- (d) a report complying with paragraph 5 has been drawn up on behalf of each transferor company and pre-existing transferee company (from hereon referred to as an “expert’s report”);
- (e) the members of any transferor company or transferee company were able to inspect at the registered office of that company copies of the documents listed in paragraph 6(1) in relation to every transferor company and pre-existing transferee company concerned in the scheme during a period beginning one month before, and ending on, the date of the first meeting of the members or any class of members of the first-mentioned transferor or transferee company summoned either under section 205 or for the purposes of paragraph 1 and those members were able to obtain copies of those documents or any part of them on request during that period free of charge; and
- (f) the memorandum and articles of association of any transferee company which is not a pre-existing transferee company, or a draft thereof, has been approved by ordinary resolution of every transferor company concerned in the scheme.

**Directors’ report.**

4. (1) The directors’ report shall consist of–

- (a) the statement required by section 206; and
- (b) insofar as that statement does not contain the following matters, a further statement–
  - (i) setting out the legal and economic grounds for the draft terms, and in particular for the share exchange ratio, and, where the scheme is a Case 3 Scheme, for the criteria upon which the allocation to the members of the transferor company of shares in the transferee companies was based; and
  - (ii) specifying any special valuation difficulties.

(2) Where the scheme is a Case 3 Scheme the directors’ report shall also state whether a return has been made to the Registrar of Companies under section 60(1)(b) (return as to allotments).

**Expert’s report.**



5. (1) Except where a joint expert is appointed under subparagraph (2) below an expert's report shall consist of a separate written report on the draft terms to the members of one transferor company or pre-existing transferee company concerned in the scheme drawn up by a separate expert appointed on behalf of that company.

(2) The court may, on the joint application of all the transferor companies and pre-existing transferee companies concerned in the scheme, approve the appointment of a joint expert to draw up a single report on behalf of all those companies.

(3) An expert shall be independent of any of the companies concerned in the scheme, that is to say a person qualified at the time of the report to be appointed, or to continue to be, an auditor of those companies.

(4) However, where it appears to an expert that a valuation is reasonably necessary to enable him to draw up the report, and it appears to him to be reasonable for that valuation, or part of it, to be made (or for him to accept such a valuation) by another person who—

- (a) appears to him to have the requisite knowledge and experience to make the valuation or that part of it; and
- (b) is not an officer or servant of any of the companies concerned in the scheme or any other body corporate which is a subsidiary or holding company of one of those companies, or a subsidiary of the holding company of one of those companies or a partner or employee of such an officer or servant;

he may arrange for or accept such a valuation, together with a report which will enable him to make his own report under this paragraph.

(5) The reference in subparagraph (4) above to an officer or servant does not include an auditor.

(6) Where any valuation is made by a person other than the expert himself the latter's report shall state that fact and shall also—

- (a) state the former's name and what knowledge and experience he has to carry out the valuation; and
- (b) describe so much of the undertaking, property and liabilities as were valued by the other person, and the method used to value them, and specify the date of the valuation.

(7) An expert's report shall—

- (a) indicate the method or methods used to arrive at the share exchange ratio proposed;
- (b) give an opinion as to whether the method or methods used are reasonable in all the circumstances of the case; indicate the values arrived at using each such method and (if there is more than one method) give an opinion on the relative importance attributed to such methods in arriving at the value decided on;
- (c) describe any special valuation difficulties which have arisen;
- (d) state whether in the expert's opinion the share exchange ratio is reasonable; and
- (e) in the case of a valuation made by a person other than himself state that it appeared to himself reasonable to arrange for it to be so made or to accept a valuation so made.

(8) Each expert has the right of access to all such documents of all the transferor companies and pre-existing transferee companies concerned in the scheme, and the right to require from the companies' officers all such information, as he thinks necessary for the purpose of making his report.

**Inspection of documents.**

6. (1) The documents referred to in paragraph 3(e) are, in relation to any company—

- (a) the draft terms;
- (b) the directors' report referred to in paragraph 4;
- (c) the expert's report;
- (d) the company's annual accounts, together with the relevant directors' report and auditors' report for the last three financial years ending on or before the relevant date; and
- (e) if the last of those financial years ended more than six months before the relevant date, an accounting statement in the form described in the following provisions.

In paragraphs (d) and (e) "the relevant date" means one month before the first meeting of the company summoned under section 205 or for the purposes of paragraph 1.

(2) The accounting statement shall consist of—

- (a) a balance sheet dealing with the state of affairs of the company as at a date not more than three months before the draft terms were adopted by the directors; and
- (b) where the company would be required to prepare group accounts if that date were the last day of a financial year, a consolidated banking sheet dealing with the state of affairs of the company and its subsidiary undertakings as at that date.

(3) The requirements of this Act as to balance sheets forming part of a company's annual accounts, and the matters to be included in notes thereto, apply to any balance sheet required for the accounting statement, with such modifications as are necessary by reason of its being prepared otherwise than as at the last day of a financial year.

(4) Any balance sheet required for the accounting statement shall be approved by the board of directors and signed on behalf of the board by a director of the company.

**Transferor company holding its own shares.**

7. The court shall not sanction under section 205(2) a compromise or arrangement under which any shares in a transferee company are to be allotted to a transferor company or its nominee in respect of shares in that transferor company held by it or its nominee.

**Securities other than shares to which special rights are attached.**

8. (1) Where any security of a transferor company to which special rights are attached is held by a person other than as a member or creditor of the company, the court shall not sanction a compromise or arrangement under section 205(2) unless under the scheme that person is to receive rights in a transferee company of equivalent value.

(2) Subparagraph (1) above shall not apply in the case of any such security where—

- (a) the holder has agreed otherwise; or
- (b) the holder is, or under the scheme is to be, entitled to have the security purchased by a transferee company involved in the scheme on terms which the court considers reasonable.

**Date and consequences of the compromise or arrangement.**

9. (1) The following provisions of this paragraph shall apply where the court sanctions a compromise or arrangement.

(2) The court shall in the order sanctioning the compromise or arrangement or in a subsequent order under section 206 fix a date on which the transfer or transfers to the transferee company or transferee companies of the undertaking, property and liabilities of the transferor company shall take place; and any such order which provides for the dissolution of the transferor company shall fix the same date for the dissolution.

(3) If it is necessary for the transferor company to take any steps to ensure that the undertaking, property and liabilities are fully transferred, the court shall fix a date, not later than six months after the date fixed under subparagraph (2) above, by which such steps must be taken and for that purpose may postpone the dissolution of the transferor company until that date.

(4) The court may postpone or further postpone the date fixed under subparagraph (3) above if it is satisfied that the steps there mentioned cannot be completed by the date (or latest date) fixed under that subparagraph.

**Exceptions.**

10. (1) The court may sanction a compromise or arrangement under section 205(2) notwithstanding that—

- (a) any meeting otherwise required by paragraph 1 has not been summoned by a pre-existing transferee company (“the relevant company”), and
- (b) paragraph 2(1)(c) and 3(e) have not been complied with in respect of that company,

if the court is satisfied that the conditions specified in subparagraph (2) below have been complied with.

(2) Subject to paragraphs 11(3) and 12(3), the conditions mentioned in subparagraph (1) above are—

- (a) that the publication of notice of receipt of the draft terms by the Registrar of Companies referred to in paragraph 2(1)(b) took place in respect of the relevant company at least one month before the date of any meeting of members of any transferor company concerned in the scheme summoned under section 205;
- (b) that the members of the relevant company were able to inspect at the registered office of that company the documents listed in paragraph 6(1) in relation to every transferor company and transferee company concerned in the scheme during a period

(“the relevant period”) beginning one month before, and ending on, the date of any such meeting, and that they were able to obtain copies of those documents or any part of them on request during that period free of charge; and

- (c) that one or more members of the relevant company, who together held not less than five per cent of the paid-up capital of that company which carried the right to vote at general meetings of the company, would have been able during the relevant period to require that a meeting of each class of members be called for the purpose of deciding whether or not to agree to the scheme but that no such requisition had been made.

11. (1) The following subparagraphs apply where the scheme is a Case 3 Scheme.

(2) Subparagraphs (a) to (d) of paragraph 3 shall not apply and subparagraph (e) of that paragraph shall not apply as regards the documents listed in paragraph 6(1)(b), (c) and (e), if all members holding shares in, and all persons holding other securities of, any of the transferor companies and pre-existing transferee companies concerned in the scheme on the date of the application to the court under section 205, being shares or securities which as at that date carry the right to vote in general meetings of the company, so agree.

(3) The court may by order direct in respect of any transferor company or pre-existing transferee company that the requirements relating to—

- (a) delivering copies of the draft terms and publication of notice of receipt of the draft terms under paragraph 2(1)(b) and (c), or
- (b) inspection under paragraph 3(e),

shall not apply, and may by order direct that paragraph 10 shall apply to any pre-existing transferee company with the omission of subparagraph (2)(a) and (b) of that paragraph.

(4) The court shall not make any order under subparagraph (3) above unless it is satisfied that the following conditions will be fulfilled —

- (a) that the members of the company will have received or will have been able to obtain free of charge copies of the documents listed in paragraph 6(1) in time to examine them before the date of the first meeting of the members or any class of members of the company summoned under section 205 or for the purposes of paragraph 1;

- (b) in the case of a pre-existing transferee company, where in the circumstances described in paragraph 10 no meeting is held, that the members of that company will have received or will have been able to obtain free of charge copies of those documents in time to require a meeting under paragraph 10(2)(c);
- (c) that the creditors of the company will have received or will have been able to obtain free of charge copies of the draft terms in time to examine them before the date of meeting of the members or any class of members of the company, or, in the circumstances referred to in paragraph (b) above, at the same time as the members of the company; and
- (d) that no prejudice would be caused to the members or creditors of any transferor company or transferee company concerned in the scheme by making the order in question.

**Transferee company or companies holding shares in the transferor company.**

12. (1) Where the scheme is a Case 1 Scheme and in the case of every transferor company concerned—

- (a) the shares in that company; and
- (b) such securities of that company (other than shares) as carry the right to vote at general meetings of that company,

are all held by or on behalf of the transferee company, section 207 and this Schedule shall apply subject to the following subparagraphs.

(2) The draft terms need not give particulars of the matters mentioned in paragraph 2(2)(b), (c) or (d).

(3) Section 206 of the Act and subparagraphs (a) and (d) of paragraph 3 shall not apply, and subparagraph (e) of that paragraph shall not apply as regards the documents listed in paragraph 6(1)(b) and (c).

(4) The court may sanction the compromise or arrangement under section 205 notwithstanding that—

- (a) any meeting otherwise required by section 205 or paragraph 1 has not been summoned by any company concerned in the scheme; and
- (b) paragraphs 2(1)(c) and 3(e) have not been complied with in respect of that company,

if it is satisfied that the conditions specified in the following subparagraphs have been complied with.

- (5) The conditions mentioned in the previous subparagraph are—
  - (a) that the publication of notice of receipt of the draft terms by the Registrar of Companies referred to in paragraph 2(1)(b) took place in respect of every transferor company and transferee company concerned in the scheme at least one month before the date of the order under section 205 (“the relevant date”);
  - (b) that the members of the transferee company were able to inspect at the registered office of that company copies of the documents listed in paragraphs 6(1)(a), (d) and (e) in relation to every transferor company or transferee company concerned in the scheme during a period (“the relevant period”) beginning one month before, and ending on, the relevant date and that they were able to obtain copies of those documents or any part of them on request during that period free of charge; and
  - (c) that one or more members of the transferee company who together held not less than five per cent of the paid-up capital of the company which carried the right to vote at general meetings of the company would have been able during the relevant period to require that a meeting of each class of members be called for the purpose of deciding whether or not to agree to the scheme but that no such requisition has been made.

13. (1) Where the scheme is a Case 3 Scheme and—

- (a) the shares in the transferor company; and
- (b) such securities of that company (other than shares) as carry the right to vote at general meetings of that company,

are all held by or on behalf of one or more transferee companies, section 207 and this Schedule shall apply subject to the following paragraphs.

(2) The court may sanction a compromise or arrangement under section 205 notwithstanding that—

- (a) any meeting otherwise required by section 205 has not been summoned by the transferor company; and

- (b) paragraphs 2(1)(c) and 3(b) and (e) have not been complied with in respect of that company,

if it is satisfied that the conditions specified in the following subparagraph have been complied with.

- (3) The conditions referred to in the previous subparagraph are—
  - (a) the conditions set out in paragraph 12(5)(a) and (c);
  - (b) that the members of the transferor company and every transferee company concerned in the scheme were able to inspect at the registered office of the company of which they were members copies of the documents listed in paragraph 6(1) in relation to every such company during a period beginning one month before, and ending on, the date of the order under section 205 (“the relevant date”), and that they were able to obtain copies of those documents or any part of them on request during that period free of charge; and
  - (c) that the directors of the transferor company have sent to every member who would have been entitled to receive a notice of the meeting (had it been called), and to the directors of each transferee company, a report of any material changes in the property and liabilities of the transferor company between the date when the draft terms were adopted and a date one month before the relevant date.

14. (1) Where the scheme is a Case 1 Scheme and in the case of every transferor company concerned ninety per cent or more (but not all) of—

- (a) the shares in that company; and
- (b) such securities in that company (other than shares) as carry the right to vote at general meetings of that company,

are held by or on behalf of the transferee company, section 207 and this Schedule shall apply subject to the following subparagraphs.

(2) The court may sanction a compromise or arrangement under section 205 notwithstanding that—

- (a) any meeting otherwise required by paragraph 1 has not been summoned by the transferee company, and
- (b) paragraphs 2(1)(c) and 3(e) have not been complied with in respect of that company,



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if the court is satisfied that the conditions specified in the following subparagraph have been complied with.

(3) The conditions referred to in the previous subparagraph are the same conditions as those specified in paragraph 10(2), save that for this purpose the condition contained in paragraph 10(2)(b) shall be treated as referring only to the documents listed in paragraph 6(1)(a), (d) and (e).

**Liabilities of transferee companies for the default of another.**

15. (1) Where the scheme is a Case 3 Scheme, each transferee company shall be jointly and severally liable, subject to subparagraph (2) below, for any liability transferred to any other transferee company under the scheme to the extent that that other company has made default in satisfying that liability, but so that no transferee company shall be so liable for an amount greater than the amount arrived at by calculating the value at the time of the transfer of the property transferred to it under the scheme less the amount at that date of the liabilities so transferred.

(2) If a majority in number representing three-fourths in value of the creditors or any class of creditors of the transferor company present and voting either in person or by proxy at a meeting summoned under section 205 so agree, subparagraph (1) above shall not apply in respect of the liabilities of the creditors or that class of creditors.

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**COMPANIES (AMENDMENT) ACT, 1999**
**Principal Act**

<b>Act. No. 1999-30</b>	<i>Commencement</i>	1.1.2000
	<i>Assent</i>	28.10.1999

Amending enactments	Relevant current provisions	Commencement date
None		

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AN ACT TO AMEND THE COMPANIES ACT.

**Title and commencement.**

1. This Act may be cited as the Companies (Amendment) Act, 1999 and comes into operation on the 1st day of January, 2000.

*Section 2 to 97 amend various provisions of the Companies Act.*

**Transitional provisions.**

50. (1) Sections 3, 5, 6, 8 and 24(c) shall operate in relation to a company incorporated or registered under the principal Act on and after the operative date of this Act.

(2) Sections 27, 39 and 97(c) shall operate in respect of the annual return due—

- (a) in respect of a company incorporated or registered under the principal Act at the operative date of this Act, at the next return date of the company, as defined by section 153 of the principal Act, after the operative date, provided that that return date shall be later than the date of the next annual general meeting required to be held on or after the operative date by the application of section 157 of the principal Act to the conduct of business of that company;

(b) in respect of any other company, from the date of incorporation or registration of the company.

(3) Sections 51, 54 and 96(a)(ii) shall operate—

(a) in respect of a company incorporated or registered under the principal Act at the operative date of this Act, from the date of the next annual general meeting required to be held on or after the operative date by the application of section 157 of the principal Act to the conduct of business of that company;

(b) in respect of any other company, from the date of incorporation or registration of the company.

(4) In this section “operative date” means the date provided for by section 1 as the date on which the Act comes into operation.

*Section 51 repeals old section 291 in the Companies Act.*

*Subsection 52(1) amends section 3 in the Companies (Share Allotment and Capital Maintenance) Act, 1998.*

*Subsection 52(2) amends section 6 in the Companies (Share Allotment and Capital Maintenance) Act, 1998.*