Companies Act, 1963

Number 33 *of* 1963.

COMPANIES ACT, 1963.

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Trade Union Act, 1871	1871, c. 31
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Companies Clauses Consolidation Act, 1845	1845. c. 16
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Insurance (Intermittent Unemployment) Act, 1942	1942, No. 7
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Irish Bankrupt and Insolvent Act, 1857	1857, c. 60
Finance (No. 2) Act, 1959	1959, No. 42
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Chartered Companies Act, 1837	1837, c. 73
Petty Sessions (Ireland) Act, 1851	1851, c. 93
Solicitors Act, 1954	1954, No. 36

Number 33 *of* 1963.

COMPANIES ACT, 1963.

AN ACT TO CONSOLIDATE WITH AMENDMENTS CERTAIN ENACTMENTS RELATING TO COMPANIES AND FOR PURPOSES CONNECTED WITH THAT MATTER. [23rd *December*, 1963.]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:—

PART I.

Preliminary.

Short title and commencement.

1.—(1) This Act may be cited as the Companies Act, 1963.

(2) This Act shall come into operation on such day as the Minister appoints by order.

General provisions as to interpretation.

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

"***accounts***" includes a company's group accounts whether prepared in the form of accounts or not;

"***agent***" does not include a person's counsel acting as such;

"***annual return***" means the return required to be made, in the case of a company having a share capital, under section 125 and, in the case of a company not having a share capital, under section 126;

"***articles***" means the articles of association of a company, as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained (as the case may be) in Table B in the Schedule annexed to the Joint Stock Companies Act, 1856, or in Table A in the First Schedule to the Companies Act, 1862, or in that Table as altered in pursuance of section 71 of the last mentioned Act, or in Table A in the First Schedule to the Companies (Consolidation) Act, 1908;

"***bank holiday***" means a day which is a bank holiday under the Public Holidays Acts, 1871 to 1924;

"***the Bankruptcy Acts***" means the Irish Bankrupt and Insolvent Act, 1857, the Bankruptcy (Ireland) Amendment Act, 1872, the Debtors Act (Ireland) 1872 and the Local Bankruptcy (Ireland) Act, 1888;

"***book and paper***" and "***book or paper***" include accounts, deeds, writings and documents;

"***company***" means a company formed and registered under this Act, or an existing company;

"***company limited by guarantee***" and "***company limited by shares***" have the meanings assigned to them respectively by subsection (2) of section 5;

"***contributory***" has the meaning assigned to it by section 208;

"***the court***" used in relation to a company means the High Court;

"***creditors' voluntary winding up***" has the meaning assigned to it by subsection (7) of section 256;

"***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;

"***existing company***" means a company formed and registered in a register kept in the State under the Joint Stock Companies Acts, the Companies Act, 1862, or the Companies (Consolidation) Act, 1908;

"***extended notice***" has the meaning assigned to it by section 142;

"***financial year***" means, in relation to any body corporate, the period in respect of which any profit and loss account of the body corporate laid before it in general meeting is made up, whether that period is a year or not;

"***group accounts***" has the meaning assigned to it by subsection (1) of section 150;

"***holding company***" means a holding company as defined by section 155;

"***issued generally***" means, in relation to a prospectus, issued to persons who are not existing members or debenture holders of the company;

1858, c. 91.

"***Joint Stock Companies Acts***" means the Joint Stock Companies Act, 1856, the Joint Stock Companies Acts, 1856, 1857, the Joint Stock Banking Companies Act, 1857 and the Act to enable Joint Stock Banking Companies to be formed on the principle of limited liability, or any one or more of those Acts as the case may require, but does not include the Act 7 & 8 Victoria, Chapter 110;

"***members' voluntary winding up***" has the meaning assigned to it by subsection (7) of section 256;

"***the minimum subscription***" has the meaning assigned to it by subsection (2) of section 53;

"***memorandum***" means the memorandum of association of a company, as originally framed or as altered in pursuance of any statute (including this Act);

"***Minister***" means the Minister for Industry and Commerce;

"***officer***" in relation to a body corporate includes a director or secretary;

"***the operative date***" means the date on which this Act comes into operation;

"***prescribed***" means, in relation to the provisions of this Act dealing with the winding up of companies, prescribed by rules of court, and in relation to the other provisions of this Act, prescribed by order made by the Minister;

"***printed***" includes reproduced in any legible and durable form approved by the registrar of companies;

"***private company***" has the meaning assigned to it by subsection (1) of section 33;

"***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;

"***recognised stock exchange***" means a stock exchange prescribed by the Minister for the purposes of each provision in which those words appear;

"***the registrar of companies***" or, when used in relation to registration of companies, "***the registrar***" means the officer performing under this Act the duty of registration of companies;

"***resolution for reducing share capital***" has the meaning assigned to it by subsection (3) of section 72;

"***a resolution for voluntary winding up***" has the meaning assigned to it by subsection (2) of section 251;

"***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;

"***share warrant***" has the meaning assigned to it by subsection (2) of section 88;

"***statutory meeting***" means the meeting required to be held by subsection (1) of section 130;

"***statutory report***" has the meaning assigned to it by subsection (2) of section 130;

"***subsidiary***" means a subsidiary as defined by section 155;

"***Table A***" means Table A in the First Schedule;

"***Tábla A***" means Tábla A in the First Schedule;

"***the time of the opening of the subscription lists***" has the meaning assigned to it by subsection (1) of section 56;

"***undischarged bankrupt***" includes—

(*a*) a bankrupt who has not obtained the certificate of conformity mentioned in section 56 of the Bankruptcy (Ireland) Amendment Act, 1872;

(*b*) a person who has been adjudged bankrupt in Northern Ireland and who has not obtained the certificate of conformity mentioned

in section 56 of the Bankruptcy (Ireland) Amendment Act, 1872;

(*c*) a person who is an undischarged bankrupt under the law of England or Scotland;

but does not include a person whose bankruptcy has been annulled;

"***unlimited company***" has the meaning assigned to it by subsection (2) of section 5.

(2) A person shall not be deemed to be, within the meaning of any provision of 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 a company act on advice given by him in a professional capacity.

(3) References in this Act to a body corporate or to a corporation shall be construed as not including a corporation sole, but as including a company incorporated outside the State.

(4) Any provision of this Act overriding or interpreting a company's articles shall, except as provided by this Act, apply in relation to articles in force on the operative date as well as to articles coming into force thereafter, and shall apply also in relation to a company's memorandum as it applies in relation to its articles.

(5) References in this Act to any enactment shall, unless the context otherwise requires, be construed as references to that enactment as amended or extended by any subsequent enactment including this Act.

(6) In this Act, a reference to a Part, section or schedule is to a Part, section or schedule of this Act, unless it is indicated that reference to some other enactment is intended.

(7) In this Act, a reference to a subsection, paragraph, subparagraph or other division is to the subsection, paragraph, subparagraph or other division of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.

Repeal and savings.

3.—(1) The enactments mentioned in the Twelfth Schedule are hereby repealed to the extent specified in the third column of that Schedule.

(2) Nothing in this Act shall affect any Order in Council, order, rule, regulation, appointment, conveyance, mortgage, deed or agreement made, resolution passed, direction given, proceeding taken, instrument issued or thing done under any former enactment relating to companies, but any such Order in Council, order, rule, regulation, appointment, conveyance, mortgage, deed, agreement, resolution, direction, proceeding, instrument or thing shall, if in force immediately before the operative date continue in force, and so far as it could have been made, passed, given, taken, issued or done under this Act shall have effect as if made, passed, given, taken, issued or done under this Act.

(3) Nothing in this Act shall affect the operation of sections 109 and 110 of the Companies (Consolidation) Act, 1908, as regards inspectors appointed before, or the continuance of an inspection begun by inspectors appointed before, the operative date, and section 172 shall apply to a report of inspectors appointed under the said sections as it applies to a report of inspectors appointed under sections 165 and 166.

(4) Nothing in this Act shall affect—

(*a*) the provisions of section 5 of the Trade Union Act, 1871 (which avoids the registration of a trade union under the enactments relating to companies);

(*b*) the enactment set out in the Thirteenth Schedule, being an enactment continued in force by section 205 of the Companies Act, 1862,

or be construed as repealing any provision of the Insurance Acts, 1909 to 1961.

(5) Subject to the provisions of subsection (4), any document referring to any former enactment relating to companies shall be construed as referring to the corresponding enactment of this Act.

(6) Any person, appointed to any office under or by virtue of any former enactment relating to companies, who is in office immediately before the operative date shall be deemed to have been appointed to that office under or by virtue of this Act.

(7) Any register kept under any former enactment relating to companies shall be deemed part of the register to be kept under the corresponding provisions of this Act.

(8) All funds and accounts constituted under this Act shall be deemed to be in continuation of the corresponding funds and accounts constituted under the former enactments relating to companies.

(9) The repeal by this Act of any enactment shall not affect—

(*a*) the incorporation of any company registered under any enactment hereby repealed;

(*b*) Table B in the Schedule annexed to the Joint Stock Companies Act, 1856, or any part thereof, so far as the same applies to any company existing on the operative date;

(*c*) Table A in the First Schedule annexed to the Companies Act, 1862, or any part thereof, either as originally contained in that Schedule or as altered in pursuance of section 71 of that Act, so far as the same applies to any company existing on the operative date;

(*d*) Table A of the First Schedule to the Companies (Consolidation) Act, 1908, or any part thereof, so far as the same applies to any company existing on the operative date.

(10) Where any offence, being an offence for the continuance of which a penalty was provided, has been committed under any former enactment relating to companies, proceedings may be taken under this Act in respect of the continuance of the offence after the operative date, in the same manner as if the offence had been committed under the corresponding provisions of this Act.

(11) In this section "***former enactment relating to companies***" means any enactment repealed by this Act and any enactment repealed by the Companies (Consolidation) Act, 1908.

Construction of references in other Acts to companies registered under the Companies (Consolidation) Act, 1908.

4.—Notwithstanding subsection (1) of section 20 of the Interpretation Act, 1937 , (which provides that where an Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted) references in any Act other than this Act to a company formed and registered, or registered, under the Companies (Consolidation) Act, 1908, shall, unless the contrary intention appears, be construed as references to a company formed and registered, or registered, under that Act or this Act.

Part II.

Incorporation of Companies and matters incidental thereto.

Memorandum of Association.

Way of forming incorporated company.

5.—(1) Any seven or more persons or, where the company to be formed will be a private company, any two or more persons, associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act relating to 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 termed "***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 termed "***a company limited by guarantee***"); or

(*c*) a company not having any limit on the liability of its members (in this Act termed "***an unlimited company***").

Requirements in relation to memorandum.

6.—(1) The memorandum of every company must state—

(*a*) the name of the company, with "***limited***" or "***teoranta***" as the last word of the name in the case of a company limited by shares or by guarantee;

(*b*) the objects of the company.

(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.

Printing, stamp and signature of memorandum.

7.—The memorandum must be printed, 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.

Modification of the *ultra vires* rule.

8.—(1) Any act or thing done by a company which if the company had been empowered to do the same would have been lawfully and effectively done, shall, notwithstanding that the company had no power to do such act or thing, be effective in favour of any person relying on such act or thing who is not shown to have been actually aware, at the time when he so relied thereon, that such act or thing was not within the powers of the company, but any director or officer of the company who was responsible for the doing by the company of such act or thing shall be liable to the company for any loss or damage suffered by the company in consequence thereof.

(2) The court may, on the application of any member or holder of debentures of a company, restrain such company from doing any act or thing which the company has no power to do.

Restriction on alteration of memorandum.

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

Way in which and extent to which objects

10.—(1) Subject to subsection (2), a company may, by special resolution, alter the provisions of its memorandum by abandoning, restricting or amending any existing object or by adopting a new object and any alteration so made shall be as valid as if originally contained

of company may be altered.

therein, and be subject to alteration in like manner.

(2) If an application is made to the court in accordance with this section for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.

(3) Subject to subsection (4), an application under this section may be made—

(*a*) by the holders of not less in the aggregate than 15% in nominal value of the company's issued share capital or any class thereof or, if the company is not limited by shares, not less than 15% of the company's members; or

(*b*) by the holders of not less than 15% of the company's debentures, entitling the holders to object to alterations of its objects.

(4) An application shall not be made under this section by any person who has consented to or voted in favour of the alteration.

(5) An application under this section 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.

(6) On an application under this section, the court may make an order cancelling the alteration or confirming the alteration either wholly or in part and on such terms and conditions as it thinks fit, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members, and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement so, however, that no part of the capital of the company shall be expended in any such purchase.

(7) The debentures entitling the holders to object to alterations of a company's objects shall be any debentures secured by a floating charge which were issued or first issued before the operative date or form part of the same series as any debentures so issued, and a special resolution altering a company's objects shall require the same notice to the holders of any such debentures as to members of the company, so however that not less than 10 days' notice shall be given to the holders of any such debentures.

In default of any 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 shall apply.

(8) In the case of a company which is, by virtue of a licence from the Minister, exempt from the obligation to use the word "***limited***" or "***teoranta***" as part of its name, a resolution altering the company's objects shall also require the same notice to the Minister as to holders of debentures.

(9) Where a company passes a resolution altering its objects—

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

(*b*) if such an application is made, it 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 an order confirming the alteration, a printed copy of the memorandum as altered.

The court may by order at any time extend the time for delivery of documents to the registrar under paragraph (*b*) for such period as the court may think proper.

(10) If a company makes default in giving notice or delivering any document to the registrar as required by subsection (9), the company and every officer of the company who is in default shall be liable to a fine not exceeding £50.

(11) In relation to a resolution for altering the provisions of a company's memorandum relating to the objects of the company passed before the operative date, this section shall have effect as if, in lieu of subsections (2) to (10), there had been enacted subsections (2) to (7) of section 9 of the Companies (Consolidation) Act, 1908.

Articles of Association.

Articles prescribing regulations for companies.

11.—There may, in the case of a company limited by shares, and there shall, in the case of a company limited by guarantee or unlimited, be registered with the memorandum articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

Regulations required in the case of an unlimited company or company limited by guarantee.

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

(2) In the case of a company limited by guarantee, the articles must state the number of members with which the company proposes to be registered.

(3) Where an unlimited company or a company limited by guarantee has increased the number of its members beyond the registered number, it shall, within 15 days after the increase was resolved on or took place, give to the registrar notice of the increase, and he 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 shall be liable to a fine not exceeding £50.

Adoption and application of Table A or Tábla A.

13.—(1) Articles of association may adopt all or any of the regulations contained in Table A, or of the equivalent regulations in the Irish language contained in Tábla A.

(2) In the case of a company limited by shares and registered after the operative date, 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.

(3) If the memorandum of the company is in the Irish language, the references in subsection (2) to Table A shall be construed as references to Tábla A.

Printing, stamp and signature of articles.

14.—Articles must—

(*a*) be printed;

(*b*) be divided into paragraphs numbered consecutively;

(*c*) bear the same stamp as if they were contained in a deed;

(*d*) be signed by each subscriber of the memorandum in the presence of at least one witness who must attest the signature.

Alteration of articles

15.—(1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution

by special resolution.

alter or add to its articles.

(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.

16.—The form of—

(*a*) the memorandum of a company limited by shares;

(*b*) the memorandum and articles of a company limited by guarantee and not having a share capital;

(*c*) the memorandum and articles of a company limited by guarantee and having a share capital;

(*d*) the memorandum and articles of an unlimited company having a share capital;

shall be respectively in accordance with the forms set out in Tables B, C, D and E in the First Schedule or as near thereto as circumstances admit.

Registration.

Registration of memorandum and articles.

17.—The memorandum and the articles, if any, shall be delivered to the registrar of companies, and he shall retain and register them.

Effect of registration.

18.—(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 with the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, 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.

Conclusiveness of certificate of incorporation.

19.—(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 authorised to be registered and duly registered under this Act.

(2) A statutory declaration by a solicitor 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 he may accept such a declaration as sufficient evidence of compliance.

Registration of unlimited company as limited.

20.—(1) Subject to the provisions of this section, a company registered as unlimited may register under this Act as limited, or a company already registered as a limited company may re-register under this Act, but the registration of an unlimited company as a limited company shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into by, to, with or on behalf of the company before the registration, and those rights or liabilities may be enforced in manner provided by Part IX of this Act in the case of a company registered in pursuance of that Part.

(2) On registration in pursuance of this section, the registrar shall close the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company, but, save as aforesaid, the registration shall take place in the same manner and have effect as if it were the first registration of the company under this Act, and as if the provisions of the Acts under which the company was previously registered and regulated had been contained in different Acts from those under which the company is registered as a limited company.

Provisions relating to Names of Companies.

Prohibition of registration of companies by undesirable names.

21.—No company shall be registered by a name which, in the opinion of the Minister, is undesirable but an appeal shall lie to the court against a refusal to register.

Registration of business name.

22.—(1) Every company carrying on business under a name other than its corporate name shall register in the manner directed by law for the registration of business names.

(2) The use of the abbreviation "Ltd." for "Limited" or "Teo." for "Teoranta" shall not of itself render such registration necessary.

Change of name.

23.—(1) A company may, by special resolution and with the approval of the Minister signified in writing, change its name.

(2) If, through inadvertence or otherwise, a company on its first registration, or on its registration by a new name, is registered by a name which, in the opinion of the Minister, is too like the name by which a company in existence is already registered, the first-mentioned company may change its name with the sanction of the Minister and, if he so directs within 6 months of its being registered by that name, shall change it within a period of 6 weeks from the date of the direction or such longer period as the Minister may think fit to allow.

If a company makes default in complying with a direction under this subsection, it shall be liable to a fine not exceeding £100.

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

(4) A change of name by a company under this section 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 which might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

(5) A company which was registered by a name specified by statute, may, notwithstanding anything contained in that statute, change its name in accordance with subsection (1), but if the Minister is of opinion that any other Minister is concerned in the administration of the statute which specified the name of the company he shall not approve of the change of name save after consultation with that other Minister.

(6) Where the winding up of a company commences within one year after the company has changed its name, the former name as well as the existing name of the company shall appear on all notices and advertisements in relation to the winding up.

Power to dispense with "***limited***" or "***teoranta***" in name of charitable and other companies.

24.—(1) Where it is proved to the satisfaction of the Minister 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 may by licence direct that the association may be registered as a company with limited liability, without the addition of the word "***limited***" or the word "***teoranta***" to its name, and the association may be registered accordingly and shall, on registration, enjoy all the privileges and (subject to the provisions of this section) be subject to all the obligations of limited companies.

(2) Where it is proved to the satisfaction of the Minister—

(*a*) that the objects of a company registered as a limited company are restricted to those specified in subsection (1) and to objects incidental or conducive thereto; and

(*b*) that, by its constitution, the company is required to apply its profits, if any, or other income in promoting its objects, and is prohibited from paying any dividend to its members;

the Minister may by licence authorise the company to make, by special resolution, a change in its name, including or consisting of the omission of the word "***limited***" or "***teoranta***" and subsections (3) and (4) of section 23 shall apply to a change of name under this subsection as they apply to a change of name under that section.

(3) A licence by the Minister under this section may be granted on such conditions as the Minister thinks fit, and those conditions shall be binding on the body to which the licence is granted, and (where the grant is under subsection (1)) shall, if the Minister so directs, be inserted in the memorandum and articles or in one of those documents.

(4) A body in respect of which a licence under this section is in force shall be exempt from the provisions of this Act relating to the use of the words "***limited***" or "***teoranta***" as any part of its name, and the publishing of its name.

(5) A licence under this section may, at any time, be revoked by the Minister and, upon revocation, the registrar shall enter the word "***limited***" or "***teoranta***" at the end of the name upon the register of the body to which it was granted.

(6) Before a licence is revoked by virtue of subsection (5), the Minister shall give to the body notice in writing of his intention, and shall afford it an opportunity of being heard in opposition to the revocation.

(7) Where a body, in respect of which a licence under this section is in force, alters the provisions of its memorandum relating to its objects, the Minister may (unless he sees fit to revoke the licence) vary the licence by making it subject to such conditions as the Minister thinks fit, in lieu of or in addition to the conditions, if any, to which the licence was formerly subject.

(8) Where a licence, granted under this section to a body the name of which contains the words "***chamber of commerce,***" is revoked, the body shall, within a period of 6 weeks from the date of revocation or such longer period as the Minister may think fit to allow, change its name to a name which does not contain those words, and—

(*a*) the notice to be given under subsection (6) to that body shall include a statement of the effect of the foregoing provisions of this subsection, and

(*b*) subsections (3) and (4) of section 23 shall apply to a change of name under this subsection as they apply to a change of name under that section.

If the body makes default in complying with the requirements of this subsection, it shall be liable to a fine not exceeding £100.

General Provisions relating to Memorandum and Articles.

Effect of memorandum and articles.

25.—(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 by 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 due from him to the company.

(3) An action to recover a debt created by this section shall not be brought after the expiration of 12 years from the date on which the cause of action accrued.

Provisions as to memorandum and

26.—(1) In the case of a company limited by guarantee and not having a share capital, and registered on or after the 1st day of January, 1901, every provision in the memorandum or articles, or in any resolution of the company, purporting to give any person a right to participate

articles of company limited by guarantee.

in the divisible profits of the company, otherwise than as a member, shall be void.

(2) 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 and registered on or after the date aforesaid, 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.

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

27.— (1) Subject to subsection (2), and 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.

(2) Subsection (1) shall not apply in any case where the member agrees in writing, either before or after the alteration is made, to be bound thereby.

Power to alter provisions in memorandum which could have been contained in articles.

28.—(1) Subject to subsection (2) and sections 27 and 205, any provision contained in a company's memorandum which could lawfully have been contained in articles of association instead of in the memorandum may, subject to the provisions of this section, be altered by the company by special resolution.

(2) If an application is made to the court for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.

(3) This section shall not apply where the memorandum itself provides for or prohibits the alteration of all or any of the said provisions, and shall not authorise any variation or abrogation of the special rights of any class of members.

(4) Subsections (3), (4), (5), (6), (9) and (10) of section 10 (except paragraph (*b*) of the said subsection (3)) shall apply in relation to any alteration and to any application made under this section as they apply in relation to alterations and to applications made under that section.

(5) This section shall apply to a company's memorandum whether registered before, on or after the operative date.

Copies of memorandum and articles to be given to members.

29.—(1) A company shall, on being so required by any member, send to him a copy of the memorandum and of the articles, if any, and a copy of any Act of the Oireachtas which alters the memorandum, subject to payment in the case of a copy of the memorandum and of the articles, of 5/– or such less sum as the company may prescribe, and, in the case of a copy of such Act, of such sum not exceeding the published price thereof as the company may require.

(2) If a company makes default in complying with this section, the company and every officer of the company who is in default shall be liable for each offence to a fine not exceeding £5.

Issued copies of memorandum to embody alterations.

30.—(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.

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

the memorandum which is not in accordance with the alteration, it shall be liable to a fine not exceeding £25, and every officer of the company who is in default shall be liable to the like penalty.

Membership of Company.

Definition of member.

31.—(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.

Membership of holding company.

32.—(1) Subject to the provisions of this section, a body corporate cannot be a member of a company which is its holding company, and any allotment or transfer of shares in a company to its subsidiary shall be void.

(2) Nothing in this section shall apply where the subsidiary is concerned as personal representative, or where it is concerned as trustee, unless the holding company or a subsidiary thereof is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

(3) This section shall not prevent a subsidiary which on the 5th day of May, 1959, was a member of its holding company, from continuing to be a member.

(4) This section shall not prevent a company which at the date on which it becomes a subsidiary of another company is a member of that other company, from continuing to be a member.

(5) This section shall not prevent a subsidiary which is a member of its holding company from accepting and holding further shares in the capital of its holding company if such further shares are allotted to it in consequence of a capitalisation by such holding company and if the terms of such capitalisation are such that the subsidiary is not thereby involved in any obligation to make any payment or to give other consideration for such further shares.

(6) Subject to subsection (2), a subsidiary which is a member of its holding company shall have no right to vote at meetings of the holding company or any class of members thereof.

(7) Subject to subsection (2), this section shall apply in relation to a nominee for a body corporate which is a subsidiary, as if references therein to such a body corporate included references to a nominee for it.

(8) Where a holding company makes an offer of shares to its members it may sell, on behalf of a subsidiary, any such shares which the subsidiary could, but for this section, have taken by virtue of shares already held by it in the holding company, and pay the proceeds of sale to the subsidiary.

(9) In relation to a company limited by guarantee, or unlimited, which is a holding company, the reference in this section to shares, whether or not it has a share capital, shall be construed as including a reference to the interests of its members as such, whatever the form of that interest.

Private Companies.

Meaning of "***private company.***"

33.—(1) For the purposes of this Act, "***private company***" means a company which has a share capital and 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.

Consequences of default in complying with conditions constituting a company a private company.

34.—(1) Subject to subsection (2), where the articles of a company include the provisions which, under section 33, are required to be included in the articles of a company in order to constitute it a private company, 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 section 36, paragraph (*a*) of subsection (4) of section 128, paragraph (*d*) of section 213, and subparagraph (i) of paragraph (*a*) of section 215, and thereupon, sections 36, 128, 213 and 215 shall apply to the company as if it were not a private company.

(2) 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 the consequences referred to in subsection (1).

Statement in lieu of prospectus to be delivered to registrar by company on ceasing to be a private company.

35.—(1) Subject to subsection (2), if a company, being a private company, alters its articles in such manner that they no longer include the provisions which, under section 33, are required to be included in the articles of a company in order to constitute it a private company, the company shall, on the date of the alteration, cease to be a private company and shall, within a period of 14 days after the said date, deliver to the registrar of companies for registration a statement in lieu of prospectus, in the form and containing the particulars set out in Part I of the Second Schedule, and, in the cases mentioned in Part II of that Schedule, setting out the reports specified therein, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(2) A statement in lieu of prospectus need not be delivered under subsection (1) if, within the said period of 14 days, a prospectus relating to the company which complies, or is deemed by virtue of a certificate of exemption under section 45 of this Act to comply, with the Third Schedule, is issued and is delivered to the registrar of companies as required by section 47.

(3) Every statement in lieu of prospectus delivered under subsection (1) shall, where the persons making any such report as referred to in that subsection have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 5 of Part III of the Second Schedule, have endorsed thereon or attached thereto a written statement signed by those persons, setting out the adjustments and giving the reasons therefor.

(4) If default is made in complying with subsection (1) or (3), the company and every officer of the company who is in default shall be liable to a fine not exceeding £100.

(5) Where a statement in lieu of prospectus, delivered to the registrar under subsection (1) includes any untrue statement, any person who authorised the delivery of the statement in lieu of prospectus for registration shall be liable—

(*a*) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine not exceeding £500, or both, or

(*b*) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding £100, or both;

unless he proves either that the untrue statement was immaterial or that he had reasonable ground to believe and did, up to the time of the delivery for registration of the statement in lieu of prospectus, believe that the untrue statement was true.

(6) For the purposes of this section—

(*a*) a statement included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included, and

(*b*) a statement shall be deemed to be included in a statement in lieu of prospectus if it is contained therein or in any report or memorandum appearing on the face thereof, or by reference incorporated therein.

Reduction of Number of Members below Legal Minimum.

Members severally liable for debts where business carried on with fewer than seven, or in case of private company, two members.

36.—If at any time the number of members of a company is reduced, in the case of a private company, below two, or, in the case of any other company, 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 6 months and knows that it is carrying on business with fewer than two members, or seven members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.

Contracts, Deeds and Powers of Attorney.

Pre-incorporation contracts.

37.—(1) Any contract or other transaction purporting to be entered into by a company prior to its formation or by any person on behalf of the company prior to its formation may be ratified by the company after its formation and thereupon the company shall become bound by it and entitled to the benefit thereof as if it had been in existence at the date of such contract or other transaction and had been a party thereto.

(2) Prior to ratification by the company the person or persons who purported to act in the name or on behalf of the company shall in the absence of express agreement to the contrary be personally bound by the contract or other transaction and entitled to the benefit thereof.

(3) This section shall not apply to a company incorporated before the operative date.

Form of contracts.

38.—(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 to be under seal, may be made on behalf of the company in writing under the common seal of the company;

(*b*) a contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing, signed by any person acting under its authority, express or implied;

(*c*) a contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing may be made by parol on behalf of the company by any person acting under its authority, express or implied.

(2) A contract made according to this section shall 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 authorised by this section to be made.

Bills of exchange and promissory notes.

39.—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.

Execution of deeds outside the State.

40.—(1) A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place outside the State.

(2) A deed signed by such attorney on behalf of the company and under his seal shall bind the company and have the same effect as if it were under its common seal.

Power for company to have official seal for

41.—(1) A company whose objects require or comprise the transaction of business outside the State may, if authorised by its articles, have for use in any territory, district or place not situate in the State, an official seal which shall be a facsimile of the common seal of the

use abroad.

company 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 with the common seal of the company.

(3) A company having an official seal for use in any such territory, district or place, may, by writing under its common seal, authorise 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 the notice of 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.

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

PART III.

Share Capital and Debentures.

Prospectus.

Dating of prospectus.

43.—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.

Matters to be stated and reports to be set out in prospectus.

44.—(1) Subject to the provisions of section 45, 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 the Third Schedule, and set out the reports specified in Part II of that Schedule, and the said 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, document or matter not specifically referred to in the prospectus shall be void.

(3) Subject to subsection (4) and section 45, 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 Part and the issue of which does not contravene the provisions of section 46.

(4) Subsection (3) 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.

(5) Subject to subsection (6), in the event of noncompliance 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 noncompliance or contravention, if—

(*a*) as regards any matter not disclosed, he proves that he did not know it; or

(*b*) he proves that the noncompliance or contravention arose from an honest mistake of fact on his part; or

(*c*) the noncompliance or contravention was in respect of matters which in the opinion of the court dealing with the case were immaterial or was otherwise such as ought, in the opinion of the court, having regard to all the circumstances of the case, reasonably to be excused.

(6) In the event of failure to include in a prospectus a statement relating to the matters specified in paragraph 16 of the Third Schedule, 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.

(7) This section shall not apply—

(*a*) 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 the shares or debentures will or will not have the right to renounce in favour of other persons; or

(*b*) to the issue of a prospectus or form of application relating to shares or debentures which are or are to be in all respects uniform with shares or debentures issued within the preceding 2 years and, for the time being, dealt in or quoted on a recognised stock exchange;

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.

(8) If any person acts in contravention of subsections (1) or (3) he shall be liable to a fine not exceeding £100.

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

Exclusion of section 44 and relaxation of Third Schedule in case of certain prospectuses.

45.—(1) Where—

(*a*) it is proposed to offer any shares in or debentures of a company to the public by a prospectus issued generally (that is, issued to persons who are not existing members or debenture holders of the company); and

(*b*) application is made to a recognised stock exchange for permission for those shares or debentures to be dealt in or quoted on that stock exchange;

there may, on the request of the applicant, be given by or on behalf of that stock exchange a certificate of exemption, that is, a certificate that, having regard to the proposals (as stated in the request) as to the size and other circumstances of the issue of shares or debentures and as to any limitations on the number and class of persons to whom the offer is to be made, compliance with the requirements of the Third Schedule would be unduly burdensome.

(2) If a certificate of exemption is given, and if the proposals aforesaid are adhered to and the particulars and information required to be published in connection with the application for permission made to the stock exchange are so published, then—

(*a*) a prospectus giving the particulars and information aforesaid in the form in which they are so required to be published shall be deemed to comply with the requirements of the Third Schedule;

(*b*) subject to paragraph (*c*), section 44 shall not apply to any issue, after the permission applied for is granted, of a prospectus relating to the shares or debentures; and

(*c*) subsection (3) of section 44 shall apply to any issue, after the permission applied for is granted, of a form of application relating to the shares or debentures as if the reference to a prospectus were a reference to a prospectus giving the particulars and information aforesaid in the form in which they are so required to be published.

Expert's consent to issue of prospectus containing statement by him.

46.—(1) A prospectus inviting persons to subscribe for shares in or debentures of a company and including a statement purporting to be made by an expert shall not be issued unless—

(*a*) he has given and has not, before delivery of a copy of the prospectus for registration, withdrawn his written consent to the issue thereof with the statement included in the form and context in which it is included;

(*b*) a statement that he has given and has not withdrawn his consent as aforesaid appears in the prospectus.

(2) If any prospectus is issued in contravention of this section the company and every person who is knowingly a party to the issue thereof shall be liable to a fine not exceeding £100.

(3) In this section "***expert***" includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him.

Registration of prospectus.

47.—(1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the registrar for registration a copy thereof signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing, and having endorsed thereon or attached thereto—

(*a*) any consent to the issue of the prospectus required by section 46 from any person as an expert; and

(*b*) in the case of a prospectus issued generally, also—

(i) a copy of any contract required by paragraph 14 of the Third Schedule to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof or, if in the case of a prospectus deemed by virtue of a certificate granted under section 45 to comply with the requirements of that Schedule, a contract or a copy thereof or a memorandum of a contract is required to be available for inspection in connection with the application made under that section to a recognised stock exchange a copy or, as the case may be, a memorandum of that contract; and

(ii) where the persons making any report required by Part II of that Schedule have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in paragraph 29 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

The references in subparagraph (i) of paragraph (*b*) of this subsection to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a foreign language, be taken as references to a copy of a translation of the contract in English or Irish or a copy embodying a translation in English or Irish of the parts in a foreign language, as the case may be, being a translation certified in the prescribed manner to be a correct translation, and the reference to a copy of a contract required to be available for inspection shall include a reference to a copy of a translation thereof or a copy embodying a translation of parts thereof.

(2) Every prospectus shall, on the face of it,—

(*a*) state that a copy has been delivered for registration as required by this section;

(*b*) specify, or refer to statements included in the prospectus which specify, any documents required by this section to be endorsed on or attached to the copy so delivered.

(3) The registrar shall not register a prospectus unless it is dated and the copy thereof signed in manner required by this section and unless it has endorsed thereon or attached thereto the documents (if any) specified as aforesaid.

(4) If a prospectus is issued without a copy thereof being delivered under this section to the registrar or without the copy so delivered having endorsed thereon or attached thereto the required documents, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine not exceeding £100.

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

48.—(1) A company limited by shares or a company limited by guarantee and having a share capital shall not prior 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.

Civil liability for mis-statements in prospectus.

49.—(1) Subject to the provisions of this section, where a prospectus invites persons to subscribe for shares in or debentures of a company, the following persons shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement included therein—

(*a*) every person who is a director of the company at the time of the issue of the prospectus;

(*b*) every person who has authorised himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;

(*c*) every person being a promoter of the company;

(*d*) every person who has authorised the issue of the prospectus.

(2) Where, under section 46, the consent of a person is required to the issue of a prospectus and he has given that consent, he shall not by reason of his having given it be liable under subsection (1) as a person who has authorised the issue of the prospectus except in respect of an untrue statement purporting to be made by him as an expert.

(3) Subject to subsection (4), no person shall be liable under subsection (1) if he proves—

(*a*) 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

(*b*) 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

(*c*) 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

(*d*) that—

(i) 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

(ii) 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 he had reasonable ground to believe and did up to the time of the issue of the prospectus believe that the person making the statement was competent to make it and that person had given the consent required by section 46 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder; and

(iii) 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.

(4) Subsection (3) shall not apply in the case of a person liable, by reason of his having given a consent required of him by the said section 46, as a person who has authorised the issue of the prospectus in respect of an untrue statement purporting to be made by him as an expert.

(5) A person who, apart from this subsection would under subsection (1) be liable, by reason of his having given a consent required of him by section 46, as a person who has authorised the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert shall not be so liable if he proves—

(*a*) that, having given his consent under the said section 46 to the issue of the prospectus, he withdrew it in writing before delivery of a copy of the prospectus for registration; or

(*b*) that, after delivery of a copy of the prospectus for registration and before allotment thereunder, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal, and of the reason therefor; or

(*c*) that he was competent to make the statement and that 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.

(6) Subject to subsection (7), where—

(*a*) the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof; or

(*b*) the consent of a person is required under section 46 to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus;

the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof shall be liable to indemnify the person named as aforesaid or whose consent was required as aforesaid, as the case may be, 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 of the inclusion therein of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any action or legal proceeding brought against him in respect thereof.

(7) A person shall not be deemed for the purposes of subsection (6) to have authorised the issue of a prospectus by reason only of his having given the consent required by section 46 to the inclusion therein of a statement purporting to be made by him as an expert.

(8) For the purposes of this section—

(*a*) "***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; and

(*b*) "***expert***" has the same meaning as in section 46.

Criminal liability for mis-statements in prospectus.

50.—(1) Where a prospectus issued after the operative date includes any untrue statement, any person who authorised the issue of the prospectus shall be liable—

(*a*) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine not exceeding £500, or both; or

(*b*) on summary conviction, to imprisonment for a term not exceeding 6 months, or a fine not exceeding £100, or both;

unless he proves either that the statement was immaterial or that he had reasonable ground to believe and did, up to the time of the issue of the prospectus, believe that the statement was true.

(2) A person shall not be deemed for the purposes of this section to have authorised the issue of a prospectus by reason only of his having given the consent required by section 46 to the inclusion therein of a statement purporting to be made by him as an expert.

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

51.—(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 and as to forms of application for shares in or debentures of the company 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 mis-statements 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 shares or debentures or of any of them for sale to the public was made within 2 years 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 44 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 said shares or debentures have been or are to be allotted may be inspected;

and section 47 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.

(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 authorised in writing.

Interpretation of provisions relating to prospectuses.

52.—For the purposes of the foregoing provisions of this Part—

(*a*) a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and

(*b*) a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

Allotment.

Minimum subscription and amount payable on application.

53.—(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 4 of the Third Schedule has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company.

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 40 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 48 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 5 per cent. per annum from the expiration of the forty-eighth day, so however 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) thereof, 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.

54.—(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 3 days before the first allotment of either shares or debentures there has been delivered to the registrar of companies 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 authorised in writing, in the form and containing the particulars set out in Part I of the Fourth Schedule and, in the cases mentioned in Part II of that Schedule, setting out the reports specified therein, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(2) Every statement in lieu of prospectus delivered under subsection (1) shall, where the persons making any such report as aforesaid have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 5 of Part III of

the Fourth Schedule, have endorsed thereon or attached thereto a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

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

(4) If a company acts in contravention of subsections (1) or (2), the company and every director of the company who knowingly and wilfully authorises or permits the contravention shall be liable to a fine not exceeding £100.

(5) Where a statement in lieu of prospectus delivered to the registrar of companies under subsection (1) includes any untrue statement, any person who authorised the delivery of the statement in lieu of prospectus for registration shall be liable—

(*a*) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine not exceeding £500, or both; or

(*b*) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding £100, or both;

unless he proves either that the untrue statement was immaterial or that he had reasonable ground to believe and did up to the time of the delivery for registration of the statement in lieu of prospectus believe that the untrue statement was true.

(6) For the purposes of this section—

(*a*) a statement included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included;

(*b*) a statement shall be deemed to be included in a statement in lieu of prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein.

Effect of irregular allotment.

55.—(1) An allotment made by a company to an applicant in contravention of sections 53 or 54 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) Where an allotment is avoided under this section the company shall within one month thereafter deliver to the registrar of companies for registration a notice to that effect, and subsections (3) and (4) of section 58 shall apply in relation to this subsection as they apply in relation to that section.

(3) If any director of a company knowingly contravenes, or permits or authorises the contravention of, any of the provisions of the said sections 53 and 54 with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or allottee may have sustained or incurred thereby, so however that proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of 2 years from the date of the allotment.

Applications for, and allotment of, shares and debentures.

56.—(1) No allotment shall be made of any shares in or debentures of a company in pursuance of a prospectus issued generally and no proceedings shall be taken on applications made in pursuance of a prospectus so issued until the beginning of the fourth day after that on which the prospectus is first so issued or such later time (if any) as may be specified in the prospectus.

The beginning of the said fourth day or such later time as aforesaid is hereafter in this Act referred to as "***the time of the opening of the subscription lists***".

(2) In subsection (1) the reference to the day on which the prospectus is first issued generally shall be construed as referring to the day on which it is first so issued as a newspaper advertisement so however that if it is not so issued as a newspaper advertisement before the fourth day after that on which it is so issued in any other manner, the said reference shall be construed as referring to the day on which it is first so issued in any manner.

(3) The validity of an allotment shall not be affected by any contravention of subsection (1) or subsection (2) but, in the event of any

such contravention, the company and every officer of the company who is in default shall be liable to a fine not exceeding £100.

(4) In the application of this section to a prospectus offering shares or debentures for sale, subsections (1) to (3) shall have effect with the substitution of references to sale for references to allotment, and with the substitution for the reference to the company and every officer of the company who is in default of a reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the contravention.

(5) An application for shares in or debentures of a company which is made in pursuance of a prospectus issued generally shall be irrevocable until after the expiration of 9 days after the day on which the prospectus is first so issued or the giving before the expiration of the said 9 days, by some person responsible under section 49 for the prospectus, of a public notice having the effect under that section of excluding or limiting the responsibility of the person giving it.

(6) In reckoning for the purposes of this section the fourth day after another day, any intervening day which is a Saturday or Sunday or which is a bank holiday shall be disregarded and if the fourth day (as so reckoned) is itself a Saturday or Sunday or such a bank holiday there shall for the said purposes be substituted the first day thereafter which is none of them.

Allotment of shares and debentures to be dealt in on stock exchange.

57.—(1) Where a prospectus, whether issued generally or not, states that application has been or will be made for permission for the shares or debentures offered thereby to be dealt in on any stock exchange, any allotment made on an application in pursuance of the prospectus shall, whenever made, be void if the permission has not been applied for before the third day after the first issue of the prospectus or if the permission has not been granted within 6 weeks from the date of the closing of the subscription lists.

(2) Where the permission has not been applied for as aforesaid or has not been granted, the company shall forthwith repay without interest all money received from applicants in pursuance of the prospectus, and, if any such money is not repaid within 8 days after the company becomes liable to repay it, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of 5 per cent. per annum from the expiration of the eighth day, so however 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.

(3) All money received as aforesaid shall be kept in a separate bank account so long as the company may become liable to repay it under subsection (2); and, if default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a fine not exceeding £100.

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

(5) This section shall have effect—

(*a*) in relation to any shares or debentures agreed to be taken by a person underwriting an offer thereof by a prospectus as if he had applied therefor in pursuance of the prospectus, and

(*b*) in relation to a prospectus offering shares or debentures for sale with the following modifications,—

(i) references to sale shall be substituted for references to allotment,

(ii) the persons by whom the offer is made, and not the company, shall be liable under subsection (2) to repay money received from applicants, and references to the company's liability under that subsection shall be construed accordingly, and

(iii) for the reference in subsection (3) to the company and every officer of the company who is in default there shall be substituted a reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the default.

(6) In reckoning for the purposes of this section the third day after another day, any intervening day which is a Saturday or Sunday or which is a bank holiday shall be disregarded and if the third day (as so reckoned) is itself a Saturday or Sunday or such a bank holiday there shall for the said purposes be substituted the first day thereafter which is none of them.

Return as to allotments.

58.—(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 of companies for registration—

(*a*) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses and occupations 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,

provided that, where shares are allotted to the members of a company on a capitalisation or provisionally allotted on a rights issue, it shall not be necessary to make a return of the particular allottees, notwithstanding that in either case there may be a right of renunciation.

(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 of companies 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 Act, 1891, and the registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section 12 of that Act.

(3) If default is made in complying with this section, every officer of the company who is in default shall be liable to a fine not exceeding £100.

(4) In case of default in delivering to the registrar of companies within one month after the allotment any document required to be delivered by this section, the company, or any officer liable for the default, may apply to the court for relief, and the court, 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.

Commissions and Discounts and Financial Assistance for Purchase of Shares.

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

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

(*a*) the payment of the commission is authorised by the articles; 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 authorised by the articles, whichever is the less; and

(*c*) the amount and 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 of companies 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 for 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 in 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) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay.

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

(5) 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 shall be liable to a fine not exceeding £100.

Giving of financial assistance by a company for the purchase of its shares.

60.—(1) Subject to subsections (2), (12) and (13), it shall not be lawful for a company to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company, or, where the company is a subsidiary company, in its holding company.

(2) Subsection (1) shall not apply to the giving of financial assistance by a company if—

(*a*) such financial assistance is given under the authority of a special resolution of the company passed not more than 12 months previously; and

(*b*) the company has forwarded with each notice of the meeting at which the special resolution is to be considered a copy of a statutory declaration which complies with subsections (3) and (4) and also delivers, on the same day as such notices are issued, a copy of the declaration to the registrar of companies for registration.

(3) The statutory declaration shall be made at a meeting of the directors held not more than 24 days before the said meeting and shall be made by the directors or, in the case of a company having more than two directors, by a majority of the directors.

(4) The statutory declaration shall state—

(*a*) the form which such assistance is to take;

(*b*) the persons to whom such assistance is to be given;

(*c*) the purpose for which the company intends those persons to use such assistance;

(*d*) that the declarants have made a full inquiry into the affairs of the company and that, having done so, they have formed the opinion that the company, having carried out the transaction whereby such assistance is to be given, will be able to pay its debts in full as they become due.

(5) Any director of a company making the statutory declaration without having reasonable grounds for the opinion that the company having carried out the transaction whereby such assistance is to be given will be able to pay its debts in full as they become due, shall be liable to imprisonment for a period not exceeding 6 months or to a fine not exceeding £100 or to both; and if the company is wound up within the period of 12 months after the making of the statutory declaration and its debts are not paid or provided for in full within the period of 12 months after the commencement of the winding up, it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion.

(6) Notwithstanding anything in the articles of association of the company, every member of the company shall have the right to receive notice of and to attend the meeting at which the special resolution is to be proposed.

(7) Unless all of the members of the company entitled to vote at general meetings of the company vote in favour of the special resolution, the transaction whereby such assistance is to be given shall not be carried out before the expiry of 30 days after such special resolution has been passed or, if an application under subsection (8) is made, until such application has been disposed of by the court.

(8) If application is made to the court in accordance with this section for the cancellation of the special resolution, such special resolution shall not have effect except to the extent to which it is confirmed by the court.

(9) Subject to subsection (10), an application under subsection (8) may be made by the holders of not less in the aggregate than 10 per cent. in nominal value of the company's issued share capital or any class thereof.

(10) An application shall not be made under subsection (8) by any person who has consented to or voted in favour of the special resolution.

(11) An application under subsection (8) must be made within 28 days after the date on which the special resolution 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.

(12) Nothing in this section shall be taken to prohibit the payment of a dividend properly declared by a company or the discharge of a liability lawfully incurred by it.

(13) Nothing in this section shall be taken to prohibit—

(*a*) where the lending of money is part of the ordinary business of the 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 of, or subscription for, fully paid shares in the company or its holding company, being a purchase or subscription of or for shares to be held by or for the benefit of employees or former employees of the company or of any subsidiary of the company including any person who is or was a director holding a salaried employment or office in the company or any subsidiary of the company;

(*c*) the making by a company of loans to persons, other than directors, *bona fide* in the employment of the company or any subsidiary of the company with a view to enabling those persons to purchase or subscribe for fully paid shares in the company or its holding company to be held by themselves as beneficial owners thereof.

(14) Any transaction in breach of this section shall be voidable at the instance of the company against any person (whether a party to the transaction or not) who had notice of the facts which constitute such breach.

(15) If a company acts in contravention of this section every officer of the company who is in default shall be liable:

(*a*) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine not exceeding £500 or to both, or

(*b*) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding £100 or to both.

(16) Nothing in this section shall prejudice the provisions of section 72.

Construction of references to offering Shares or Debentures to the Public.

Construction of references to offering shares or debentures to the public.

61.—(1) Any reference in this Act to offering shares or debentures to the public shall, subject to any provision to the contrary contained therein, be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner, and references in this Act or in a company's articles to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be similarly construed.

(2) Subsection (1) shall not be taken as requiring any offer or invitation to be treated as made to the public if it can properly be regarded, in all the circumstances, as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or otherwise as being a domestic concern of the persons making and receiving it, and in particular—

(*a*) a provision in a company's articles prohibiting invitations to the public to subscribe for shares or debentures shall not be taken as prohibiting the making to members or debenture holders of an invitation which can properly be regarded as aforesaid, and

(*b*) the provisions of this Act relating to private companies shall be construed accordingly.

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

Application of premiums received on issue of shares.

62.—(1) Where a company 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 subsection (1) be applied by the company in paying up unissued shares of the company (other than redeemable preference shares) to be issued 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 operative date issued any shares at a premium, this section shall apply as if the shares had been issued after the operative date, so however that any part of the premiums which has been so applied that it does not at the operative date form an identifiable part of the company's reserves within the meaning of the Sixth Schedule shall be disregarded in determining the sum to be included in the share premium account.

Power to issue shares at a discount.

63.—(1) Subject to the provisions of this section, it shall be lawful for a company to issue at a discount shares in the company of a class already issued so, however, that—

(*a*) the issue of the shares at a discount must be authorised by a special resolution of the company, and must be sanctioned by the court;

(*b*) the resolution must specify the maximum rate of discount at which the shares are to be issued;

(*c*) in the case of a company which is not a private company not less than 2 years must at the date of issue have elapsed since the

date on which the company was entitled to commence business and, in the case of a private company not less than 2 years must have elapsed since the date on which the company was incorporated;

(*d*) the shares to be issued at a discount must be issued within 6 months after the date on which the issue is sanctioned by the court or within such extended time as the court may allow.

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

(3) The company shall, within 21 days after the making of the order, deliver a copy of the order to the registrar of companies for registration.

(4) Every prospectus relating 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 prospectus.

(5) If default is made in complying with subsection (3) or (4) the company and every officer of the company who is in default shall be liable to a fine not exceeding £100.

Power to issue redeemable preference shares.

64.—(1) Subject to the provisions of this section, a company limited by shares may, if so authorised by its articles, issue preference shares which are, or at the option of the company are to be liable, to be redeemed, so, however, that—

(*a*) 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;

(*b*) no such shares shall be redeemed unless they are fully paid;

(*c*) the premium, if any, payable on redemption, must have been provided for out of the profits of the company or out of the company's share premium account before the shares are redeemed;

(*d*) 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.

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

(3) The redemption of preference shares under this section by a company shall not be taken as reducing the amount of the company's authorised share capital.

(4) Subject to subsection (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.

(5) Where 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 subsection (4) unless the old shares are redeemed within one month after the issue of the new shares.

(6) The capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company in paying up unissued shares of the company (other than redeemable preference shares) to be issued to members of the company as fully paid bonus shares.

Power to redeem preference shares issued before 5th May, 1959.

65.—(1) Subject to the provisions of this section, a company limited by shares may, if so authorised by its articles, redeem any preference shares issued by it before the 5th day of May, 1959, so, however, that—

(*a*) no such shares shall be redeemed unless they are fully paid;

(*b*) 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;

(*c*) no such shares shall be redeemed at a sum greater than the issue price of such shares;

(*d*) the redemption of such shares and the terms and the manner thereof must have been authorised by a special resolution of the company;

(*e*) notice of the meeting at which the special resolution referred to in paragraph (*d*) is to be proposed and a copy of the said resolution must be published in *Iris Oifigiúil*and in at least one daily newspaper circulating in the district in which the registered office of the company is situated not less than 14 days and not more than 30 days before the date of the meeting;

(*f*) no holder of such shares shall be obliged to accept redemption thereof;

(*g*) in the case of a private company the redemption must have been sanctioned by the court.

(2) The powers conferred by this section may be availed of only by means of an offer made to all the holders of the preference shares concerned.

(3) 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.

(4) Subject to the provisions of this section, the redemption of preference shares under this section may be effected on such terms and in such manner as may be provided by the special resolution referred to in paragraph (*d*) of subsection (1).

(5) The redemption of preference shares under this section by a company shall not be taken as reducing the amount of the company's authorised share capital.

(6) Subject to subsection (7), 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.

(7) Where 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 subsection (6) unless the old shares are redeemed within one month after the issue of the new shares.

(8) The capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company in paying up unissued shares of the company (other than redeemable preference shares) to be issued to members of the company as fully paid bonus shares.

Miscellaneous Provisions as to Share Capital.

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

66.—A company, if so authorised 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 a dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

Reserve liability of limited company.

67.—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 to alter its share capital.

68.—(1) A company limited by shares or a company limited by guarantee and having a share capital, if so authorised by its articles, may in general meeting alter the conditions of its memorandum as follows, that is, 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 re-convert that stock into paid up shares of any denominations;

(*d*) subdivide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

(*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) 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 certain alterations in share capital.

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

(*a*) consolidated and divided its share capital into shares of larger amount than its existing shares; or

(*b*) converted any shares into stock; or

(*c*) reconverted stock into shares; or

(*d*) subdivided its shares or any of them; or

(*e*) redeemed any redeemable preference shares; or

(*f*) redeemed any preference shares; or

(*g*) cancelled any shares, otherwise than in connection with a reduction of share capital under section 72:

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

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding £50.

Notice of increase of share capital.

70.—(1) Where a company, having a share capital, whether its shares have or have not been converted into stock, has increased its share capital above the registered capital, it shall, within 15 days after the passing of the resolution increasing its share capital, give to the registrar of companies notice of the increase, and the registrar shall record the increase.

(2) The notice to be given as aforesaid 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.

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding £50.

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

71.—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:

(*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.

Reduction of Share Capital.

Power of company to reduce its share capital.

72.—(1) Except in so far as this Act expressly permits, it shall not be lawful for a company limited by shares or a company limited by guarantee and having a share capital to purchase any of its shares or to reduce its share capital in any way.

(2) Subject to confirmation by the court, a company limited by shares or a company limited by guarantee and having a share capital, may, if so authorised 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.

(3) 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

73.—(1) Where a company has passed a resolution for reducing share capital, it may apply to the court for an order confirming the reduction.

and settlement of list of objecting creditors.

(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 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 court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction;

(*b*) the court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction;

(*c*) where a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the court may direct, the following amount:—

(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 court after the like inquiry and adjudication as if the company were being wound up by 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 court may, if, having regard to any special circumstances of the case, it thinks proper so to do, direct that subsection (2) shall not apply as regards any class or any classes of creditors.

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

74.—(1) The court, if satisfied in relation to every creditor of the company who, under section 73, is entitled to object to the reduction, that either his consent to the reduction has been obtained or that his debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

(2) Where the court makes any such order, it may—

(*a*) if for any special reason it thinks proper so to do, make an order directing that the company shall, during such period, commencing on or at any time after the date of the order, as is specified in the order, add to its name as the last words thereof the words "***and reduced***" or where the word "***teoranta***" is part of such name, the words "***agus laghdaithe***",

(*b*) make an order requiring the company to publish as the court directs the reasons for reduction or such other information in regard thereto as the court may think expedient, with a view to giving proper information to the public, and, if the court thinks fit, the causes which led to the reduction.

(3) Where a company is ordered to add to its name the words "***and reduced***", or the words "***agus laghdaithe***" 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

75.—(1) The registrar of companies, on production to him of an order of the court confirming the reduction of the share capital of a

and minute of reduction.

company, and the delivery to him of a copy of the order and of a minute approved by the court showing, with respect to the share capital of the company as altered by the order, the amount of the share capital, the number of shares into which it is to be divided, and the amount of each share, and the amount, if any, at the date of the registration deemed to be paid up on each share, shall register the order and minute.

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

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

(4) The registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act relating 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 as aforesaid for part of the memorandum of the company shall be deemed to be an alteration of the memorandum within the meaning of section 30.

Liability of members in respect of reduced shares.

76.—(1) Subject to subsection (2), 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.

(2) If any creditor entitled in respect of any debt or claim to object to the reduction of the share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his debt or 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 relating 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.

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

Penalty for concealment of certain matters in proceedings for reduction.

77.—If any officer of the company—

(*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,

he shall be liable on summary conviction to a fine not exceeding £100.

Variation of Shareholders' Rights.

Rights of holders of

78.—(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

special classes of shares.

memorandum or articles for authorising the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than 10 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.

(2) An application under this section must be made within 28 days (or such longer period as the court, on application made to it by any shareholder before the expiry of the said 28 days, may allow) 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 but an appeal shall lie to the Supreme Court from the determination of the court on a question of law.

(5) The company shall, within 21 days after the making of an order by the court on any such application, forward a copy of the order to the registrar of companies, and, if default is made in complying with this provision, the company and every officer of the company who is in default, shall be liable to a fine not exceeding £50.

(6) In this section "***variation***" includes abrogation, and "***varied***" shall be construed accordingly.

Numbering and Transfer of and Evidence of Title to Shares and Debentures.

Nature of shares.

79.—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.

Numbering of shares.

80.—(1) Subject to subsections (2) and (3), each share in a company having a share capital shall be distinguished by its appropriate number.

(2) If at any time all the issued shares in a company, or all the issued shares therein of a particular class, are fully paid up and rank *pari passu* for all purposes, none of those shares need thereafter have a distinguishing number, so long as it remains fully paid up and ranks *pari passu* for all purposes with all shares of the same class for the time being issued and fully paid up.

(3) Where new shares are issued by a company on the terms that, within a period not exceeding 12 months, they will rank *pari passu* for all purposes with all the existing shares, or all the existing shares of a particular class, in the company, neither the new shares nor the corresponding existing shares need have distinguishing numbers so long as all of them are fully paid up and rank *pari passu* but the share certificates of the new shares shall, if not numbered, be appropriately worded or enfaced.

Transfer not to be registered unless instrument of transfer delivered to the company.

81.—(1) Subject to subsection (2), and 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.

(2) Nothing in subsection (1) 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.

82.—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.

Registration of transfer at request of transferor.

83.—On 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.

Notice of refusal to register transfer.

84.—(1) If the company refuses to register a transfer of any shares or debentures, the company shall, within 2 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 officer of the company who is in default shall be liable to a fine not exceeding £50.

Certification of transfers.

85.—(1) The certification by a company of any instrument of transfer of shares in or debentures of the company shall be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show a *prima facie* title to the shares or debentures in the transferor named in the instrument of transfer, but not as a representation that the transferor has any title to the shares or debentures.

(2) Where any person acts on the faith of a false certification by a company made negligently, the company shall be under the same liability to him as if the certification had been made fraudulently.

(3) For the purposes of this section—

(*a*) an instrument of transfer shall be deemed to be certificated if it bears the words "***certificate lodged***" or words to the like effect;

(*b*) the certification of an instrument of transfer shall be deemed to be made by a company if—

(i) the person issuing the instrument is a person authorised to issue certificated instruments of transfer on the company's behalf, and

(ii) the certification is signed by a person authorised to certificate transfers on the company's behalf or by any officer or servant either of the company or of a body corporate so authorised;

(*c*) a certification shall be deemed to be signed by any person if—

(i) it purports to be authenticated by his signature or initials (whether hand written or not), and

(ii) it is not shown that the signature or initials was or were placed there neither by himself nor by any person authorised to use the signature or initials for the purpose of certificating transfers on the company's behalf.

Duties of company in relation to the issue of certificates.

86.—(1) Every company shall, within 2 months after the allotment of any of its shares, debentures or debenture stock, and within 2 months after the date on which a transfer of any such shares, debentures or debenture stock is lodged with the company, complete and have ready for delivery the certificates of all shares, 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 officer of the company who is in default shall be liable to a fine not exceeding £20.

(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 10 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.

Evidence of title, probate and letters of administration.

87.—(1) A certificate under the common seal of the company specifying any shares held by any member shall be *prima facie* evidence of the title of the member to the shares.

(2) 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

Issue and effect of share warrants to bearer.

88.—(1) A company limited by shares if so authorised by its articles, may, in relation to any fully paid up shares, issue under its common seal 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.

(2) Such a warrant as aforesaid 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.

89.—If a company has created or issued shares in its capital and if there is reason to apprehend that such shares were invalidly created or issued, the court may, on the application of the company, any holder of such shares or any member or creditor, or the liquidator, of the company, declare that such creation or issue shall be valid for all purposes if the court is satisfied that it would be just and equitable to do so and thereupon such shares shall from the creation or issue thereof, as the case may be, be deemed to have been validly created or issued.

Validation of invalid issue of shares.

90.—If any person 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, or votes at any meeting, as if the offender were the true and lawful owner, he shall be liable, on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine not exceeding £500 or to both, or, on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding £100 or to both.

Penalty of personation of shareholder.

Special Provisions as to Debentures.

Provisions as to register of debenture holders.

91.—(1) Every company shall keep a register of holders of debentures of the company and enter therein the names and addresses of the debenture holders and the amount of debentures currently held by each.

For the purposes of this subsection, debentures do not include any debenture which does not form part of a series ranking *pari passu* nor any debenture which is transferable by delivery.

(2) A company shall keep such register at the registered office of the company, any other office of the company at which the work of making it up is done, or if the company arranges with some other person for the making up of the register to be undertaken on behalf of the company by that other person, at the office of that other person at which the work is done.

(3) Subject to subsection (4), every company shall send notice to the registrar of companies of the place where the register is kept, and of any change in that place.

(4) A company shall not be bound to send notice under subsection (3) where the register has, at all times since it came into existence, or, in the case of a company which came into existence after the operative date, at all times since then, been kept at the registered office of the company.

(5) Where a company makes default in complying with subsection (1) or (2) or makes default for 14 days in complying with subsection (3), the company and every officer of the company who is in default shall be liable to a fine not exceeding £50.

Rights of inspection of register of debenture holders and to copies of register and trust deed.

92.—(1) Every register of holders of debentures of a company shall, except when duly closed (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than 2 hours in each day shall be allowed for inspection), be open to the inspection of the registered holder of any such debentures or any holder of shares in the company without fee, and of any other person on payment of a fee of one shilling or such less sum as may be prescribed by the company.

(2) Any such registered holder of debentures or holder of shares as aforesaid or any other person may require a copy of the register of the holders of debentures of the company or any part thereof, on payment of sixpence for every 100 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 5 shillings or such less sum as may be prescribed by the company, or, where the trust deed has not been printed, on payment of sixpence for every 100 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 shall be liable to a fine not exceeding £25.

(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.

(6) For the purposes of this section, a register shall be deemed to be duly closed if closed in accordance with provisions contained in the articles or in the debentures or, in the case of debenture stock, in the stock certificates, or in the trust deed or other document securing the debentures or debenture stock, during such period or periods, not exceeding in the whole 30 days in any year, as may be therein specified.

Liability of trustees for debenture holders.

93.—(1) Subject to subsections (2) to (4), any provision contained in a trust deed for securing an issue of debentures, or in any contract with the holders of debentures secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from or indemnifying him against liability for breach of trust where he fails to show the degree of care and diligence required of him as trustee, having regard to the provisions of the trust deed conferring on him any powers, authorities or discretions.

(2) Subsection (1) shall not invalidate—

(*a*) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or

(*b*) any provision enabling such a release to be given—

(i) on the agreement thereto of a majority of not less than three-fourths in value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose, and

(ii) either with respect to specific acts or omissions or on the trustee dying or ceasing to act.

(3) Subsection (1) shall not operate—

(*a*) to invalidate any provision in force on the operative date so long as any person then entitled to the benefit of that provision or afterwards given the benefit thereof under subsection (4) remains a trustee of the deed in question; or

(*b*) to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him

while any such provision was in force,

(4) While any trustee of a trust deed remains entitled to the benefit of a provision saved by subsection (3), the benefit of that provision may be given either—

(*a*) to all trustees of the deed, present and future; or

(*b*) to any named trustee or proposed trustees thereof;

by a resolution passed by a majority of not less than three-fourths in value of the debenture holders present in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose in accordance with the provisions of the deed or, if the deed makes no provision for summoning meetings, a meeting summoned for the purpose in any manner approved by the court.

Perpetual debentures.

94.—A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the operative date, 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, notwithstanding any rule of law to the contrary.

Power to re-issue redeemed debentures.

95.—(1) Where either before, on or after the operative date, a company has redeemed any debentures, then—

(*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, shown 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) Subject to section 96, 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, either before, on or after the operative date 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.

(4) Subject to subsection (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, whether the re-issue or issue was made before, on or after the operative date, 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.

(5) 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.

Saving of rights of certain mortgagees in case of re-issued debentures.

96.—Where any debentures which have been redeemed before the operative date are re-issued on or subsequently to that date, the re-issue of the debentures shall not prejudice and shall be deemed never to have prejudiced any right or priority which any person would have had under or by virtue of any mortgage or charge created before the operative date, if section 104 of the Companies (Consolidation) Act, 1908, had been enacted in this Act instead of section 95.

Specific performance of contracts to subscribe for debentures.

97.—A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

Preferential payments when receiver is appointed under floating charge.

98.—(1) Where either a receiver is appointed on behalf of the holders of any debentures of a 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 as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(2) In the application of the said provisions section 285 of this Act shall be construed as if the provision for payment of accrued holiday remuneration becoming payable on the termination of employment before or by the effect of the winding up order or resolution, were a provision for payment of such remuneration becoming payable on the termination of employment before or by the effect of the appointment of the receiver or possession being taken as aforesaid.

(3) 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 aforesaid, as the case may be.

(4) Where the date referred to in subsection (3) occurred before the operative date, subsections (1) and (3) shall have effect with the substitution for references to the said provisions of Part VI of references to the provisions which, by virtue of subsection (12) of the said section 285 are deemed to remain in force in the case therein mentioned, and subsection (2) of this section shall not apply.

(5) Any payments made under this section shall be recouped so far as may be out of the assets of the company available for payment of general creditors.

PART IV

Registration of Charges

Registration of Charges with Registrar of Companies.

Registration of charges created by companies.

99.—(1) Subject to the provisions of this Part, every charge created after the fixed date by a company, 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, verified in the prescribed manner, are delivered to or received by the registrar of companies for registration in manner required by this Act within 21 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 the following charges:

(*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, but not including a charge for any rent or other periodical sum issuing out of land;

(*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 trade mark or on a copyright or a licence under a copyright.

(3) In the case of a charge created out of the State comprising property situate outside the State, 21 days after the date on which the prescribed particulars could, in due course of post, and if despatched with due diligence, have been received in the State shall be substituted for 21 days after the date of the creation of the charge as the time within which the particulars are to be delivered to the registrar.

(4) Where a charge is created in the State but comprises property outside the State, the prescribed particulars 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 charge comprises property situate outside the State and registration in the country where the property is situate is necessary to make the charge valid or effectual according to the law of that country, a certificate in the prescribed form stating that the charge was presented for registration in the country where the property is situate on the date on which it was so presented shall be delivered to the registrar of companies for registration.

(6) 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.

(7) 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.

(8) 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 21 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 authorising 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;

so, however, 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 amount and date of each issue, but an omission to do this shall not affect the validity of the debentures issued.

(9) 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 and 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, so, however, 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.

(10) In this Part—

(*a*) "***charge***" includes mortgage;

(*b*) "***the fixed date***" means, in relation to the charges specified in paragraphs (*a*) to (*f*), of subsection (2), the 1st July, 1908, and in relation to the charges specified in paragraphs (*g*) to (*i*), the operative date.

Duty of company to register charges created by company.

100.—(1) It shall be the duty of a company to send to the registrar of companies for registration within the time required by section 99 the particulars of every charge created by the company, and of the issues of debentures of a series requiring registration under section 99, together with any documents required by that section, 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 under section 99 or any documents required by that section then, unless registration has been effected on the application of some other person, the company and every officer of the company who is in default shall be liable to a fine not exceeding £100.

(4) Proceedings in relation to an offence under this section may be brought and prosecuted by the registrar of companies.

Duty of company to register charges existing on property acquired.

101.—(1) Where a company acquires any property which is subject to a charge of any such kind as would, if it had been created 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, verified in the prescribed manner, to be delivered to the registrar of companies for registration in manner required by this Act within 21 days after the date on which the acquisition is completed so, however, that if the property is situated outside the State, 21 days after the date on which the prescribed particulars could, in due course of post and if despatched with due diligence, have been received in the State, shall be substituted for 21 days after the completion of the acquisition as the time within which the particulars 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 shall be liable to a fine not exceeding £100.

Registration of judgment mortgages.

102.—(1) When judgment is recovered against a company and such judgment is subsequently converted into a judgment mortgage affecting any property of the company, the judgment creditor shall cause 2 copies (certified by the Land Registry or the Registry of Deeds, as the case may be, to be correct copies) of the affidavit required for the purpose of registering the judgment as a mortgage to be delivered to the company within 21 days after the date of such registration, and the company shall within 3 days of receipt of such copies deliver one of such copies to the registrar of companies for registration in manner required by this Act. By way of further precaution, the Land Registry, or Registry of Deeds, shall as soon as may be deliver a copy of the said affidavit to the registrar of companies.

(2) If any judgment creditor makes default in complying with subsection (1) he shall be liable to a fine not exceeding £100, and if a company makes default in complying with that subsection, the company and every officer of the company who is in default shall be liable to a like penalty.

(3) This section shall not apply to any judgment mortgage created before the operative date.

Register of charges to be kept by registrar of companies.

103.—(1) The registrar of companies shall keep, in relation to each company, a register in the prescribed form of all the charges requiring registration under this Part, and shall, on payment of such fee as may be prescribed, enter in the register, in relation to such charges, the following particulars:

(*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 subsection (8) of section 99;

(*b*) in the case of any other charge—

(i) if the charge is a charge created by the company, the date of its creation;

(ii) if the charge was a charge existing on property acquired by the company, the date of the acquisition of the property;

(iii) if the charge was a judgment mortgage, the date of the creation of such judgment mortgage;

(iv) the amount secured by the charge;

(v) short particulars of the property charged;

(vi) the persons entitled to the charge.

(2) The register kept in pursuance of this section shall be open to inspection by any person on payment of such fee as may be prescribed.

Certificate of registration.

104.—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.

Entries of satisfaction and release of property from charge.

105.—The registrar of companies, on evidence being given to his satisfaction with respect to any registered charge

(*a*) that the debt in relation to which the charge was created has been paid or satisfied in whole or in part; or

(*b*) that part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking;

and after giving notice to the person to whom such charge was originally given or to the judgment creditor, as the case may be, may enter on the register a memorandum of satisfaction in whole or in part, or of the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be, and where he enters a memorandum of satisfaction in whole he shall, if required, furnish the company with a copy thereof.

Extension of time for registration of charges.

106.—(1) The court, on being satisfied that the omission to register a charge within the time required by this Act or that the omission or mis-statement 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 mis-statement shall be rectified.

(2) The grant of relief by the court under this section shall, if the court so directs, not have the effect of relieving the company or its officers of any liability already incurred under section 100.

Notice to registrar of appointment of receiver, and of receiver ceasing to act.

107.—(1) If any person obtains an order for the appointment of a receiver of the property of a company or appoints such a receiver under any powers contained in any instrument, he shall, within 7 days after the date of the order or of the appointment, publish in *Iris Oifigiúil* and in at least one daily newspaper circulating in the district where the registered office of the company is situated, and deliver to the registrar of companies, a notice in the form prescribed.

(2) When any person appointed receiver of the property of a company ceases to act as such receiver, he shall, on so ceasing, deliver to the registrar of companies a notice in the form prescribed.

(3) If any person makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding £100.

Effect of provisions of former Companies Acts as to registration of charges on land.

108.—Paragraph (*d*) of subsection (1) of section 10 of the Companies Act, 1907, and paragraph (*d*) of subsection (1) of section 93 of the Companies (Consolidation) Act, 1908 (by virtue whereof charges created on land by a company required registration under those Acts respectively), shall be deemed never to have applied to a charge for any rent or other periodical sum issuing out of the land.

Provisions as to copies of Instruments creating Charges.

Copies of instruments creating charges to be kept at registered office.

109.—Every company shall cause a copy of every instrument creating any charge requiring registration under this Part, including every affidavit a copy of which has been delivered to the company under section 102, to be kept at the registered office of the company so, however, that, in the case of a series of uniform debentures, a copy of one debenture of the series shall be sufficient.

Right to inspect copies of instruments creating charges.

110.—(1) The copies of instruments referred to in section 109 may be inspected during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than 2 hours in each day shall be allowed for inspection) by any creditor or member of the company without fee.

(2) If inspection is refused, every officer of the company who is in default shall be liable to a fine not exceeding £100.

(3) In the event of any such refusal, the court may by order compel an immediate inspection.

Application of this Part to Companies incorporated outside the State.

Application of this Part to companies incorporated outside the State.

111.—The provisions of this Part shall extend to charges on property in the State which are created on or after the operative date, and to charges on property in the State which is acquired on or after the operative date, by a company incorporated outside the State which has an established place of business in the State, and to judgment mortgages created on or after the operative date and affecting property in the State of such a company and to receivers, appointed on or after the operative date, of property in the State of such a company, and for the purposes of those provisions, the principal place of business of such a company in the State shall be deemed to be its registered office.

Registration of Charges existing before application of this Act.

Registration of charges existing before application of this Act.

112.—(1) It shall be the duty of a company within 6 months after the operative date to send to the registrar of companies for registration the prescribed particulars of

(*a*) any charge created by the company before the operative date and remaining unsatisfied at that date which would have been required to be registered under paragraphs (*g*), (*h*) and (*i*) of subsection (2) of section 99 or under section 111, if the charge had been created after the operative date;

(*b*) any charge to which any property acquired by the company before the operative date is subject and which would have been required to be registered under section 101 or under section 111 if the property had been acquired after the operative date;

(*c*) any charge created before the operative date to which any property of the company is subject and which would have required registration under section 102 or under section 111 if created after the operative date.

(2) The registrar on payment of the prescribed fee shall enter the said particulars on the register kept by him in pursuance of this Part.

(3) If a company fails to comply with this section, the company and every officer of the company or other person who is knowingly a

party to the default shall be liable to a fine not exceeding £100.

(4) The failure of the company to send to the registrar the prescribed particulars of any charge mentioned in paragraphs (*a*), (*b*) and (*c*) of subsection (1) shall not prejudice any rights which any person in whose favour the charge was made may have thereunder.

(5) For the purposes of this section, "***company***" includes a company incorporated outside the State which has an established place of business in the State.

(6) In relation to a company incorporated outside the State which, on or after the operative date, establishes a place of business in the State, this section shall have effect as if—

(*a*) for the references to the operative date there were substituted references to the date of such establishment, and

(*b*) for the references to charges created or property acquired before the operative date there were substituted references to charges created or property acquired before such establishment, whether before the operative date or not.

PART V

Management and Administration.

Registered Office and Name.

Registered office of company.

113.—(1) A company shall, as from the day on which it begins to carry on business or as from the fourteenth day after the date of its incorporation, whichever is the earlier, have a registered office in the State 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 14 days after the date of the incorporation of the company or of the change, as the case may be, to the registrar of companies, 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.

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding £100.

(4) Proceedings in relation to an offence under this section may be brought and prosecuted by the registrar of companies.

Publication of name by company.

114.—(1) Every company—

(*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;

(*c*) shall have its name mentioned in legible characters in all business letters of the company and in all notices and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company and in all 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 shall be liable to a fine not exceeding £25, 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 shall be liable to a fine not exceeding £25.

(3) If a company fails to comply with paragraph (*b*) or paragraph (*c*) of subsection (1), the company shall be liable to a fine not

exceeding £50.

(4) If an officer of a company or any person on its behalf—

(*a*) uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or

(*b*) issues or authorises the issue of any business letter of the company or any notice or other official publication of the company, or signs or authorises 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 authorises the issue of any invoice, receipt or letter of credit of the company wherein its name is not mentioned in manner aforesaid;

he shall be liable to a fine not exceeding £50, and shall further be 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.

(5) The use of the abbreviation "***Ltd.***" instead of "***Limited***" or "***Teo.***" instead of "***Teoranta***" shall not be a breach of the provisions of this section.

Restrictions on Commencement of Business.

Restrictions on commencement of business.

115.—(1) Where a company having a share capital has issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers unless—

(*a*) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; and

(*b*) every director of the company has paid to the company 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*) no money is or may become liable to be repaid to applicants for any shares or debentures which have been offered for public subscription by reason of any failure to apply for or to obtain permission for the shares or debentures to be dealt in on any stock exchange; and

(*d*) there has been delivered to the registrar of companies 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 of companies 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 of companies 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 of companies 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) Any contract made or ratified by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

(5) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(6) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding £100.

(7) Nothing in this section shall apply to—

(*a*) a private company, or

(*b*) a company registered before the 1st day of January, 1901, or

(*c*) a company registered before the 1st day of July, 1908, which has not issued a prospectus inviting the public to subscribe for its shares.

Register of Members.

Register of members.

116.—(1) Subject to subsection (4), every company shall keep a register of its members and enter therein the following particulars:—

(*a*) the names, addresses and occupations 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 so long as the share has a 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;

(*c*) the date at which any person ceased to be a member.

(2) The entries required under paragraphs (*a*) and (*b*) of subsection (1) shall be made within 28 days after the conclusion of the agreement with the company to become a member or, in the case of a subscriber of the memorandum, within 28 days after the registration of the company.

(3) The entry required under paragraph (*c*) of subsection (1) shall be made within 28 days after the date when the person concerned ceased to be a member, or, if he ceased to be a member otherwise than as a result of action by the company, within 28 days of production to the company of evidence satisfactory to the company of the occurrence of the event whereby he ceased to be a member.

(4) Where the company has converted any of its shares into stock and given notice of the conversion to the registrar of companies, 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 subsection (1).

(5) Subject to subsection (6), the register of members shall, except when it is closed under the provisions of this Act, be kept at the registered office of the company, so, however, that—

(*a*) if the work of making it up is done at another office of the company, it may be kept at that other office; and

(*b*) if the company arranges with some other person for the making up of the register to be undertaken on behalf of the company by that other person, it may be kept at the office of that other person at which the work is done.

(6) The register of members shall not be kept at a place outside the State.

(7) Subject to subsection (8), every company shall send notice to the registrar of companies of the place where its register of members is kept and of any change in that place.

(8) A company shall not be bound to send notice under subsection (7) where the register has, at all times since it came into existence or, in the case of a register in existence on the operative date, at all times since then, been kept at the registered office of the company.

(9) Where a company makes default in complying with any of the requirements of subsections (1) to (6) or makes default for 14 days in complying with subsection (7), the company and every officer of the company who is in default shall be liable to a fine not exceeding £100.

Index of members.

117.—(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 14 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 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) The index shall be at all times kept at the same place as the register of members.

(4) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding £50.

Provisions as to entries in register in relation to share warrants.

118.—(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:

(*a*) the fact of the issue of the warrant; and

(*b*) a statement of the shares included in the warrant, distinguishing each share by its number so long as the share has a 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 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 and index.

119.—(1) Except when the register of members is closed under the provisions of this Act, the register, and index of the names, of the members of a company shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than 2 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 one shilling, or such less sum as the company may prescribe, for each inspection.

(2) Any member or other person may require a copy of the register, or of any part thereof, on payment of sixpence, or such less sum as the company may prescribe, for every 100 words or fractional part thereof required to be copied.

The company shall cause any copy so required by any person to be sent to that person within a period of 10 days commencing on the day next after the day on which the requirement is received by the company.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper period, the company and every officer of the company who is in default shall be liable in respect of each offence to a fine not exceeding £50.

(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.

Consequences of failure to comply with requirements as to register owing to agent's default.

120.—Where, by virtue of paragraph (*b*) of subsection (5) of section 116, the register of members is kept at the office of some person other than the company, and by reason of any default of his the company fails to comply with subsection (7) of that section or subsection (3) of section 117 or section 119 , or with any requirements of this Act as to the production of the register, that other person shall be liable to the same penalties as if he were an officer of the company who is in default, and the power of the court under subsection (4) of section 119, shall extend to the making of orders against that other person and his officers or servants.

Power to close register.

121.—A company may, on giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate, close the register of members for any time or times not exceeding in the whole 30 days in each year.

Rectification of register.

122.—(1) If—

(*a*) the name of any person is, without sufficient cause, entered in the register of members or omitted therefrom in contravention of subsections (1) and (2) of section 116; or

(*b*) default is made in entering on the register within the period fixed by subsection (3) of section 116 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 compensation for any loss 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 of companies, 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.

(5) A company may, without application to the court, at any time rectify any error or omission (whether occurring before, on or after the operative date) in the register but such a rectification shall not adversely affect any person unless he agrees to the rectification made. The company shall, within 21 days, give notice of the rectification to the registrar of companies if the error or omission also occurs in any document forwarded by the company to him.

Trusts not to be entered on register.

123.—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.

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

Annual Return.

Annual return to be made by company having a share capital.

125.—(1) Every company having a share capital shall, once at least in every year, make a return to the registrar of companies containing in relation to the registered office of the company, registers of members and debenture holders, shares and debentures, indebtedness, past and present members and directors and secretary, the matters specified in Part I of the Fifth Schedule, and the said return shall be in the form set

out in Part II of that Schedule, so, however, that—

(*a*) a company need not make a return under this subsection either in the year of its incorporation or, if it is not required by section 131 to hold an annual general meeting during the following year, in that year;

(*b*) where a company has converted any of its shares into stock then, where appropriate, references to shares in paragraphs 3 and 5 of Part I of the said Schedule shall be taken as references to stock and references to number of shares shall be taken as references to the amount of stock;

(*c*) the return may, in any year, if the return for any of the 5 immediately preceding years has given as at the date of that return the full particulars required by the said paragraph 5, give only such of the particulars required by that paragraph as relate to persons ceasing to be or becoming members since the date of the last return and to shares transferred since that date;

(*d*) a company which is not a private company need not in the return in any year give the particulars required by the said paragraph 5 which relate to shares transferred by persons who are still members or who have ceased to be members or the dates of registration of the transfers.

(2) If a company fails to comply with this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding £100.

(3) For the purposes of this section and of Part I of the Fifth Schedule, "***director***" and "***officer***" shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

(4) Proceedings in relation to an offence under this section may be brought and prosecuted by the registrar of companies.

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

126.—(1) Subject to subsection (2), every company not having a share capital shall once at least in every year make a return to the registrar of companies stating—

(*a*) the address of the registered office of the company;

(*b*) in a case in which the register of members is, under the provisions of this Act, kept elsewhere than at that office, the address of the place where it is kept;

(*c*) in a case in which any register of holders of debentures of the company is, under the provisions of this Act, kept elsewhere than at the registered office of the company, the address of the place where it is kept;

(*d*) all such particulars relating to the persons who at the date of the return are the directors of the company and any person who at that date is secretary of the company as are by this Act required to be contained with respect to directors and the secretary respectively in the register of directors and secretaries of a company.

(2) A company need not make a return under subsection (1) either in the year of its incorporation or, if it is not required by section 131 to hold an annual general meeting during the following year, in that year.

(3) 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 of companies under this Act, or which would have been required so to be registered if created after the 1st day of July, 1908.

(4) If a company fails to comply with this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding £100.

(5) For the purposes of this section, "***officer***" and "***director***" shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

(6) Proceedings in relation to an offence under this section may be brought and prosecuted by the registrar of companies.

Time for completion of annual return.

127.—(1) The annual return must be completed within 60 days after the annual general meeting for the year, whether or not that meeting is the first or only ordinary general meeting, or the first or only general meeting, of the company in the year, and the company must forthwith forward to the registrar of companies a copy signed both by a director and by the secretary of the company.

(2) If a company fails to comply with this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding £100.

For the purposes of this subsection, "***officer***" shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

(3) Proceedings in relation to an offence under this section may be brought and prosecuted by the registrar of companies.

Documents to be annexed to annual return.

128.—(1) Subject to the provisions of this Act, there shall be annexed to the annual return—

(*a*) a written copy certified both by a director and by the secretary of the company to be a true copy of every balance sheet laid before the annual general meeting of the company held during the period to which the return relates (including every document required by law to be annexed to the balance sheet); and

(*b*) a copy certified as aforesaid of the report of the auditors on, and of the report of the directors accompanying, each such balance sheet; and

(*c*) where any such balance sheet or document required by law to be annexed thereto is in any language other than the English or Irish language, there shall be annexed to that balance sheet a translation in English or Irish of the balance sheet or document certified in the prescribed manner to be a correct translation.

(2) If any such balance sheet as aforesaid or document required by law to be annexed thereto 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 or documents aforesaid, as the case may be, there shall be made such additions to and corrections in the copy as would have been required to be made in the balance sheet or document in order to make it comply with the said requirements, and the fact that the copy has been so amended shall be stated thereon.

(3) If a company fails to comply with this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding £100.

For the purposes of this subsection, "***officer***" shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

(4) This section shall not apply to—

(*a*) a private company; or

(*b*) an assurance company which has complied with subsection (4) of section 7 of the Assurance Companies Act, 1909; or

(*c*) a company, not having a share capital, which is formed for an object that is charitable and is under the control of a religion recognised by the State under Article 44 of the Constitution, and which exercises its functions in accordance with the laws, canons and ordinances of the religion concerned.

(5) (*a*) The Commissioners of Charitable Donations and Bequests for Ireland may, if they think fit, by order exempt, either altogether or for a limited period, from the application of this section a specified company, formed for charitable purposes, not having a share capital.

(*b*) The Commissioners may by order revoke an order under paragraph (*a*).

(*c*) A sealed copy of every order of the Commissioners under this subsection shall be delivered by the company to the registrar of companies for registration within fourteen days of the making of the order.

(6) Nothing in this section shall operate to require the balance sheet of a private company or any document or report relating thereto to be annexed to an annual return.

(7) Proceedings in relation to an offence under this section may be brought and prosecuted by the registrar of companies.

Certificates to be sent by private company with annual return.

129.—A private company shall send with the annual return required by section 125 a certificate signed both by a director and by 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 subsection (1) of section 33 are not to be included in reckoning the number of fifty.

Meetings and Proceedings.

Statutory meeting and statutory report.

130.—(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 3 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***".

(2) Subject to subsection (3), the directors shall, at least 14 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) If the statutory report is forwarded later than is required by subsection (2) it shall, notwithstanding that fact, be deemed to have been duly forwarded if it is so agreed by all the members entitled to attend and vote at the meeting.

(4) The statutory report shall be certified by not less than two directors of the company 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; and

(*b*) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid; and

(*c*) an abstract of the receipts of the company and of the payments made thereout, up to a date within 7 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; and

(*d*) the names and addresses of the directors, auditors (if any) and secretary of the company; and

(*e*) particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with particulars of the modification or the proposed modification.

(5) The statutory report shall, so far as it relates to the shares allotted by the company, and to 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.

(6) The directors shall cause a copy of the statutory report certified as required by this section, to be delivered to the registrar of companies for registration forthwith after the sending thereof to the members of the company.

(7) The directors shall cause a list showing the names, addresses and occupations 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 the members of the company during the continuance of the meeting.

(8) 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.

(9) 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.

(10) In the event of any default in complying with this section, every director of the company who is knowingly and wilfully guilty of the default or, in the case of default by the company, every officer of the company who is in default shall be liable to a fine not exceeding £100.

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

Annual general meeting.

131.—(1) Subject to subsection (2), every company shall 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 and not more than 15 months shall elapse between the date of one annual general meeting of a company and that of the next.

(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) If default is made in holding a meeting of the company in accordance with subsection (1), the Minister may, on the application of any member of the company, call or direct the calling of a general meeting of the company and give such ancillary or consequential directions as the Minister thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the company's articles, and it is hereby declared that the directions which may be given under this subsection include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(4) A general meeting held in pursuance of subsection (3) shall, subject to any directions of the Minister, be deemed to be an annual general meeting of the company but, where a meeting so held is not held in the year in which the default in holding the company's annual general meeting occurred, the meeting so held shall not be treated as the annual general meeting for the year in which it is held unless at that meeting the company resolves that it shall be so treated.

(5) Where a company resolves that a meeting shall be so treated, a copy of the resolution shall, within 15 days after the passing thereof, be forwarded to the registrar of companies and recorded by him.

(6) If default is made in holding a meeting of the company in accordance with subsection (1), or in complying with any direction of the Minister under subsection (3), the company and every officer of the company who is in default shall be liable to a fine not exceeding £100, and if default is made in complying with subsection (5), the company and every officer of the company who is in default shall be liable to a fine not exceeding £20.

Convening of extraordinary general meeting on requisition.

132.—(1) The directors of a company, notwithstanding anything in its articles, shall, on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid up capital of the company as at the date of the deposit carries the right of voting at general meetings of the company, or, in the case of a company not having a share capital, members of the company representing not less than one-tenth of the total voting rights of all the members having at the said date a right to vote at general meetings of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.

(2) The requisition must state the objects of the meeting and must be signed by the requisitionists and deposited at the registered office of the company and may consist of several documents in like form each signed by one or more requisitionists.

(3) If the directors do not within 21 days from the date of the deposit of the requisition proceed duly to convene a meeting to be held within 2 months from the said date, the requisitionists, or any of them representing more than one half of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of 3 months from the 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 141.

Length of notice for calling meetings.

133.—(1) Any provision of a company's articles shall be void in so far as it provides for the calling of a meeting of the company (other than an adjourned meeting) by a shorter notice than—

(*a*) in the case of the annual general meeting, 21 days' notice in writing; and

(*b*) in the case of a meeting (other than an annual general meeting or a meeting for the passing of a special resolution) 14 days' notice in writing where the company is neither a private company nor an unlimited company and 7 days' notice in writing where it is a private company or an unlimited company.

(2) Save in so far as the articles of a company make other provision in that behalf (not being a provision avoided by subsection (1)) a meeting of the company (other than an adjourned meeting) may be called—

(*a*) in the case of the annual general meeting by 21 days' notice in writing; and

(*b*) in the case of a meeting (other than an annual general meeting or a meeting for the passing of a special resolution), by 14 days' notice in writing where the company is neither a private company nor an unlimited company and by 7 days' notice in writing where it is a private company or an unlimited company.

(3) A meeting of a company shall, notwithstanding that it is called by shorter notice than that specified in subsection (2) or in the company's articles, as the case may be, be deemed to have been duly called if it is so agreed by the auditors of the company and by all the members entitled to attend and vote thereat.

General Provisions as to meetings and votes.

134.—The following provisions shall have effect in so far as the articles of the company do not make other provision in that behalf—

(*a*) 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;

(*b*) 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 5 per cent. in number of all the members of the company may call a meeting;

(*c*) in the case of a private company two members, and in the case of any other company three members, personally present shall be a quorum;

(*d*) any member elected by the members present at a meeting may be chairman thereof;

(*e*) 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.

Power of court to order a meeting.

135.—(1) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in manner prescribed by the articles or this Act, the court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the court thinks fit, and where any such order is made may give such ancillary or consequential directions as it thinks expedient; and it is hereby declared that the directions that may be given under this subsection include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) Any meeting called, held and conducted in accordance with an order under subsection (1) shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.

Proxies.

136.—(1) Subject to subsection (2), any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of him, and a proxy so appointed shall have the same right as the member to speak at the meeting and to vote on a show of hands and on a poll.

(2) Unless the articles otherwise provide—

(*a*) subsection (1) shall not apply in the case of a company not having a share capital; and

(*b*) a member of a company shall not be entitled to appoint more than one proxy to attend on the same occasion.

(3) In every notice calling a meeting of a company having a share capital there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy or, where that is allowed, one or more proxies, to attend, speak and vote instead of him, and that a proxy need not be a member; and if default is made in complying with this subsection in relation to any meeting, every officer of the company who is in default shall be liable to a fine not exceeding £50.

(4) Any provision contained in a company's articles shall be void in so far as it would have the effect of requiring the instrument appointing a proxy, or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy, to be received by the company or any other person more than 48 hours before a meeting or adjourned meeting in order that the appointment may be effective thereat.

(5) Subject to subsection (6), if for the purpose of any meeting of a company invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to some only of the members entitled to be sent a notice of the meeting and to vote thereat by proxy, every officer of the company who knowingly and wilfully authorises or permits their issue as aforesaid shall be liable to a fine not exceeding £100.

(6) An officer shall not be liable under subsection (5) by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy or of a list of persons willing to act as proxy if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(7) This section shall apply to meetings of any class of members of a company as it applies to general meetings of the company.

Right to demand a poll.

137.—(1) Any provision contained in a company's articles shall be void in so far as it would have the effect either—

(*a*) of excluding the right to demand a poll at a general meeting on any question other than the election of the chairman of the meeting or the adjournment of the meeting, or

(*b*) of making ineffective a demand for a poll on any such question which is made—

(i) by not less than five members having the right to vote at the meeting, or

(ii) by a member or members representing not less than one-tenth of the total voting rights of all the members having the

right to vote at the meeting, or

(iii) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

(2) The instrument appointing a proxy to vote at a meeting of a company shall be deemed also to confer authority to demand or join in demanding a poll, and for the purposes of subsection (1), a demand by a person as proxy for a member shall be the same as a demand by the member.

Voting on a poll.

138.—On a poll taken at a meeting of a company or a meeting of any class of members of a company, a member, whether present in person or by proxy, entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

Representation of bodies corporate at meetings of companies and of creditors.

139.—(1) A body corporate may—

(*a*) if it is a member of a company, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company; and

(*b*) if it is a creditor (including a holder of debentures) of a company, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or of any rules made thereunder or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person authorised as aforesaid shall be entitled to exercise the same powers on behalf of the body corporate which he represents as that body corporate could exercise if it were an individual member, creditor or holder of debentures of the company.

Annual general meeting to be held in the State.

140.—(1) Subject to subsection (2), the annual general meeting of a company shall be held in the State and any business transacted at a meeting held in breach of this requirement shall be void unless—

(*a*) either all the members entitled to attend and vote at such meeting consent in writing to its being held elsewhere or a resolution providing that it be held elsewhere has been passed at the preceding annual general meeting; and

(*b*) the articles do not provide that the annual general meeting shall be held in the State.

(2) Subsection (1) shall not apply to the first annual general meeting of a company held on or after the operative date.

Resolutions.

141.—(1) A resolution shall be a special resolution when it has been passed by not less than three-fourths of the votes cast by such members as, being entitled so to do, vote in person or, where proxies are allowed, by proxy at a general meeting of which not less than 21 days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given.

(2) A resolution may be proposed and passed as a special resolution at a meeting of which less than 21 days' notice has been given if it is so agreed by a majority in number of the members having the right to attend and vote at any such meeting, being a majority together holding not less than ninety per cent. in nominal value of the shares giving that right or, in the case of a company not having a share capital, together representing not less than ninety per cent. of the total voting rights at that meeting of all the members.

(3) At any meeting at which a special resolution is submitted to be passed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour

of or against the resolution.

(4) For the purposes of this section, notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by this Act or the articles.

(5) The terms of any resolution (whether special or otherwise) before a general meeting may be amended by ordinary resolution moved at the meeting provided that the terms of the resolution as amended will still be such that adequate notice of the intention to pass the same can be deemed to have been given.

(6) Any reference to an extraordinary resolution contained in any statute which was passed or document which existed before the operative date shall, in relation to a resolution passed or to be passed on or after the operative date, be deemed to be a reference to a special resolution.

(7) Where before the operative date a meeting has been convened for the purpose of passing an extraordinary resolution as defined in the Companies Acts, 1908 to 1959, and at that meeting that resolution has after the operative date been passed in the manner required by those Acts for the passing of an extraordinary resolution and such resolution would under the Companies Acts, 1908 to 1959, have been effective for its purpose, such resolution shall be as effective as if it had been a special resolution.

(8) (*a*) Notwithstanding anything to the contrary in this Act, in any case in which a company is so authorised by its articles, a resolution in writing signed by all the members for the time being entitled to attend and vote on such resolution at a general meeting (or being bodies corporate by their duly appointed representatives) shall be as valid and effective for all purposes as if the resolution had been passed at a general meeting of the company duly convened and held, and if described as a special resolution shall be deemed to be a special resolution within the meaning of this Act.

(*b*) Any such resolution shall be deemed to have been passed at a meeting held on the date on which it was signed by the last member to sign, and where the resolution states a date as being the date of his signature thereof by any member the statement shall be *prima facie* evidence that it was signed by him on that date.

(*c*) This subsection does not apply to a resolution for any of the purposes of section 160 or 182.

Extended notice.

142.—(1) Subject to subsection (2), where by any provision hereafter contained in this Act extended notice is required of a resolution, the resolution shall not be effective unless (except when the directors of the company have resolved to submit it) notice of the intention to move it has been given to the company not less than 28 days before the meeting at which it is moved, and the company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice thereof, either by advertisement in a daily newspaper circulating in the district in which the registered office of the company is situate or in any other mode allowed by the articles, not less than 21 days before the meeting.

(2) If, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date 28 days or less after the notice has been given, the notice though not given within the time required by subsection (1) shall be deemed to have been properly given for the purposes of that subsection.

Registration of, and obligation of company to supply copies of, certain resolutions and agreements.

143.—(1) A printed copy of every resolution or agreement to which this section applies shall, within 15 days after the passing or making thereof, be forwarded to the registrar of companies and recorded by him.

(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) A copy of every such resolution or agreement shall be forwarded to any member at his request on payment of one shilling or such less sum as the company may direct.

(4) This section shall apply to—

(*a*) special resolutions;

(*b*) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;

(*c*) resolutions or agreements which have been agreed to by all the members of some class of 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;

(*d*) resolutions increasing the share capital of a company;

(*e*) resolutions that a company be wound up voluntarily passed under paragraph (*a*) or paragraph (*c*) of subsection (1) of section 251.

(5) If a company fails to comply with subsection (1), the company and every officer of the company who is in default shall be liable to a fine not exceeding £50.

(6) If a company fails to comply with subsection (2) or subsection (3), the company and every officer of the company who is in default shall be liable to a fine not exceeding £1 for each copy in respect of which default is made.

(7) For the purposes of subsections (5) and (6), a liquidator of a company shall be deemed to be an officer of the company.

Resolutions passed at adjourned meetings.

144.—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 of company and directors.

145.—(1) Every company shall as soon as may be cause minutes of all proceedings of general meetings and all proceedings at meetings of its directors or committees of directors 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 this section of the proceedings at any general meeting of the company or meeting of directors or committee of directors, 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 or liquidators shall be deemed to be valid.

(4) If a company fails to comply with subsection (1), the company and every officer of the company who is in default shall be liable to a fine not exceeding £100.

Inspection of minute

146.—(1) The books containing the minutes of proceedings of any general meeting of a company held after the operative date shall be

books.

kept at the registered office of the company, and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than 2 hours in each day be allowed for inspection) be open to the inspection of any member without charge.

(2) Any member shall be entitled to be furnished within 7 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 one shilling for every 100 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 shall be liable in respect of each offence to a fine not exceeding £25.

(4) In the case of any such refusal or default, the court may by order compel an 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.

147.—(1) Every company shall cause to be kept proper books of account relating 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) For the purposes of subsection (1), proper books of account shall not be deemed to be kept in relation to the matters aforesaid if there are not kept such books as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.

(3) Subject to subsection (4), 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 reasonable times be open to inspection by the directors.

(4) If books of account are kept at a place outside the State, there shall be sent to, and kept at a place in the State and be at all reasonable times open to inspection by the directors such accounts and returns relating to the business dealt with in the books of account so kept as will disclose with reasonable accuracy the financial position of that business at intervals not exceeding 6 months and will enable to be prepared in accordance with this Act the company's balance sheet, its profit and loss account or income and expenditure account, and any document annexed to any of those documents giving information which is required by this Act and is thereby allowed to be so given.

(5) Every record required to be kept under this section shall be preserved by the company for a period of six years after the date to which it relates.

(6) If any person 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, he shall, in respect of each offence be liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding £100 or to both, so, however, that—

(*a*) in any proceedings against a person in respect of an offence under this section consisting of a failure to take reasonable steps to secure compliance by the company with the requirements of this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that those requirements were complied with and was in a position to discharge that duty; and

(*b*) a person shall not be sentenced to imprisonment for such an offence unless, in the opinion of the court dealing with the case, the

offence was committed wilfully.

Profit and loss account and balance sheet.

148.—(1) The directors of every company shall at some date not later than 18 months after the incorporation of the company and subsequently once at least in every calendar year lay before the annual general meeting of the company 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 9 months.

(2) The directors shall cause to be made out in every calendar year and to be laid before the annual general meeting of the company 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.

(3) If any person being a director of a company fails to take all reasonable steps to comply with the provisions of this section, he shall, in respect of each offence, be liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding £100 or to both, so, however, that—

(*a*) in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that this section was complied with and was in a position to discharge that duty; and

(*b*) a person shall not be sentenced to imprisonment for such an offence unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

Contents and form of accounts; computation and treatment of profits and losses.

149.—(1) Every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of its financial year, and every profit and loss account of a company shall give a true and fair view of the profit or loss of the company for the financial year.

(2) A company's balance sheet and profit and loss account shall comply with the requirements of the Sixth Schedule so far as applicable thereto.

(3) Save as expressly provided in the following provisions of this section or in Part III of the Sixth Schedule, the requirements of subsection (2) and of the Sixth Schedule shall be without prejudice either to the general requirements of subsection (1) or to any other requirements of this Act.

(4) Subsections (1) and (2) shall not apply to a company's profit and loss account if—

(*a*) the company has subsidiaries; and

(*b*) the profit and loss account is framed as a consolidated profit and loss account dealing with all or any of the company's subsidiaries as well as the company; and—

(i) complies with the requirements of this Act relating to consolidated profit and loss accounts, and

(ii) shows how much of the consolidated profit or loss for the financial year is dealt with in the accounts of the company.

(5) The profits or losses attributable to any shares in a subsidiary for the time being held by a holding company or any other of its subsidiaries shall not, for any purpose, be treated in the holding company's accounts as revenue profits or losses so far as they are profits or losses for the period before the date on or as from which the shares were acquired by the company or any of its subsidiaries, and for the purpose of determining whether any profits or losses are to be treated as profits or losses for the said period the profit or loss for any financial year of the subsidiary may, if it is not practicable to apportion it with reasonable accuracy by reference to the facts, be treated as accruing from day to day during that year and be apportioned accordingly. Provided, however, that where the directors and the auditors are satisfied

and so certify that it would be fair and reasonable and would not prejudice the rights and interests of any person, the profits or losses attributable to any shares in a subsidiary may be treated in a manner otherwise than in accordance with this subsection.

(6) (*a*) A capital surplus arising on the revaluation of unrealised fixed assets shall not be treated as being available, directly or indirectly, for distribution in dividends or for paying up debentures or other loan stock or for paying calls on partly paid shares.

(*b*) An unrealised net capital surplus (established by *bona fide* revaluation of all the fixed assets of the company) in excess of the previous book value of the assets may be used in paying up unissued shares of the company, other than redeemable preference shares, to be issued to members as fully paid bonus shares.

(7) If any person being a director of a company fails to take all reasonable steps to secure compliance in relation to any account laid before the annual general meeting of a company with this section and with the other requirements of this Act as to the matters to be stated in accounts, he shall, in respect of each offence, be liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding £100 or to both, so, however, that—

(*a*) in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the said provisions or the said other requirements, as the case may be, were complied with and was in a position to discharge that duty; and

(*b*) a person shall not be sentenced to imprisonment for any such offence unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

(8) For the purposes of this section and the following provisions of this Act, unless the contrary intention appears—

(*a*) any reference to a balance sheet or profit and loss account shall include any notes thereon or document annexed thereto giving information which is required by this Act and is thereby allowed to be so given; and

(*b*) any reference to a profit and loss account shall be taken, in the case of a company not trading for profit, as referring to its income and expenditure account, and references to profit or to loss and, if the company has subsidiaries, references to a consolidated profit and loss account shall be construed accordingly.

Obligation to lay group accounts before holding company.

150.—(1) Where at the end of its financial year a company has subsidiaries, accounts or statements (in this Act referred to as "***group accounts***") dealing as hereinafter mentioned with the state of affairs and profit or loss of the company and the subsidiaries (including those in liquidation) shall, subject to subsection (2), and, in the case of a private company, to section 154, be laid before the annual general meeting of the company when the company's own balance sheet and profit and loss account are so laid.

(2) Notwithstanding anything in subsection (1)—

(*a*) group accounts shall not be required where the company is at the end of its financial year the wholly owned subsidiary of another body corporate incorporated in the State; and

(*b*) group accounts need not deal with a subsidiary of the company if the company's directors are of opinion that—

(i) it is impracticable, or would be of no real value to members of the company, in view of the insignificant amounts involved, or would involve expense or delay out of proportion to the value to members of the company, or

(ii) the result would be misleading;

and if the directors are of such an opinion about each of the company's subsidiaries, group accounts shall not be required.

(3) If the group accounts do not deal with a subsidiary of the company, any member of the company shall be entitled to be furnished without charge within 14 days after he has made a request in that behalf to the company with a copy of the latest balance sheet of such

subsidiary which has been sent to the members of that subsidiary together with a copy of every document required by law to be annexed thereto and a copy of the directors' and auditors' reports.

If any copy required under this subsection is not sent within the proper time, the company and every officer of the company who is in default shall be liable, in respect of each offence, to a fine not exceeding £100 unless it is proved that the member has already made a demand for and been furnished with a copy and in the case of any default under this subsection the court may direct that the copies required shall be sent to the member requiring them.

(4) If any person being a director of a company fails to take all reasonable steps to secure compliance as respects the company with subsection (1), he shall, in respect of each offence, be liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding £100 or to both, so, however, that—

(*a*) in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the requirements of this section were complied with and was in a position to discharge that duty; and

(*b*) 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.

(5) For the purposes of this section, a body corporate shall be deemed to be the wholly-owned subsidiary of another if it has no members except that other and that other's wholly-owned subsidiaries and its or their nominees.

Form of group accounts.

151.—(1) Subject to subsection (2), the group accounts laid before the annual general meeting of a holding company shall be consolidated accounts comprising—

(*a*) a consolidated balance sheet dealing with the state of affairs of the company and all the subsidiaries to be dealt with in group accounts;

(*b*) a consolidated profit and loss account dealing with the profit or loss of the company and those subsidiaries.

(2) If the company's directors are of opinion that it is better for the purpose—

(*a*) of presenting the same or equivalent information about the state of affairs and profit or loss of the company and those subsidiaries; and

(*b*) of so presenting it that it may be readily appreciated by the company's members;

the group accounts may be prepared in a form other than that required by subsection (1) and in particular may consist of more than one set of consolidated accounts dealing respectively with the company and one group of subsidiaries and with other groups of subsidiaries or of separate accounts dealing with each of the subsidiaries, or of statements expanding the information about the subsidiaries in the company's own accounts, or any combination of those forms.

(3) The group accounts may be wholly or partly incorporated in the company's own balance sheet and profit and loss account.

Contents of group accounts.

152.—(1) The group accounts laid before the annual general meeting of a company shall give a true and fair view of the state of affairs and profit or loss of the company and the subsidiaries dealt with thereby as a whole, so far as concerns members of the company.

(2) Where the financial year of a subsidiary does not coincide with that of the holding company, the group accounts shall deal with the subsidiary's state of affairs as at the end of its financial year ending with or last before that of the holding company and with the subsidiary's profit or loss for that financial year.

(3) Without prejudice to subsection (1), the group accounts, if prepared as consolidated accounts, shall comply with the requirements of

the Sixth Schedule so far as applicable thereto, and if not so prepared shall give the same or equivalent information.

Financial year of holding company and subsidiary.

153.—(1) A holding company's directors shall secure that except where there are good reasons against it, the financial year of each of its subsidiaries shall coincide with the company's own financial year.

(2) Where it appears to the Minister desirable for a holding company or a holding company's subsidiary to extend its financial year, so that the subsidiary's financial year may end with that of the holding company, and for that purpose to postpone the submission of the relevant accounts to an annual general meeting from one calendar year to the next, the Minister may on the application or with the consent of the directors of the company whose financial year is to be extended direct that, in the case of that company, the submission of accounts to an annual general meeting, the holding of an annual general meeting or the making of an annual return shall not be required in the earlier of the said calendar years.

(3) If any person being a director of a company fails to take all reasonable steps to secure compliance by the company with the provisions of this section, he shall in respect of each offence be liable on summary conviction to a fine not exceeding £50.

(4) No proceedings shall be instituted under this section except by, or with the consent of, the Minister.

(5) This section shall not apply to a private company which is a holding company and which takes advantage of subsection (1) of section 154.

Right of member of private company to get balance sheet of subsidiary.

154.—(1) Notwithstanding section 150, a private company which is a holding company need not prepare group accounts but if it does not do so the subsequent provisions of this section shall apply.

(2) Any member of the company shall be entitled to be furnished without charge within 14 days after he has made a request in that behalf to the company with a copy of the latest balance sheet of each of its subsidiaries which has been sent to the members of that subsidiary together with a copy of every document required by law to be annexed thereto and a copy of the directors' and auditors' reports.

(3) Without prejudice to subsection (2), any member of the company shall be entitled to be furnished within 14 days after he has made a request in that behalf to the company with a copy of any balance sheet (including every document required by law to be annexed thereto and a copy of the directors' and auditors' reports) of any subsidiary of the company laid before any annual general meeting of such subsidiary held since the operative date, at a charge not exceeding 2 shillings for each balance sheet so furnished so, however, that a member shall not be entitled to be furnished with a copy of any balance sheet laid before an annual general meeting held more than 10 years before the date on which such request is made.

(4) Copies of balance sheets need not be sent to any member of a private company if, on the application either of the company or of any person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused, and the court may order the company's costs on an application under this subsection to be paid in whole or in part by the member who has made the request for such copies.

(5) Subject to subsection (4), 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 shall be liable, in respect of each offence, to a fine not exceeding £100 unless it is proved that the member has already made a demand for and been furnished with a copy.

(6) In the case of any default under this section, the court may direct that the copies required shall be sent to the member requiring them.

Meaning of "***holding***

155.—(1) For the purposes of this Act, a company shall, subject to subsection (3), be deemed to be a subsidiary of another if, but only

company " and " ***subsidiary.*** "

if—

(*a*) that other—

(i) is a member of it and controls the composition of its board of directors, or

(ii) holds more than half in nominal value of its equity share capital, or

(iii) holds more than half in nominal value of its shares carrying voting rights (other than voting rights which arise only in specified circumstances); or

(*b*) the first-mentioned company is a subsidiary of any company which is that other's subsidiary.

(2) For the purposes of subsection (1), the composition of a company's board of directors shall be deemed to be controlled by another company if, but only if, that other company by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove the holders of all or a majority of the directorships; but for the purposes of this provision that other company shall be deemed to have power to appoint to a directorship in relation to which any of the following conditions is satisfied—

(*a*) that a person cannot be appointed thereto without the exercise in his favour by that other company of such a power as aforesaid; or

(*b*) that a person's appointment thereto follows necessarily from his appointment as director of that other company.

(3) In determining whether one company is a subsidiary of another—

(*a*) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it;

(*b*) subject to paragraphs (*c*) and (*d*), any shares held or power exercisable—

(i) by any person as a nominee for that other (except where that other is concerned only in a fiduciary capacity); or

(ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity;

shall be treated as held or exercisable by that other;

(*c*) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded;

(*d*) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary (not being held or exercisable as mentioned in paragraph (*c*)) shall be treated as not held or exercisable by that other if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(4) For the purposes of this Act, a company shall be deemed to be another's holding company if, but only if, that other is its subsidiary.

(5) In this section "***company***" includes any body corporate and "***equity share capital***" means, in relation to a company, its issued share capital excluding any part thereof which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.

Signing of balance sheet and profit and loss account.

156.—(1) Every balance sheet and profit and loss account of a company shall be signed on behalf of the directors by two of the directors of the company.

(2) In the case of a banking company registered after the 15th day of August, 1879, the balance sheet and profit and loss account must be

signed by the secretary and where there are more than three directors of the company by at least three of those directors, and where there are not more than three directors by all the directors.

(3) If any copy of a balance sheet or profit and loss account which has not been signed as required by this section is issued, circulated or published, the company and every officer of the company who is in default shall be liable to a fine not exceeding £100.

(4) Subsection (3) shall not prohibit the issue, circulation or publication of—

(*a*) a fair and accurate summary of any profit and loss account and balance sheet and the auditors' report thereon after such profit and loss account and balance sheet shall have been signed on behalf of the directors;

(*b*) a fair and accurate summary of the profit or loss figures for part of the company's financial year.

Documents to be attached and annexed to balance sheet.

157.—(1) The profit and loss account and, so far as not incorporated in the balance sheet or profit and loss account, any group accounts laid before the annual general meeting of a company shall be annexed to the balance sheet and the auditors' report shall be attached thereto and any accounts so annexed shall be approved by the board of directors before the balance sheet and profit and loss account are signed on their behalf.

(2) If any copy of a balance sheet is issued, circulated or published without compliance with subsection (1), the company and every officer of the company who is in default shall be liable to a fine not exceeding £100.

Directors' report to be attached to balance sheet and contents of such report.

158.—(1) There shall be attached to every balance sheet laid before the annual general meeting of a company a report by the directors on the state of the company's affairs and, if the company is a holding company, on the state of affairs of the company and its subsidiaries as a group, 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 reserves within the meaning of the Sixth Schedule.

(2) The said report shall be signed on behalf of the directors by two of the directors of the company.

(3) The said report shall deal, so far as is material for the appreciation of the state of the company's affairs, with any change during the financial year in the nature of the business of the company or of the company's subsidiaries, or in the classes of business in which the company has an interest whether as a member of another company or otherwise.

(4) The said report shall contain a list of bodies corporate in relation to which either of the following conditions is fulfilled at the end of the company's financial year—

(*a*) the body corporate is a subsidiary of the company;

(*b*) although the body corporate is not a subsidiary of the company, the company is beneficially entitled to more than 20 per cent. in nominal value of its shares carrying voting rights (other than voting rights which arise only in specified circumstances).

(5) The list referred to in subsection (4) shall distinguish between bodies corporate falling within paragraph (*a*) and paragraph (*b*) thereof and shall state in relation to each such body corporate

(*a*) its name;

(*b*) where it is incorporated; and

(*c*) the nature of the business carried on by it.

(6) Subsections (4) and (5) shall not apply to a company which is principally engaged in the acquisition and underwriting of shares or other securities of companies carrying on a trade or industry in the State and which holds a certificate of exemption issued by the Minister from the requirements of those subsections.

(7) If any person, being a director of a company, fails to take all reasonable steps to comply with the requirements of this section he shall in respect of each offence be liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding

£100 or to both so, however, that—

(*a*) in any proceedings against a person in respect of an offence under this section it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the provisions of this section were complied with and was in a position to discharge that duty; and

(*b*) a person shall not be liable to be sentenced to imprisonment for such an offence unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

Obligation of company to send copies of balance sheets and directors' and auditors' reports.

159.—(1) Subject to subsections (2) and (3), a copy of every balance sheet including every document required by law to be annexed thereto, which is to be laid before the annual general meeting of a company together with a copy of the directors' and auditors' reports shall, not less than 21 days before the date of the meeting, be sent to every member of the company (whether he is or is not entitled to receive notices of general meetings of the company), every holder of debentures of the company (whether he is or is not so entitled) and all persons other than members or holders of debentures of the company who are so entitled.

(2) In the case of a company not having a share capital, subsection (1) shall not require a copy of the documents referred to in that subsection to be sent to a member of the company who is not entitled to receive notices of general meetings of the company or to a holder of debentures of the company who is not so entitled.

(3) If the copies of the documents referred to in subsection (1) are sent less than 21 days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by all the members entitled to attend and vote at the meeting.

(4) Any member of a company, whether he is or is not entitled to have sent to him copies of the company's balance sheets, and any holder of debentures of the company, whether he is or is not so entitled, 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 copies of the directors' and auditors' reports.

(5) If default is made in complying with subsection (1), the company and every officer of the company who is in default shall be liable to a fine not exceeding £50, and if, when any person makes a demand for any document with which he is by virtue of subsection (4) entitled to be furnished, default is made in complying with the demand within 7 days after the making thereof, the company and every officer of the company who is in default shall be liable to a fine not exceeding £50 unless it is proved that that person has already made a demand for and been furnished with a copy of the document.

(6) Subsection (4) shall not apply to a balance sheet of a private company laid before it before the operative date and the right of any person to be furnished with a copy of any such balance sheet and the liability of the company in respect of a failure to satisfy that obligation shall be the same as they would have been if this Act had not been passed.

Appointment and remuneration of auditors.

160.—(1) Subject to subsection (2), every company shall at each annual general meeting appoint an auditor or auditors to hold office from the conclusion of that until the conclusion of the next annual general meeting.

(2) Subject to subsection (3), at any annual general meeting a retiring auditor, however appointed, shall be re-appointed without any resolution being passed unless—

(*a*) he is not qualified for re-appointment; or

(*b*) a resolution has been passed at that meeting appointing somebody instead of him or providing expressly that he shall not be re-appointed; or

(*c*) he has given the company notice in writing of his unwillingness to be re-appointed.

(3) Where notice is given of an intended resolution to appoint some other person or persons in place of a retiring auditor, and by reason of the death, incapacity or disqualification of that person or of all those persons, as the case may be, the resolution cannot be proceeded with, the retiring auditor shall not be automatically re-appointed by virtue of subsection (2).

(4) Where, at an annual general meeting, no auditors are appointed or re-appointed, the Minister may appoint a person to fill the vacancy.

(5) The company shall, within one week of the Minister's power under subsection (4) becoming exercisable, give the Minister notice of that fact, and, if a company fails to give notice as required by this subsection, the company and every officer of the company who is in default shall be liable to a fine not exceeding £50.

(6) Subject as hereinafter provided, the first auditors of a company may be appointed by the directors at any time before the first annual general meeting, and auditors so appointed shall hold office until the conclusion of that meeting, so, however, that—

(*a*) the company may at a general meeting remove any such auditors and appoint in their place any other 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 14 days before the date of the meeting; and

(*b*) if the directors fail to exercise their powers under this subsection, the company in general meeting may appoint the first auditors, and thereupon the said powers of the directors shall cease.

(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—

(*a*) in the case of an auditor appointed by the directors or by the Minister, may be fixed by the directors or by the Minister, as the case may be;

(*b*) Subject to paragraph (*a*), shall be fixed by the company at the annual general meeting or in such manner as the company at the annual general meeting may determine.

For the purposes of this subsection, any sums paid by the company in respect of the auditors' expenses shall be deemed to be included in the term "***remuneration***".

(9) The appointment of a firm by its firm name to be the auditors of a company shall be deemed to be an appointment of those persons who shall from time to time during the currency of the appointment be the partners in that firm as from time to time constituted and who are qualified to be auditors of that company.

Provisions as to resolutions relating to appointment and removal of auditors.

161.—(1) Extended notice within the meaning of section 142 shall be required for a resolution at a company's annual general meeting appointing as auditor a person other than a retiring auditor or providing expressly that a retiring auditor shall not be re-appointed.

(2) On receipt of notice of such an intended resolution as aforesaid, the company shall forthwith send a copy thereof to the retiring auditor (if any).

(3) Subject to subsection (4), where notice is given of such an intended resolution as, aforesaid, and the retiring auditor makes in relation to the intended resolution representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so—

(*a*) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and

(*b*) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or

after receipt of the representations by the company);

and if a copy of the representations is not sent as aforesaid because received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting.

(4) Copies of the representations need not be sent out as aforesaid and the representations need not be read out at the meeting as aforesaid if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter and the court may order the company's costs on an application under this section to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

(5) Subsections (3) and (4) shall apply to a resolution to remove the first auditors by virtue of subsection (6) of section 160 as they apply in relation to a resolution that a retiring auditor shall not be re-appointed.

Qualifications for appointment as auditor.

162.—(1) A person shall not be qualified for appointment as auditor of a company unless—

(*a*) he is a member of a body of accountants for the time being recognised for the purposes of this paragraph by the Minister; or

(*b*) he is for the time being authorised by the Minister to be so appointed either as having obtained similar qualifications otherwise than from such a body or as having obtained adequate knowledge and experience prior to the operative date in the course of his employment by a member of a body of accountants recognised for the purposes of paragraph (*a*) or as having before the operative date practised in the State as an accountant.

(2) If an auditor is convicted of a criminal offence arising out of or connected with the performance of his duties or his conduct as an auditor, he shall not be qualified for appointment as auditor of a company without the permission of the court.

(3) None of the following persons shall be qualified for appointment as auditor of a company—

(*a*) an officer or servant 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 servant of the company;

(*c*) a body corporate.

References in this subsection to an officer or servant shall be construed as not including references to an auditor.

(4) A person shall also not be qualified for appointment as auditor of a company if he is, by virtue of subsection (3), disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company.

(5) Any person who acts as auditor of a company when disqualified under this section shall be liable to a fine not exceeding £100.

(6) This section shall not apply to the Comptroller and Auditor General.

Auditors' report and right of access to books and to attend and be heard at general meetings.

163.—(1) The auditors shall make a report to the members on the accounts examined by them, and on every balance sheet, every profit and loss account and all group accounts laid before the company in general meeting during their tenure of office, and the report shall contain statements as to the matters mentioned in the Seventh Schedule.

(2) The auditors' report shall be read at the annual general meeting of the company and shall be open to inspection by any member.

(3) Every auditor of a company shall have a right of access at all reasonable times to the books and accounts and vouchers of the

company, and shall be entitled to require from the officers of the company such information and explanations as he thinks necessary for the performance of the duties of the auditors.

(4) The auditors of a company shall be entitled to attend any general meeting of the company and to receive all notices of and other communications relating to any general meeting which any member of the company is entitled to receive and to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors.

Construction of references to documents annexed to accounts.

164.—(1) Subject to subsection (2), references in this Act to a document annexed or required to be annexed to a company's accounts or any of them shall not include the directors' report or the auditors' report.

(2) Any information which is required by this Act to be given in accounts, and is thereby allowed to be given in a statement annexed, may be given in the directors' report instead of in the accounts and, if any such information is so given, the report shall be annexed to the accounts, and this Act shall apply in relation thereto accordingly, except that the auditors shall report thereon only so far as it gives the said information.

Inspection.

Investigation of company's affairs on application of members.

165.—(1) The Minister may appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as the Minister directs—

(*a*) in the case of a company having a share capital, on the application either of not less than one hundred members or of a member or members holding not less than one-tenth of the paid up share capital of the company;

(*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.

(2) The application shall be supported by such evidence as the Minister may require for the purpose of showing that the applicants have good reason for requiring the investigation, and the Minister may, before appointing an inspector, require the applicants to give security, to an amount not exceeding £50, for payment of the costs of the investigation.

Investigation of company's affairs in other cases.

166.—Without prejudice to his powers under section 165, the Minister—

(*a*) shall appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as the Minister directs if—

(i) the company by special resolution; or

(ii) the court by order;

declares that the company's affairs ought to be investigated by an inspector appointed by the Minister; and

(*b*) may do so if it appears to the Minister that there are circumstances suggesting—

(i) that the company's business is being conducted with intent to defraud its creditors or the creditors of any other person or otherwise for fraudulent or unlawful purposes or that the affairs of the company are being conducted or the

powers of the directors are being exercised in a manner oppressive to any of its members or in disregard of their interests as members of the company or that it was formed for any fraudulent or unlawful purpose; or

(ii) that persons connected with its 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

(iii) that its members have not been given all the information relating to its affairs which they might reasonably expect.

Power of inspectors to extend investigation into affairs of related companies.

167.—If an inspector appointed under sections 165 or 166 to investigate the affairs of a company thinks it necessary for the purposes of his investigation to investigate also the affairs of any other body corporate which is or has at any relevant time been the company's subsidiary or holding company or a subsidiary of its holding company or a holding company of its subsidiary, he shall, with the approval of the Minister, have power so to do, and shall report on the affairs of the other body corporate so far as he thinks the results of his investigation thereof are relevant to the investigation of the affairs of the first-mentioned company.

Production of documents, and evidence, on investigation.

168.—(1) It shall be 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 by virtue of section 167 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 and otherwise to give to the inspectors all assistance in connection with the investigation which they are reasonably able to give.

(2) An inspector may examine on oath the officers and agents of the company or other body corporate in relation to its business and may administer an oath accordingly.

(3) If any officer or agent of the company or other body corporate 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 or other body corporate, as the case may be, the inspectors may certify the refusal under their hand to the court, and the court may thereupon inquire into the case, and after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of court.

(4) Subject to subsection (5), if an inspector thinks it necessary for the purpose of his investigation that a person whom he has no power to examine on oath, should be so examined, he may apply to the court and the court may, if it sees fit, order that person to attend and be examined on oath before it on any matter relevant to the investigation, and on any such examination—

(*a*) the inspector may take part therein by solicitor or counsel;

(*b*) the court may put such questions to the person examined as the court thinks fit;

(*c*) the person examined shall answer all such questions as the court may put or allow to be put to him, but 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;

and 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.

(5) Notwithstanding anything in paragraph (*c*) of subsection (4), the court may allow the person examined such costs as, in its discretion, it may think fit, and any costs so allowed shall be paid as part of the expenses of the investigation.

(6) In this section, any reference to officers or to agents shall include past, as well as present, officers or agents, as the case may be, and for the purposes of this section, "***agents***", in relation to a company or other body corporate, shall include the bankers and solicitors of the company or other body corporate and any persons employed by the company or other body corporate as auditors, whether those persons are or are not officers of the company or other body corporate.

Inspectors' report.

169.—(1) The inspectors may, and if so directed by the Minister shall, make interim reports to the Minister and on the conclusion of the investigation, shall make a final report to the Minister.

Any such report shall be written or printed as the Minister directs.

(2) The Minister shall—

(*a*) forward a copy of any report made by the inspectors to the registered office of the company;

(*b*) if the Minister thinks fit, furnish a copy thereof on request and on payment of the prescribed fee to any other person who is a member of the company or of any other body corporate dealt with in the report by virtue of section 167 or whose interests as a creditor of the company or of any such other body corporate as aforesaid appear to the Minister to be affected;

(*c*) where the inspectors are appointed under section 165, furnish at the request of the applicants for the investigation, a copy to them; and

(*d*) where the inspectors are appointed under section 166 in pursuance of an order of the court, furnish a copy to the court;

and may also cause the report to be printed and published.

(3) The Minister may lay the report before each House of the Oireachtas and such publication shall be privileged.

Proceedings on inspectors' report.

170.—(1) If from any report made under section 169 it appears to the Minister that any person has, in relation to the company or to any other body corporate whose affairs have been investigated by virtue of section 167, been guilty of any offence for which he is criminally liable, the Minister shall refer the matter to the Attorney General.

(2) If where any matter is referred to the Attorney General under this section, he considers that the case is one in which a prosecution ought to be instituted and institutes proceedings accordingly, it shall be the duty of all officers and agents of the company or other body corporate as aforesaid, as the case may be, (other than the defendant in the proceedings) to give him all assistance in connection with the prosecution which they are reasonably able to give.

Subsection (6) of section 168 shall apply for the purposes of this subsection as it applies for the purpose of that section.

(3) If, in the case of any body corporate liable to be wound up under this Act, it appears to the Minister from any such report as aforesaid that it is expedient so to do, by reason of any such circumstances as are referred to in subparagraph (i) or subparagraph (ii) of paragraph (*b*) of section 166, the Minister may, unless the body corporate is being wound up by the court, present a petition for it to be so wound up on the ground that it is just and equitable that it should be wound up or on the ground that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to any of its members or in disregard of their interests as members of the company or a petition for an order under section 205 or both.

(4) If from any such report as aforesaid it appears to the Minister that proceedings ought, in the public interest, to be brought by any body corporate dealt with by the report for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation of that body corporate or the management of its affairs, or for the recovery of any property of the body corporate which has been misapplied or wrongfully retained, the Minister may himself bring proceedings for that purpose in the name of the body corporate.

(5) The Minister shall indemnify the body corporate against costs or expenses incurred by it in or in connection with any proceedings brought by virtue of subsection (4).

Expenses of

171.—(1) The expenses of and incidental to an investigation by an inspector appointed by the Minister under the foregoing provisions of

investigation of company's affairs.

this Act shall be defrayed in the first instance by the Minister, but the following persons shall, to the extent mentioned, be liable to repay the Minister:

(*a*) any person who is convicted on a prosecution instituted as a result of the investigation by the Attorney General or who is ordered to pay damages or restore any property in proceedings brought by virtue of subsection (4) of section 170, may, in the same proceedings, be ordered to pay the said expenses to such an extent as may be specified in the order; and

(*b*) any body corporate in whose name proceedings are brought as aforesaid shall be liable to the amount or value of any sums or property recovered by it as a result of those proceedings; and

(*c*) unless, as a result of the investigation, a prosecution is instituted by the Attorney General—

(i) any body corporate dealt with by the report, where the inspector was appointed otherwise than at the Minister's own motion, shall be liable, except so far as the Minister otherwise directs; and

(ii) the applicants for the investigation, where the inspector was appointed under section 165, shall be liable to such extent (if any) as the Minister may direct;

and any amount for which a body corporate is liable by virtue of paragraph (*b*) shall be a first charge on the sums or property mentioned in that paragraph.

(2) The report of an inspector appointed otherwise than at the Minister's own motion may, if he thinks fit, and shall, if the Minister so directs, include a recommendation as to the directions (if any) which the inspector thinks appropriate, in the light of his investigation, to be given under paragraph (*c*) of subsection (1).

(3) For the purposes of this section, any costs or expenses incurred by the Minister in or in connection with proceedings brought by virtue of subsection (4) of section 170 (including expenses incurred by virtue of subsection (5) thereof) shall be treated as expenses of the investigation giving rise to the proceedings.

(4) Any liability to repay the Minister imposed by paragraphs (*a*) and (*b*) of subsection (1) shall, subject to satisfaction of the Minister's right to repayment, be a liability also to indemnify all persons against liability under paragraph (*c*) thereof, and any such liability imposed by the said paragraph (*a*) shall, subject as aforesaid, be a liability also to indemnify all persons against liability under the said paragraph (*b*); and any person liable under the said paragraph (*a*) or the said paragraph (*b*) or either subparagraph of the said paragraph (*c*) shall be entitled to contribution from any other person liable under the same paragraph or subparagraph, as the case may be, according to the amount of their respective liabilities thereunder.

Inspectors' report to be evidence.

172.—A copy of any report of any inspectors appointed under the foregoing provisions of this Act, shall be admissible in any legal proceedings as evidence of the opinion of the inspectors in relation to any matter contained in the report.

Saving for solicitors and bankers.

173.—Nothing in the foregoing provisions of this Part of this Act shall require disclosure to the Minister or to an inspector appointed by the Minister—

(*a*) by a solicitor, of any privileged communication made to him in that capacity; or

(*b*) by bankers as such of any information as to the affairs of any of their customers other than the company or a body corporate whose affairs are being investigated by virtue of section 167.

Directors and other Officers.

Directors.

174.—Every company shall have at least two directors.

Secretary.

175.—(1) Every company shall have a secretary, who may be one of the directors.

(2) Anything required or authorised to be done by or to the secretary may, if the office is vacant 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 any officer of the company authorised generally or specially in that behalf by the directors.

Prohibition of body corporate being director.

176.—(1) A company shall not, after the expiration of 3 months from the operative date, have as director of the company a body corporate.

(2) A body corporate which, on the operative date is a director of a company shall within a period of 3 months from that date vacate its office as director of the company, and all acts or things purporting to be made or done after the expiration of that period, by a body corporate as director of any company shall be null and void.

Avoidance of acts done by person in dual capacity as director and secretary.

177.—A provision requiring or authorising a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the secretary.

Validity of acts of directors.

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

Restrictions on appointment or advertisement of director.

179.—(1) A person shall not be capable of being appointed a 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 the delivery of the statement in lieu of prospectus, as the case may be, he has by himself or by his agent authorised in writing—

(*a*) signed and delivered to the registrar of companies 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 signed and delivered as aforesaid 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) References in this section to a share qualification of a director or proposed director shall be construed as including only a share qualification required on appointment or within a period determined by reference to the time of appointment, and references therein to qualification shares shall be construed accordingly.

(4) 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 shall be liable to a fine not exceeding £50.

(5) 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.

Share qualifications of directors.

180.—(1) Without prejudice to the restrictions imposed by section 179, 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 2 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 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 2 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 shall be liable to a fine not exceeding £100.

Appointment of directors to be voted on individually.

181.—(1) At a general meeting of a company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be made, unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.

(2) Subject to subsections (3) and (4), a resolution moved in contravention of this section shall be void, whether or not its being so moved was objected to at the time,

(3) Subsection (2) shall not be taken as excluding the operation of section 178.

(4) Where a resolution moved in contravention of this section is passed, no provision for the automatic re-appointment of retiring directors in default of another appointment shall apply.

(5) For the purposes of this section, a motion for approving a person's appointment or for nominating a person for appointment shall be treated as a motion for his appointment.

(6) Nothing in this section shall apply to a resolution altering the company's articles.

Removal of directors.

182.—(1) A company may by ordinary resolution remove a director before the expiration of his period of office notwithstanding anything in its articles or in any agreement between it and him so, however, that this subsection shall not, in the case of a private company, authorise the removal of a director holding office for life.

(2) Extended notice within the meaning of section 142 shall be required of any resolution to remove a director under this section or to appoint somebody instead of the director so removed at the meeting at which he is removed, and on receipt of notice of an intended resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director (whether or not he is a member of the company) shall be entitled to be heard on the resolution at the meeting.

(3) Subject to subsection (4), where notice is given of an intended resolution to remove a director under this section and the director concerned makes in relation thereto representations in writing to the company (not exceeding a reasonable length) and requests their

notification to the members of the company, the company shall, unless the representations are received by it too late for it to do so,—

(*a*) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and

(*b*) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company);

and if a copy of the representations is not sent as aforesaid because received too late or because of the company's default, the director may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting.

(4) Copies of the representations need not be sent out as aforesaid, and the representations need not be read out at the meeting as aforesaid if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter, and the court may order the company's costs on an application under this section to be paid in whole or in part by the director concerned, notwithstanding that he is not a party to the application.

(5) A vacancy created by the removal of a director under this section may be filled at the meeting at which he is removed and, if not so filled, may be filled as a casual vacancy.

(6) A person appointed director in place of a person removed under this section shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become director on the day on which the person in whose place he is appointed was last appointed director.

(7) Nothing in this section shall be taken as depriving a person removed thereunder of compensation or damages payable to him in respect of the determination of his appointment as director or compensation or damages payable to him in respect of the determination of any appointment terminating with that as director or as derogating from any power to remove a director which may exist apart from this section.

Prohibition of undischarged bankrupts acting as directors.

183.—(1) Subject to subsection (2), if any person being an undischarged bankrupt acts as director of, or directly or indirectly takes part in or is concerned in the management of any company except with the leave of the court, he shall be liable on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine not exceeding £500 or to both, or on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding £100 or to both.

(2) A person shall not be guilty of an offence under this section by reason that he, being an undischarged bankrupt, has acted as director of, or taken part or been concerned in the management of a company, if he was on the operative date acting as director of, or taking part or being concerned in the management of, that company, and has continuously so acted, taken part or been concerned since that date, and the bankruptcy was prior to that date.

(3) In this section "***company***" includes an unregistered company and a company incorporated outside the State which has an established place of business within the State.

Power of court to restrain certain persons from acting as directors of or managing companies.

184.—(1) Where a person is convicted on indictment of any offence in connection with the promotion, formation or management of a company or any offence involving fraud or dishonesty whether in connection with a company or not, the court by which he is convicted may on the application of the Attorney General at the close of the trial, order that that person shall not, without the leave of the High Court, be a director of or in any way, whether directly or indirectly, be concerned or take part in the management of any company for such period as may be specified in the order.

(2) Where in the course of winding up a company it appears that a person—

(*a*) has been guilty of any offence for which he is liable (whether he has been convicted or not) under section 297; or

(*b*) has otherwise been guilty, while an officer of the company, of any fraud in relation to the company or of any breach of his duty

to the company;

the court may make an 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 or take part in the management of any company for such period as may be specified in the order.

(3) An application for the making of an order under subsection (2) may be made on behalf of the liquidator of the company or by any person who is or has been a member or creditor of the company, and on the hearing of any application for an order under this section by the liquidator or of any application for leave under this section by a person against whom an order has been made on the application of the liquidator, the liquidator shall appear and call the attention of the court to any matters which seem to him to be relevant and may himself give evidence or call witnesses.

(4) An order may be made under paragraph (*b*) of subsection (2) 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, and for the purposes of the said paragraph (*b*) "***officer***" shall include any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

(5) If any person acts in contravention of an order made under this section, he shall, in respect of each offence, be liable on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine not exceeding £500 or to both or on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding £100 or to both.

Prohibition of tax-free payments to directors.

185.—(1) It shall not be lawful for a company to pay a director remuneration (whether as director or otherwise) free of income tax or of income tax and sur-tax or of sur-tax, or otherwise calculated by reference to or varying with the amount of his income tax or his income tax and sur-tax or his sur-tax, or to or with the rate of income tax or sur-tax except under a contract which was in force on the 31st day of March, 1962, and provides expressly, and not by reference to the articles, for payment of remuneration as aforesaid.

(2) Any provision contained in a company's articles or in any contract other than such a contract as aforesaid, or in any resolution of a company or a company's directors, for payment to a director of remuneration as aforesaid shall have effect as if it provided for payment, as a gross sum subject to income tax and sur-tax, of the net sum for which it actually provides.

(3) This section shall not apply to remuneration due before the operative date or in respect of a period before the operative date.

Approval of company necessary for payment by it to director for loss of office.

186.—It shall not be lawful for a company to make to any director of the company any payment by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, without particulars relating to the proposed payment (including the amount thereof) being disclosed to the members of the company and the proposal being approved by the company in general meeting.

Approval of company necessary for payment to director of compensation in connection with transfer of property.

187.—(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 relating to the proposed payment (including the amount thereof) have been disclosed to the members of the company and the proposal approved by the company in general meeting.

(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.

Duty of director to disclose to company payments to be made to

188.— (1) Where, in connection with the transfer to any persons of all or any of the shares in a company being a transfer resulting from—

him in connection with transfer of shares in a company.

(*a*) an offer made to the general body of shareholders; or

(*b*) an offer made by or on behalf of some other body corporate, with a view to the company becoming its subsidiary or a subsidiary of its holding company; or

(*c*) an offer made by or on behalf of an individual with a view to his obtaining the right to exercise or control the exercise of not less than one-third of the voting power at any general meeting of the company; or

(*d*) any other offer which is conditional on acceptance to a given extent;

a payment is to be made to a director of the company by way of compensation for loss of office, or as a consideration for or in connection with his retirement from office, it shall be the duty of that director to take all reasonable steps to secure that particulars of 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.

(2) If—

(*a*) any such director fails to take reasonable steps as aforesaid; or

(*b*) any person who has been properly required by any such director to include the said particulars in or send them with any such notice as aforesaid fails so to do,

he shall be liable to a fine not exceeding £25.

(3) Unless—

(*a*) the requirements of subsection (1) are complied with in relation to any such payment as is therein mentioned; and

(*b*) the making of the proposed payment is, before the transfer of any shares in pursuance of the offer, approved by a meeting summoned for the purpose of the holders of the shares to which the offer relates and of other holders of shares of the same class as any of the said shares,

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, and the expenses incurred by him in distributing that sum amongst those persons shall be borne by him and not retained out of that sum.

(4) Where the shareholders referred to in paragraph (*b*) of subsection (3) are not all the members of the company and no provision is made by the articles for summoning or regulating such a meeting as is mentioned in that paragraph, the provisions of this Act and of the company's articles relating to general meetings of the company shall, for that purpose, apply to the meeting either without modification or with such modifications as the Minister on the application of any person concerned may direct for the purpose of adapting them to the circumstances of the meeting.

(5) If at a meeting summoned for the purpose of approving any payment as required by paragraph (*b*) of subsection (3), a quorum is not present and, after the meeting has been adjourned to a later date, a quorum is again not present, the payment shall be deemed, for the purposes of that subsection, to have been approved.

Provisions supplementary to

189.—(1) Where in proceedings for the recovery of any payment as having, by virtue of subsections (1) and (2) of section 187 or subsections (1) and (3) of section 188, been received by any person in trust, it is shown that—

sections 186, 187 and 188.

(*a*) the payment was made in pursuance of any arrangement entered into as part of the agreement for the transfer in question, or within one year before or 2 years after that agreement or the offer leading thereto; and

(*b*) the company or any person to whom the transfer was made was privy to that arrangement;

the payment shall be deemed, except in so far as the contrary is shown, to be one to which the subsections apply.

(2) If in connection with any such transfer as is mentioned in section 187 or section 188—

(*a*) the price to be paid to a director of the company 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

(*b*) 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 that 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.

(3) It is hereby declared that references in sections 186, 187 and 188 to payments to any director of a company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, include payments to him by way of compensation for loss of office as director of the company or for the loss, while director of the company, or on or in connection with his ceasing to be a director of the company, of any other office in connection with the management of the company's affairs or of any office as director or otherwise in connection with the management of the affairs of any subsidiary company but do not include any *bona fide*payment by way of damages for breach of contract or by way of pension in respect of past services, and for the purposes of this subsection "***pension***" includes any superannuation allowance, superannuation gratuity or similar payment.

(4) Nothing in sections 187 and 188 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 therein mentioned or with respect to any other like payments made or to be made to the directors of a company or to prejudice the operation of any rule of law in relation to the accountability (if any) of any director for any such payment received by him.

(5) References in sections 186, 187, 188 and this section to a director include references to a past-director.

Register of directors' shareholdings.

190.—(1) Every company shall keep a register showing, in relation to each director and secretary of the company, the number, description and amount of any shares in or debentures of the company or any other body corporate, being the company's subsidiary or holding company, or a subsidiary of the company's holding company, which are held by, or in trust for, him or his spouse or any child of his or of which he or they have any right to become the holder (whether on payment or not), so however, that the register need not include shares in any body corporate which is the wholly-owned subsidiary of another body corporate, and for this purpose a body corporate shall be deemed to be the wholly-owned subsidiary of another if it has no members but that other and that other's wholly-owned subsidiaries and its or their nominees.

(2) Subject to subsection (3), where any shares or debentures have to be, or cease to be, recorded in the said register in relation to any director or secretary by reason of a transaction entered into after the operative date and while he is a director or secretary the register shall also show the date of, and price or other consideration for, the transaction.

(3) Where there is an interval between the agreement for any such transaction as aforesaid and the completion thereof, the date shall be that of the agreement.

(4) The nature and extent of the interest or right in or over any shares or debentures recorded in relation to a director or secretary in the said register shall, if he so requires, be indicated in the register.

(5) The company shall not, by virtue of anything done for the purposes of this section, be affected with notice of, or put upon inquiry as to, the rights of any person in relation to any shares or debentures.

(6) Subject to subsection (7), the said register shall be kept at the same office as the register of members is kept, and shall be open to inspection 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 2 hours in each day be allowed for inspection) by any member or holder of debentures of the company.

(7) The said register shall also be produced at the commencement of the company's annual general meeting and shall remain open and accessible during the continuance of the meeting to any person attending the meeting.

(8) Any member or holder of debentures of the company may require a copy of the register, or of any part thereof, on payment of one shilling, or such less sum as the company may prescribe, for every 100 words or fractional part thereof required to be copied.

The company shall cause any copy so required by any person to be sent to that person within a period of 10 days commencing on the day next after the day on which the requirement is received by the company.

(9) If default is made in complying with subsection (7), the company and every officer of the company who is in default shall be liable to a fine not exceeding £50; and if default is made in complying with subsection (1) or subsection (2), or 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 shall be liable to a fine not exceeding £100.

(10) To ensure compliance with the provisions of this section the court may by order compel an inspection of the register or direct that the copies required shall be sent to the persons requiring them.

(11) For the purposes of this section—

(*a*) any person in accordance with whose directions or instructions the directors of a company are accustomed to act shall be deemed to be a director of the company; and

(*b*) a person shall be deemed to hold, or to have an interest in or right over, any shares or debentures in which he has an interest jointly or in common with any other person or a limited, reversionary or contingent interest or an interest as the object of a discretionary trust; and

(*c*) a person shall be deemed to hold, or to have an interest or right in or over any shares or debentures if a body corporate other than the company holds them or has that interest or right in or over them, and either—

(i) that body corporate or its directors are accustomed to act in accordance with his directions or instructions; or

(ii) he is entitled to exercise or control the exercise of one-third or more of the voting power at any general meeting of that body corporate.

(12) This section shall not apply to a private company if and so long as all the members of such private company are directors thereof.

Particulars of directors' salaries and payments to be given in accounts.

191.—(1) In any accounts of a company laid before the annual general meeting or in a statement annexed thereto, there shall, subject to and in accordance with the provisions of this section, be shown so far as the information is contained in the company's books and papers or the company has the right to obtain it from the persons concerned—

(*a*) the aggregate amount of the directors' emoluments;

(*b*) the aggregate amount of directors' or past-directors' pensions; and

(*c*) the aggregate amount of any compensation to directors or past-directors in respect of loss of office.

(2) The amount to be shown under paragraph (*a*) of subsection (1)—

(*a*) shall include any emoluments paid to or receivable by any person in respect of his services as director of the company or in respect of his services, while director of the company, as director of any subsidiary thereof or otherwise in connection with the management of the affairs of the company or any subsidiary thereof; and

(*b*) shall distinguish between emoluments in respect of services as director, whether of the company or of its subsidiary, and other emoluments;

and, for the purposes of this section, "***emoluments***" in relation to a director, includes fees and percentages, any sums paid by way of expenses allowance in so far as those sums are charged to income tax, any contribution paid in respect of him under any pension scheme, and the estimated money value of any other benefits received by him otherwise than in cash in so far as the same are charged to income tax.

(3) The amount to be shown under paragraph (*b*) of subsection (1)—

(*a*) shall not include any pension paid or receivable under a pension scheme if the scheme is such that the contributions thereunder are substantially adequate for the maintenance of the scheme, but save as aforesaid, shall include any pension paid or receivable in respect of any such services of a director or past-director of the company as are mentioned in subsection (2), whether to or by him or, on his nomination or by virtue of dependence on or other connection with him, to or by any other person; and

(*b*) shall distinguish between pensions in respect of services as director, whether of the company or its subsidiary, and other pensions;

and, for the purposes of this section, "***pension***" includes any superannuation allowance, superannuation gratuity or similar payment, and "***pension scheme***" means a scheme for the provision of pensions in respect of services as director or otherwise which is maintained in whole or in part by means of contributions, and "***contribution***" in relation to a pension scheme means any payment (including an insurance premium) paid for the purposes of the scheme by or in respect of persons rendering services in respect of which pensions will or may become payable under the scheme, except that it does not include any payment in respect of two or more persons if the amount paid in respect of each of them is not ascertainable.

(4) The amount to be shown under paragraph (*c*) of subsection (1)—

(*a*) shall include any sums paid to or receivable by a director or past-director by way of compensation for loss of office as director of the company or for the loss, while director of the company, or on or in connection with his ceasing to be a director of the company, of any other office in connection with the management of the company's affairs or of any office as director or otherwise in connection with the management of the affairs of any subsidiary thereof; and

(*b*) shall distinguish between compensation in respect of the office of director, whether of the company or of its subsidiary, and compensation in respect of other offices;

and, for the purposes of this section, references to compensation for loss of office shall include sums paid as consideration for or in connection with a person's retirement from office.

(5) The amounts to be shown under each paragraph of subsection (1)—

(*a*) shall include all relevant sums paid by or receivable from—

(i) the company; and

(ii) the company's subsidiaries; and

(iii) any other person;

except sums to be accounted for to the company or any of its subsidiaries or, by virtue of section 188, to past or present members of the company or any of its subsidiaries or any class of those members; and

(*b*) shall distinguish, in the case of the amount to be shown under paragraph (*c*) of subsection (1), between the sums respectively paid by or receivable from the company, the company's subsidiaries and persons other than the company and its subsidiaries.

(6) The amounts to be shown under this section for any financial year shall be the sums receivable in respect of that year, whenever paid, or, in the case of sums not receivable in respect of a period, the sums paid during that year, so, however, that where—

(*a*) any sums are not shown in the accounts for the relevant financial year on the ground that the person receiving them is liable to account therefor as mentioned in paragraph (*a*) of subsection (5), but the liability is thereafter wholly or partly released or is not enforced within a period of 2 years; or

(*b*) any sums paid by way of expenses allowance are charged to income tax after the end of the relevant financial year;

those sums shall, to the extent to which the liability is released or not enforced or they are charged as aforesaid, as the case may be, be shown in the first accounts in which it is practicable to show them, or in a statement annexed thereto, and shall be distinguished from the amounts to be shown therein apart from this provision.

(7) Where it is necessary so to do for the purpose of making any distinction required by this section in any amount to be shown thereunder, the directors may apportion any payments between the matters in respect of which they have been paid or are receivable in such manner as they think appropriate.

(8) If in the case of any accounts 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 the report thereon, so far as they are reasonably able to do so, a statement giving the required particulars.

(9) In this section, any reference to a company's subsidiary—

(*a*) in relation to a person who is or was, while a director of the company, a director also, by virtue of the company's nomination, direct or indirect, of any other body corporate, shall, subject to the following paragraph, include that body corporate, whether or not it is or was in fact the company's subsidiary; and

(*b*) shall, for the purposes of subsections (2) and (3), be taken as referring to a subsidiary at the time the services were rendered, and, for the purposes of subsection (4), be taken as referring to a subsidiary immediately before the loss of office as director of the company.

Particulars of loans to directors to be given in accounts.

192.—(1) The accounts which, in pursuance of this Act, are to be laid before the annual general meeting of every company shall, subject to the provisions of this section, contain particulars showing—

(*a*) the amount of any loans made during the company's financial year to—

(i) any director of the company;

(ii) any person who, after the making of the loan, became during that year a director of the company; and

(iii) any body corporate in which the directors of the company (or any of them) are beneficially entitled to more than 20 per cent. in nominal value of the shares of such body corporate which carry voting rights other than voting rights

which arise only in specified circumstances;

by the company or a subsidiary thereof or by any other person under a guarantee from or on a security provided by the company or a subsidiary thereof (including any such loans which were repaid during that year); and

(*b*) the amount of any loans made in manner aforesaid to any such director, person or body corporate as aforesaid at any time before the company's financial year and outstanding at the expiration thereof.

(2) Subsection (1) shall not require the inclusion in accounts of particulars of—

(*a*) a loan made in the ordinary course of its business by the company or a subsidiary thereof, where the ordinary business of the company, or, as the case may be, the subsidiary, includes the lending of money; or

(*b*) a loan made by the company or a subsidiary thereof to an employee of the company or subsidiary, as the case may be, if the loan does not exceed £2,000 and is certified by the directors of the company or subsidiary, as the case may be, to have been made in accordance with any practice adopted or about to be adopted by the company or subsidiary relating to loans to its employees;

not being, in either case, a loan made by the company under a guarantee from or on a security provided by a subsidiary thereof or a loan made by a subsidiary of the company under a guarantee from or on a security provided by the company or any other subsidiary thereof.

(3) If in the case of any such accounts as aforesaid, the requirements of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report on the balance sheet of the company, so far as they are reasonably able to do so, a statement giving the required particulars.

(4) References in this section to a subsidiary shall be taken as referring to a subsidiary at the end of the company's financial year (whether or not a subsidiary at the date of the loan).

General duty to make disclosure for the purposes of sections 190, 191 and 192.

193.—(1) It shall be the duty of every director and secretary of a company to give notice in writing to the company as soon as may be of such matters relating to himself and to his spouse and children as may be necessary for the purposes of section 190.

(2) It shall be the duty of every director of a company to give notice in writing to the company of such matters relating to himself as may be necessary for the purposes of sections 191 and 192 except in so far as the latter section relates to loans made by the company or by any other person under a guarantee from or on a security provided by the company to a director thereof.

(3) If any such notice is not given at a meeting of directors, the director or secretary, as the case may be, giving it shall take reasonable steps to secure that it is brought up and read at the next meeting of the directors after it is given.

(4) Any person who fails to comply with this section shall be liable to a fine not exceeding £100.

Duty of director to disclose his interest in contracts made by the company.

194.—(1) 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.

(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) Subject to subsection (4), for the purposes 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) No such notice as aforesaid shall be of effect unless either it is given at a meeting of the directors or the director takes reasonable steps to secure that it is brought up and read at the next meeting of the directors after it is given.

(5) (*a*) A copy of every declaration made and notice given in pursuance of this section shall, within 3 days after the making or giving thereof, be entered in a book kept for this purpose. Such book shall be open for inspection without charge by any director, secretary, auditor or member of the company at the registered office of the company and shall be produced at every general meeting of the company, and at any meeting of the directors if any director so requests in sufficient time to enable the book to be available at the meeting.

(*b*) If a company fails to comply with this subsection the company and every officer of the company who is in default shall be liable to a fine not exceeding £100 and if any inspection or production required thereunder is refused, the court may by order compel an immediate inspection or production.

(6) Any director who fails to comply with this section shall be liable to a fine not exceeding £100.

(7) 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.

Register of directors and secretaries.

195.—(1) Every company shall keep at its registered office a register of its directors and secretaries.

(2) Subject to subsection (3), the said register shall contain the following particulars relating to each director—

(*a*) his present Christian name and surname and any former Christian name and surname; and

(*b*) his usual residential address; and

(*c*) his nationality, if not Irish; and

(*d*) his business occupation, if any; and

(*e*) particulars of any other directorships of bodies corporate incorporated in the State held by him.

(3) It shall not be necessary for the said register to contain particulars of directorships held by a director in bodies corporate of which the company is the wholly-owned subsidiary or which are the wholly-owned subsidiaries either of the company or of another body corporate of which the company is the wholly-owned subsidiary and for the purposes of this subsection a body corporate shall be deemed to be the wholly-owned subsidiary of another if it has no members except that other and that other's wholly-owned subsidiaries and its or their nominees.

(4) Subject to subsection (5), the said register shall contain the following particulars relating to the secretary or, where there are joint secretaries, in relation to each of them—

(*a*) in the case of an individual, his present Christian name and surname, any former Christian name and surname and his usual residential address; and

(*b*) in the case of a body corporate, the corporate name and registered office.

(5) Where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated instead of the said

particulars.

(6) The company shall, within the periods respectively mentioned in subsection (7), send to the registrar of companies a return in the prescribed form containing the particulars specified in the said register and a notification in the prescribed form of any change among its directors or in its secretary, or in any of the particulars contained in the register specifying the date of the change.

(7) Subject to subsection (8), the periods referred to in subsection (6) are the following:—

(*a*) the period within which the said return is to be sent shall be a period of 14 days from the appointment of the first directors of the company; and

(*b*) the period within which the said notification of a change is to be sent shall be 14 days from the happening thereof.

(8) In the case of a return containing particulars relating to any person who is the company's secretary on the operative date, the period shall be 14 days from the operative date.

(9) 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 2 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 one shilling or such less sum as the company may prescribe, for each inspection.

(10) If any inspection required under this section is refused or if default is made in complying with subsections (1), (2), (4) or (6), the company and every officer of the company who is in default shall be liable to a fine not exceeding £100.

(11) In the case of any such refusal, the court may by order compel an immediate inspection of the register.

(12) For the purposes of this section—

(*a*) 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;

(*b*) "***Christian name***" includes a forename;

(*c*) in the case of a person usually known by a title different from his surname, the expression "***surname***" means that title;

(*d*) references to a former Christian name or surname do not include—

(i) in the case of a person usually known by a 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 any person, a former Christian name or surname where that name or surname was changed or disused before the person bearing the name attained the age of 18 years or has been changed or disused for a period of not less than 20 years; or

(iii) in the case of a married woman, the name or surname by which she was known previous to the marriage.

Particulars relating to directors to be shown on all business letters of the company.

196.—(1) Subject to subsection (2), every company to which this section applies shall, in all business letters on or in which the company's name appears and which are sent by the company to any person, state in legible characters in relation to every director the following particulars:

(*a*) his present Christian name, or the initials thereof, and present surname; and

(*b*) any former Christian names and surnames; and

(*c*) his nationality, if not Irish.

(2) If special circumstances exist which render it in the opinion of the Minister expedient that such an exemption should be granted, the Minister may, subject to such conditions as he may think fit, grant exemption from the obligations imposed by this section.

(3) This section shall apply to—

(*a*) every company registered under this Act or under the Companies (Consolidation) Act, 1908, unless it was registered before the 23rd day of November, 1916, and

(*b*) every company incorporated outside the State which has an established place of business within the State, unless it had established such a place of business before the said date; and

(*c*) every company licensed under the Moneylenders Act, 1933 , whenever it was registered or whenever it established a place of business.

(4) Subject to subsection (5), if a company makes default in complying with this section, every officer of the company who is in default shall be liable on summary conviction for each offence to a fine not exceeding £25, and, for the purpose of this subsection, where a body corporate is an officer of the company, any officer of the body corporate shall be deemed to be an officer of the company.

(5) No proceedings shall be instituted under this section except by, or with the consent of, the Minister.

(6) For the purposes of this section—

(*a*) "***director***" includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act, and "***officer***" shall be construed accordingly; and

(*b*) "***initials***" includes a recognised abbreviation of a Christian name; and paragraphs (*b*), (*c*) and (*d*) of subsection (12) of section 195 shall apply as they apply for the purposes of that section.

Limited company may have directors with unlimited liability.

197.—(1) In a limited company the liability of the directors, or of the managing director, may, if so provided by the memorandum, be unlimited.

(2) In a limited company in which the liability of a director is unlimited, the directors of the company and the member who proposes a person for election or appointment to the office of director, shall add to that proposal a statement that the liability of the person holding that office will be unlimited, and before the person accepts the office or acts therein, notice in writing that his liability will be unlimited shall be given to him by the following or one of the following persons, namely, the promoters of the company, the directors of the company, and the secretary of the company.

(3) If any director or proposer makes default in adding such a statement, or if any promoter or director or secretary makes default in giving such a notice, he shall be liable to a fine not exceeding £100 and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

Power of limited company to make liability of directors unlimited.

198.—(1) A limited company, if so authorised by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors or 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.

Provisions as to assignment of office by

199.—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 of the company to assign his office as such to another person, any assignment of office made in

directors.

pursuance of the said provision shall, notwithstanding anything to the contrary contained in the said 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.

Avoidance of provisions exempting officers and auditors of company from liability.

200.—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 officer of the company or any person employed by the company as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void, so, however, that—

(*a*) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force; and

(*b*) notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid, indemnify any such officer or auditor against any liability incurred by him in defending 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 391 in which relief is granted to him by the court.

Arrangements and Reconstructions.

Compromise between company and its members or creditors.

201.—(1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them or between the company and its members or any class of them, the court may, on the application of the company or of any creditor or member of the company, or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the court directs.

(2) Whenever such an application as is mentioned in subsection (1) is made, the court may on such terms as seem just, stay all proceedings or restrain further proceedings against the company for such period as to the court seems fit.

(3) 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, vote in favour of a resolution agreeing 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.

(4) Section 144 shall apply to any such resolution as is mentioned in subsection (3) which is passed at any adjourned meeting held under this section.

(5) An order made under subsection (3) shall have no effect until an office copy of the order has been delivered to the registrar of companies 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.

(6) If a company fails to comply with subsection (5), the company and every officer of the company who is in default shall be liable to a fine not exceeding £20.

(7) In this section and in section 202, "***company***" means any company liable to be wound up under this Act, and "***arrangement***" includes a reorganisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods.

Information as to compromises with members and creditors.

202.—(1) Where a meeting of creditors or any class of creditors or members or any class of members is summoned under section 201 there shall—

(*a*) with every notice summoning the meeting which is sent to a creditor or member, be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors of the company, whether as directors or as members or as creditors of the company or otherwise, and the effect thereon of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons; and

(*b*) in every notice summoning the meeting which is given by advertisement, be included either such a statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement as aforesaid.

(2) Where the compromise or arrangement affects the rights of debenture holders of a company, the said statement shall give the like explanation in relation to the trustees of any deed for securing the issue of the debentures as it is required to give in relation to the company's directors.

(3) Where a notice given by advertisement includes a notification that copies of a statement explaining the effect of a compromise or arrangement proposed can be obtained by creditors or members entitled to attend the meeting, every such creditor or member shall, on making application in the manner indicated by the notice, be furnished by the company free of charge with a copy of the statement.

(4) Subject to subsection (5), where a company fails to comply with any requirement of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding £100, and for the purpose of this subsection any liquidator of the company and any trustee of a deed for securing the issue of debentures of the company shall be deemed to be an officer of the company.

(5) A person shall not be liable under subsection (4) if that person shows that the default was due to the refusal of any other person, being a director or trustee for debenture holders, to supply the necessary particulars as to his interests.

(6) It shall be the duty of any director of the company and of any trustee for debenture holders of the company to give notice to the company of such matters relating to himself as may be necessary for the purposes of this section, and any person who makes default in complying with this subsection shall be liable to a fine not exceeding £50.

Provisions to facilitate reconstruction and amalgamation of companies.

203.—(1) Where an application is made to the court under section 201 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—

(*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 of companies for registration within 21 days after the making of the order, and if default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a fine not exceeding £25.

(4) In this section, "***property***" includes property, rights and powers of every description, and "***liabilities***" includes duties.

(5) Notwithstanding subsection (7) of section 201, "***company***" in this section does not include any company other than a company within the meaning of this Act.

Power to acquire shares of shareholders dissenting from scheme or contract which has been approved by majority.

204.—(1) Subject to subsection (2), where a scheme, contract or offer involving the acquisition by one company, whether a company within the meaning of this Act or not (in this section referred to as "***the transferee company***") of the beneficial ownership of all the shares (other than shares already in the beneficial ownership of the transferee company) in the capital of another company, being a company within the meaning of this Act (in this section referred to as "***the transferor company***") has become binding or been approved or accepted in respect of not less than four-fifths in value of the shares affected not later than the date 4 months after publication generally to the holders of the shares affected of the terms of such scheme, contract or offer, the transferee company may at any time before the expiration of the period of 6 months next following such publication give notice in the prescribed manner to any dissenting shareholder that it desires to acquire the beneficial ownership of his shares, and when such 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 the beneficial ownership of those shares on the terms on which under the scheme, contract or offer, the beneficial ownership of the shares in respect of which the scheme, contract or offer has become binding or been approved or accepted is to be acquired by the transferee company.

(2) Where shares in the transferor company are, at the date of such publication, already in the beneficial ownership of the transferee company to a value greater than one-fifth of the aggregate value of those shares and the shares affected, subsection (1) shall not apply unless the assenting shareholders besides holding not less than four-fifths in value of the shares affected are not less than three-fourths in number of the holders of those shares.

(3) For the purpose of this section, shares in the transferor company in the beneficial ownership of a subsidiary of the transferee company shall be deemed to be in the beneficial ownership of the transferee company, the acquisition of the beneficial ownership of shares in the transferor company by a subsidiary of the transferee company shall be deemed to be the acquisition of such beneficial ownership by the transferee company and shares shall not be treated as not being in the beneficial ownership of the transferee company merely by reason of the fact that those shares are or may become subject to a charge in favour of another person.

(4) Where, in consequence of any such scheme, contract or offer, the beneficial interest in shares in the transferor company is acquired by the transferee company and as a result of such acquisition the transferee company has become the beneficial owner of four-fifths in value

of all the shares in the transferor company then—

(*a*) the transferee company shall, within one month of the date of such acquisition, give notice of that fact in the prescribed manner to all holders of shares in the transferor company not in the beneficial ownership of the transferee company; and

(*b*) any such holder may, within 3 months from the giving of the notice to him, require the transferee company to acquire his shares;

and, where a shareholder gives notice under paragraph (*b*) in relation to any shares, the transferee company shall be entitled and bound to acquire the beneficial ownership of those shares on the terms on which under the scheme, contract or offer the beneficial ownership of the shares of the assenting shareholders was acquired by it, or on such other terms as may be agreed or as the court on the application either of the transferee company or of a shareholder thinks fit to order, and subsections (5), (6) and (7) shall be applicable *mutatis mutandis* as if any reference therein to a notice given under subsection (1) were a reference to a notice given under paragraph (*b*).

(5) Where a notice has been given by the transferee company under subsection (1) and the court has not, on 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 was given, or, if an application to the court by the dissenting shareholder is then pending, after that application has been disposed of, transmit to the transferor company a copy of the notice together with an instrument of transfer of the shares of the dissenting shareholder executed on behalf of the dissenting shareholder as transferor by any person appointed by the transferee company and by the transferee (being either the transferee company or a subsidiary of the transferee company or a nominee of the transferee company or of such a subsidiary) and pay to or vest in the transferor company the amount or other consideration representing the price payable by the transferee company for the shares the beneficial ownership of which by virtue of this section the transferee company is entitled to acquire, and the transferor company shall thereupon register as the holder of those shares the person who executed such instrument as the transferee, so however, that an instrument of transfer shall not be so required for any share for which a share warrant is for the time being outstanding.

(6) 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.

(7) The transferor company or a nominee of the transferor company shall not be entitled to exercise any right of voting conferred by any shares in the transferee company issued to it or to its nominee as aforesaid except by and in accordance with instructions given by the shareholder in respect of whom those shares were so issued or his successor in title.

(8) In this section, "***the shares affected***" means the shares the acquisition of the beneficial ownership of which by the transferee company is involved in the scheme, contract or offer, "***assenting shareholder***" means a holder of any of the shares affected in respect of which the scheme, contract or offer has become binding or been approved or accepted and "***dissenting shareholder***" means a holder of any of the shares affected in respect of which the scheme, contract or offer has not become binding or been approved or accepted or who has failed or refused to transfer his shares in accordance with the scheme, contract or offer.

(9) Where the scheme, contract or offer becomes binding on or is approved or accepted by a person in respect of a part only of the shares held by him, he shall be treated as an assenting shareholder as regards that part of his holding and as a dissenting shareholder as regards the remainder of his holding.

(10) Where the scheme, contract or offer provides that an assenting shareholder may elect between 2 or more sets of terms for the acquisition by the transferee company of the beneficial ownership of the shares affected, the notice given by the transferee company under subsection (1) shall be accompanied by or embody a notice stating the alternative sets of terms between which assenting shareholders are entitled to elect and specifying which of those sets of terms shall be applicable to the dissenting shareholder if he does not before the

expiration of 14 days from the date of the giving of the notice notify to the transferee company in writing his election as between such alternative sets of terms, and the terms upon which the transferee company shall under this section be entitled and bound to acquire the beneficial ownership of the shares of the dissenting shareholder shall be the set of terms which the dissenting shareholder shall so notify or, in default of such notification, the set of terms so specified as applicable.

(11) In the application of this section to a transferor company the share capital of which consists of two or more classes of shares, references to the shares in the capital of the transferor company shall be construed as references to the shares in its capital of a particular class.

(12) Subject to subsection (13), this section shall not apply to a scheme, contract or offer the terms of which were published generally to the holders of the shares affected before the operative date and section 8 of the Companies Act, 1959 , shall continue to apply to any such scheme, contract or offer and for the purposes of any such scheme, contract or offer, the said section shall be deemed to remain in full force.

(13) Where any such scheme, contract or offer as is mentioned in subsection (1) was approved or accepted in the manner described in that subsection at any time before the passing of the Companies Act, 1959 , the court may by order on an application made to it by the transferee company within 6 months after the operative date authorise notice to be given under this section within such time after the making of the order as the court shall direct, and this section shall apply accordingly, except that the terms on which the shares of the dissenting shareholder are to be acquired shall be such terms as the court may by the order direct, instead of the terms provided by the scheme, contract or offer.

Minorities.

Remedy in cases of oppression.

205.—(1) Any member of a company who complains that the affairs of the company are being conducted or that the powers of the directors of the company are being exercised in a manner oppressive to him or any of the members (including himself), or in disregard of his or their interests as members, may apply to the court for an order under this section.

(2) In a case falling within subsection (3) of section 170, the Minister may apply for an order under this section.

(3) If, on any application under subsection (1) or subsection (2) the court is of opinion that the company's affairs are being conducted or the directors' powers are being exercised as aforesaid, the court may, with a view to bringing to an end the matters complained of, make such order as it thinks fit, whether directing or prohibiting any act or cancelling or varying any transaction or for regulating the conduct of the company's affairs in future, or for the purchase of the shares of any members of the company by other members of the company or by the company and in the case of a purchase by the company, for the reduction accordingly of the company's capital, or otherwise.

(4) Where an order under this section makes any alteration in or addition to any company's memorandum or articles, then, notwithstanding anything in any other provision of this Act but subject to the provisions of the order, the company concerned shall not have power without the leave of the court to make any further alteration in or addition to the memorandum or articles inconsistent with the provisions of the order; but, subject to the foregoing provisions of this subsection, the alterations or additions made by the order shall be of the same effect as if duly made by resolution of the company, and the provisions of this Act shall apply to the memorandum or articles as so altered or added to accordingly.

(5) An office copy of any order under this section altering or adding to or giving leave to alter or add to a company's memorandum or articles shall, within 21 days after the making thereof, be delivered by the company to the registrar of companies for registration; and if a company fails to comply with this subsection, the company and every officer of the company who is in default shall be liable to a fine not exceeding £25.

(6) The personal representative of a person who, at the date of his death was a member of a company, or any trustee of, or person

beneficially interested in, the shares of a company by virtue of the will or intestacy of any such person, may apply to the court under subsection (1) for an order under this section and, accordingly, any reference in that subsection to a member of a company shall be construed as including a reference to any such personal representative, trustee or person beneficially interested as aforesaid or to all of them.

(7) If, in the opinion of the court, the hearing of proceedings under this section would involve the disclosure of information the publication of which would be seriously prejudicial to the legitimate interests of the company, the court may order that the hearing of the proceedings or any part thereof shall be in camera.

PART VI.

Winding up.

(i) Preliminary.

Modes of Winding Up.

Modes of winding up.

206.—(1) The winding up of a company may be—

(*a*) by the court; or

(*b*) voluntary.

(2) The provisions of this Act relating to winding up apply, unless the contrary appears, to the winding up of a company in either of those modes.

Contributories.

Liability as contributories of past and present members.

207.—(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 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 more 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 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 the 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, whether past or present, whose liability is, under 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, so, however, that—

(*a*) a past director shall not be liable to make such further contribution if he has ceased to hold office for a year or more before the commencement of the winding up;

(*b*) a past director 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 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***".

208.—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.

Liability of contributory.

209.—(1) The liability of a contributory shall create a 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.

(2) An action to recover a debt created by this section shall not be brought after the expiration of 12 years from the date on which the cause of action accrued.

Contributories in case of death of member.

210.—(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 the administration of the estate of the deceased contributory or otherwise for compelling payment thereout of the money due.

Contributories in case of bankruptcy of member.

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

(*a*) the Official Assignee 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.

(ii) Winding up by the Court.

Jurisdiction.

Jurisdiction to wind up companies.

212.—The High Court shall have jurisdiction to wind up any company.

Cases in which Company may be wound up by the Court.

Circumstances in which company may be wound up by the court.

213.—A company may be wound up by the court if—

(*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 two, 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;

(*g*) the court is satisfied that the company's affairs are being conducted, or the powers of the directors are being exercised, in a manner oppressive to any member or in disregard of his interests as a member and that, despite the existence of an alternative remedy, winding up would be justified in the general circumstances of the case so, however, that the court may dismiss a petition to wind up under this paragraph if it is of opinion that proceedings under section 205 would, in all the circumstances, be more appropriate.

Circumstances in which company deemed to be unable to pay its debts.

214.—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 £50 then due, has served on the company, by leaving it at the registered office of the company, a demand in writing requiring the company to pay the sum so due, and the company has for 3 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

215.—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

winding up.

contributories, or by all or any of those parties, together or separately, so, however, 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 two, 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 6 months during the 18 months before the commencement of the winding up, or have devolved on him through the death of a former holder; 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 14 days after the last day on which the meeting ought to have been held; and

(*c*) the court shall not give a hearing to a 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; and

(*d*) in a case falling within subsection (3) of section 170 a winding-up petition may be presented by the Minister; and

(*e*) a petition for winding up on the grounds mentioned in paragraph (*g*) of section 213 may be presented by any person entitled to bring proceedings for an order under section 205.

Powers of court on hearing petition.

216.—(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.

(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.

217.—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 High Court or on appeal in the Supreme Court apply to the court in which the action or proceeding is pending for a stay of proceedings therein; and

(*b*) where any other action or proceeding is pending against the company, apply to the High Court to restrain further proceedings in the action or proceeding;

and the court to which application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms and for such period as it thinks fit.

Avoidance of dispositions of property and transfer of shares after commencement of winding up.

218.—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 executions against property of company.

219.—Where any company is being wound up by the court, any attachment, sequestration, distress or execution put in force against the property 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.

220.—(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 to direct otherwise, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case, the winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up.

Consequences of Winding-up Order.

Copy of order for winding up to be forwarded to registrar.

221.—(1) On the making of a winding-up order, an office copy of the order must forthwith be delivered by the company, or by such person as the court may direct, to the registrar of companies for registration.

(2) If a company makes default in complying with subsection (1), the company and every officer of the company who is in default shall be liable to a fine not exceeding £25 and if any other person makes default in complying with subsection (1) such person shall be liable to a fine not exceeding £25.

Actions against company stayed on winding-up order.

222.—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.

Effect of winding-up order.

223.—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.

Statement of company's affairs to be filed in court.

224.—(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 filed in the court 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 court may require.

(2) The statement shall be filed 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 of the company or by such of the persons hereinafter mentioned in this subsection as the court may require to file and verify the statement, that is, persons—

(*a*) who are or have been 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 court, 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 filed within 21 days from the relevant date or within such extended time as 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 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 court may allow.

(5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding £100.

(6) Any person who states in writing that he is 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 filed in pursuance of this section, and to a copy thereof or extract therefrom.

(7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court and shall, on the application of the liquidator, be 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.

Liquidators.

Appointment of liquidator.

225.—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.

226.—(1) Subject to subsection (2), the court may appoint a liquidator provisionally at any time after the presentation of a winding-up petition and before the first appointment of liquidators.

(2) Where a liquidator is provisionally appointed by the court, the court may limit and restrict his powers by the order appointing him.

Publication by liquidator of his appointment.

227.—(1) In a winding up by the court, the liquidator shall within 21 days after his appointment, publish in *Iris Oifigiúil* a notice of his appointment and deliver to the registrar of companies an office copy of the court order appointing him.

(2) If the liquidator fails to comply with subsection (1), he shall be liable to a fine not exceeding £50.

General provisions as to liquidators.

228.—The following provisions relating to liquidators shall have effect on a winding-up order being made—

(*a*) the court may determine whether any and what security is to be given by a liquidator on his appointment;

(*b*) a liquidator shall be described by the style of "***the official liquidator***" of the particular company in respect of which he is appointed and not by his individual name;

(*c*) a liquidator appointed by the court may resign or, on cause shown, be removed by the court;

(*d*) a person appointed liquidator 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;

(*e*) a vacancy in the office of a liquidator appointed by the court shall be filled by the court;

(*f*) if more than one liquidator is appointed by the court, the court shall declare whether any act by this Act required or authorised to

be done by the liquidator is to be done by all or any one or more of the persons appointed;

(*g*) subject to section 300, 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.

229.—(1) 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.

(2) If and so long as there is no liquidator, all the property of the company shall be deemed to be in the custody of the court.

Vesting of property of company in liquidator.

230.—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.

231.—(1) The liquidator in a winding up by the court shall have power, with the sanction 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 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 lots and for the purpose of selling the company's land or any part thereof to carry out such sales by fee farm grant, sub fee farm grant, lease, sub-lease or otherwise, and to sell any rent reserved on any such grant or any reversion expectant upon the determination of any such lease;

(*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 use, when necessary, the company's seal;

(*c*) where any contributory has been adjudged bankrupt or has presented a petition for arrangement with his creditors in pursuance of the Bankruptcy Acts, to prove, rank and claim in the bankruptcy or arrangement for any balance against his estate, and to

receive dividends in the bankruptcy or arrangement in respect of that balance, as a separate debt due from the bankrupt or arranging debtor, and rateably with the other separate creditors;

(*d*) to draw, accept, make and endorse 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 endorsed 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 give security for costs in any proceedings commenced by the company or by him in the name of the company;

(*h*) to appoint an agent to do any business which the liquidator is unable to do himself;

(*i*) 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 in relation to any exercise or proposed exercise of any of those powers.

(4) The court may provide by any order that the liquidator may, where there is no committee of inspection, exercise any of the powers mentioned in paragraph (*a*) or paragraph (*b*) of subsection (1) without the sanction or intervention of the court.

Committees of Inspection.

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

232.—(1) When a winding-up order has been made by the court, the liquidator shall if the court by order so directs summon a meeting of the creditors of the company or 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 the appointment of a committee of inspection to act with the liquidator and who are to be the members of the committee if appointed.

(2) The court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matters aforesaid, the court shall decide the difference and make such order thereon as the court may think fit.

Constitution and proceedings of committee of inspection.

233.—(1) A committee of inspection appointed in pursuance of this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories or as, in case of difference, may be determined by the court.

(2) The committee shall meet at such times as they from time to time appoint, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) The committee may act by a majority of their members present at a meeting but shall not act unless a majority of the committee are present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt or compounds or arranges with his creditors or is absent from 5 consecutive meetings of the committee without the leave of those members who, together with himself, represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories, of which 7 days' notice has been given, stating the object of the meeting.

(7) Subject to subsection (8), on a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, reappoint the same or appoint another person, qualified under subsection (1) to be a member of the committee, to fill the vacancy.

(8) If the liquidator, having regard to the position in the winding up, is of opinion that it is unnecessary for a vacancy occurring in the committee to be filled, he may apply to the court and the court may make an order that the vacancy shall not be filled or shall not be filled except in such circumstances as may be specified in the order.

(9) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

General Powers of Court in case of Winding Up by the Court.

Power to annul order for winding up or to stay winding up.

234.—(1) The court may at any time after an order for winding up, on the application of the liquidator or any creditor or contributory and on proof to the satisfaction of the court that the order for winding up ought to be annulled, make an order annulling the order for winding up on such terms and conditions as the court thinks fit.

(2) The court may at any time after an order for winding up, on the application of the liquidator or any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

(3) On any application under this section the court may, before making an order, require the liquidator to furnish to the court a report relating to any facts or matters which are in his opinion relevant to the application.

(4) An office copy of every order made under this section shall forthwith be forwarded by the company, or by such person as the court may direct, to the registrar of companies for registration.

(5) If a company makes default in complying with subsection (4), the company and every officer of the company who is in default shall be liable to a fine not exceeding £25 and if any other person makes default in complying with subsection (4) such person shall be liable to a fine not exceeding £25.

Settlement of list of contributories and application of assets.

235.—(1) Subject to subsection (2), 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.

(2) 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.

(3) 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 of company to liquidator.

236.—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.

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

237.—(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.

(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 whose liability is unlimited or to his estate a 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.

238.—(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 on the list of 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 that some of the contributories may partly or wholly fail to pay the call.

Payment into bank of moneys due to company.

239.—(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 such bank as the court may appoint to the account of the liquidator instead of to the liquidator, and any such order may be enforced in like manner as if it had directed payment to the liquidator.

(2) All moneys and securities paid or delivered into any such bank as aforesaid 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 to be conclusive evidence.

240.—(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 relevant matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings.

Power to exclude creditors not proving in time.

241.—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.

Adjustment of rights of contributories.

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

Inspection of books by creditors and contributories.

243.—(1) 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.

(2) Nothing in this section shall be taken as excluding or restricting any statutory rights of a Minister of the Government or a person acting under the authority of a Minister of the Government.

Power to order costs of winding up to be paid out of assets.

244.—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, charges and expenses incurred in the winding up in such order of priority as the court thinks just.

Power of court to summon persons for examination.

245.—(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 relating to 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 the lien.

(4) A person who is examined under this section shall not be entitled to refuse to answer any question put to him on the ground that his answer might incriminate him but none of the answers of such person shall be admissible in evidence against him in any other proceedings, civil or criminal, except in the case of any criminal proceedings for perjury in respect of any such answer.

(5) 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 an excuse (made known to the court at the time of its sitting and allowed by it), the court may cause him to be arrested and brought before the court for examination.

Attendance of officers of company at meetings.

246.—In the case of a winding up by the court, the court shall have power to require the attendance of any officer of the company at any meeting of creditors or of contributories or of a committee of inspection for the purpose of giving information as to the trade, dealings, affairs or property of the company.

Power to arrest absconding contributory.

247.—The court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit the State or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls or of avoiding examination about 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 detained until such time as the court may order.

Powers of court cumulative.

248.—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.

249.—(1) When the affairs of a company have been completely wound up, the court, if the liquidator makes an application in that behalf, shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) An office copy of the order shall within 21 days from the date thereof be forwarded by the liquidator to the registrar of companies for registration.

(3) If the liquidator makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding £50.

Enforcement of Orders made in Winding Up by Courts outside the State.

Enforcement of orders made in winding up by

250.—(1) Any order made by a court of any country recognised for the purposes of this section and made for or in the course of winding up a company may be enforced by the High Court in the same manner in all respects as if the order had been made by the High Court.

courts outside the State.

(2) When an application is made to the High Court under this section, an office copy of any order sought to be enforced shall be sufficient evidence of the order.

(3) In this section, "***company***" means a body corporate incorporated outside the State, and "***recognised***" means recognised by order made by the Minister.

(iii) Voluntary Winding Up.

Resolutions for and Commencement of Voluntary Winding Up.

Circumstances in which company may be wound up voluntarily.

251.—(1) A company may be wound up voluntarily—

(*a*) when the period, if any, fixed for the duration of the company by the articles expires, or the event, if any, occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution that the company be wound up voluntarily;

(*b*) if the company resolves by special resolution that the company be wound up voluntarily;

(*c*) if the company in general meeting resolves that it cannot by reason of its liabilities continue its business, and that it be wound up voluntarily.

(2) In this Act, "***a resolution for voluntary winding up***" means a resolution passed under any paragraph of subsection (1).

Publication of resolution to wind up voluntarily.

252.—(1) When a company has passed a resolution for voluntary winding up, it shall, within 14 days after the passing of the resolution, give notice of the resolution by advertisement in *Iris Oifigiúil*.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding £25 and for the purposes of this subsection, the liquidator of the company shall be deemed to be an officer of the company.

Commencement of voluntary winding up.

253.—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 business and status of company.

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

Avoidance of transfers of shares after commencement of voluntary winding up.

255.—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.

256.—(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, make a statutory declaration to the effect that they have made a full inquiry into the affairs of the company, and that having done so, they have formed the opinion that the company will be able to pay its debts in full within such period not exceeding 12 months from the commencement of the winding up as may be specified in the declaration.

(2) A declaration made as aforesaid shall have no effect for the purposes of this Act unless—

(*a*) it is made within the 28 days immediately preceding the date of the passing of the resolution for winding up the company and is delivered to the registrar of companies for registration before that date; and

(*b*) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.

(3) If within 28 days after the resolution for voluntary winding up has been advertised under subsection (1) of section 252, a creditor applies to the court for an order under this subsection, and the court is satisfied that such creditor together with any creditors supporting him in his application represents one-fifth at least in number or value of the creditors of the company, and the court is of opinion that it is unlikely that the company will be able to pay its debts within the period specified in the declaration, the court may order that all the provisions of this Act relating to a creditors' voluntary winding up shall apply to the winding up.

(4) If the court orders that all the provisions of this Act in relation to a creditors' voluntary winding up shall apply to the winding up, the company shall within 21 days after the making of the order, deliver an office copy of such order to the registrar of companies.

(5) If default is made in complying with subsection (4), the company and every officer of the company who is in default shall be liable to a fine not exceeding £25.

(6) Any director of a company making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration, shall be liable to imprisonment for a period not exceeding 6 months or to a fine not exceeding £100 or to both; and if the company is wound up in pursuance of a resolution passed within the period of 28 days after the making of the declaration, but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion.

(7) 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 voluntary winding up in the case of which a declaration has not been made and delivered as aforesaid or in the case of which an order is made under subsection (3) is in this Act referred to as "***a creditors' voluntary winding up***".

(8) This section shall not apply to a winding up commenced before the operative date.

Provisions applicable to a Members' Voluntary Winding Up.

Provisions applicable to a members' voluntary winding up.

257.—Sections 258 to 264 shall, subject to the last-mentioned section, apply to a members' voluntary winding up.

Power of company to appoint and fix remuneration of liquidators.

258.—(1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.

(2) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting or the liquidator sanctions the continuance thereof.

Power to fill vacancy in office of liquidator.

259.—(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 fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there are 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.

260.—(1) Where a company is proposed to be, or is in course of being, wound up 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 the voting rights conferred by any shares in the company were not cast in favour of the special resolution and the holder of those shares expresses his dissent from the special resolution in writing addressed to the liquidator and left at the registered office of the company within 7 days after the passing of the special resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase that part of his interest which those shares represent 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, unless otherwise provided for, shall be deemed to be and shall be paid as part of the costs, charges and expenses of the winding up.

(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 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 Companies Clauses Consolidation Act, 1845, relating to the settlement of disputes by arbitration, shall be incorporated with this Act, and in the construction of those provisions this Act shall be deemed to be the special Act, and "***the company***" shall mean the transferor company, and any appointment by the said incorporated provisions directed to be made under the hand of the secretary or any two of the directors 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.

Duty of liquidator to call creditors' meeting if he is of opinion that company unable to pay its debts.

261.—(1) If, in the case of a winding up commenced after the operative date, the liquidator is at any time of opinion that the company will not be able to pay its debts in full within the period stated in the declaration under section 256 he shall forthwith summon a meeting of the creditors, and shall lay before the meeting a statement of the assets and liabilities of the company.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding £50.

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

262.—(1) Subject to section 264, 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 at the first convenient date within 3 months from the end of the year 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 and shall within 7 days after such meeting send a copy of that account to the registrar.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding £50.

Final meeting and dissolution.

263.—(1) Subject to section 264, as soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account and giving any explanation thereof.

(2) The meeting shall be called by advertisement in 2 daily newspapers circulating in the district where the registered office of the company is situate, specifying the time, place and object thereof, and published 28 days at least before the meeting.

(3) Within one week after the meeting, the liquidator shall send to the registrar of companies 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 shall be liable to a fine not exceeding £100, so, however, 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) Subject to subsection (5), the registrar on receiving the account and either of the returns hereinbefore mentioned shall forthwith register them, and on the expiration of 3 months from the registration of the return the company shall be deemed to be dissolved.

(5) 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.

(6) It shall be the duty of the person on whose application an order of the court under this section is made, within 14 days after the making of the order, to deliver to the registrar an office copy of the order for registration, and if that person fails so to do he shall be liable to a fine not exceeding £5.

(7) If the liquidator fails to call a general meeting of the company as required by this section, he shall be liable to a fine not exceeding £50.

Alternative provisions as to annual and final meetings if liquidator is of opinion that company unable to pay its debts.

264.—(1) Subject to subsection (2), where section 261 has effect, sections 272 and 273 shall apply to the winding up to the exclusion of sections 262 and 263, as if the winding up were a creditors' voluntary winding up and not a members' voluntary winding up.

(2) The liquidator shall not be required to summon a meeting of creditors under section 272 at the end of the first year from the commencement of the winding up, unless the meeting held under section 261 is held more than 3 months before the end of that year.

Provisions applicable to a Creditors' Voluntary Winding Up.

Provisions applicable

265.— Sections 266 to 273 shall apply in relation to a creditors' voluntary winding up.

to a creditors' voluntary winding up.

Meeting of creditors.

266.—(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 said meeting of creditors to be sent by post to the creditors at least 10 days before the date of the said meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised once at least in 2 daily newspapers circulating in the district where the registered office or principal place of business of the company is situate.

(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 the 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, shall be liable to a fine not exceeding £100, and in case of default by the company, every officer of the company who is in default shall be liable to the like penalty.

Appointment of liquidator.

267.—(1) Subject to subsection (2), the creditors and the company at their respective meetings mentioned in section 266 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.

(2) Where different persons are nominated as liquidator, any director, member or creditor of the company may, within 14 days after the date on which the nomination was made by the creditors; apply to the court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors.

Appointment of committee of inspection.

268.—(1) Subject to subsection (2), the creditors at the meeting to be held in pursuance of section 266 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 committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint three persons to act as members of the committee, provided that the number of members of the committee shall not at any time exceed eight.

(2) 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 subsection the court may, if it thinks fit,

appoint other persons to act as such members in place of the persons mentioned in the resolution.

(3) Subject to subsections (1) and (2), and to rules of court, section 233 (except subsection (1)) shall apply to a committee of inspection appointed under this section as it applies to a committee of inspection appointed in a winding up by the court.

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

269.—(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) Within 28 days after the remuneration to be paid to the, liquidator or liquidators has been fixed by the committee of inspection or by the creditors, any creditor or contributory who alleges that such remuneration is excessive may apply to the court to fix the remuneration to be paid to the liquidator or liquidators.

(3) 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.

270.—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 260 to a creditors' voluntary winding up.

271.—Section 260 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.

272.—(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 the creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within 3 months from the end of the year, 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 and shall within 7 days after the later of such meetings send a copy of that account to the registrar.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding £50.

Final meeting and dissolution.

273.—(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.

(2) Each such meeting shall be called by advertisement in 2 daily newspapers circulating in the district where the registered office of the company is situate, specifying the time, place and object thereof, and published 28 days 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 of companies 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 shall be liable to a fine not exceeding £50, so, however, 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) Subject to subsection (5), 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 3 months from the registration thereof the company shall be deemed to be dissolved.

(5) 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.

(6) It shall be the duty of the person on whose application, an order of the court under this section is made, within 14 days after the making of the order, to deliver to the registrar an office copy of the order for registration, and if that person fails so to do, he shall be liable to a fine not exceeding £50.

(7) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this section, he shall be liable to a fine not exceeding £50.

Provisions applicable to every Voluntary Winding Up.

Provisions applicable to every voluntary winding up.

274.—Sections 275 to 282 shall apply to every voluntary winding up whether a members' or a creditors' winding up.

Distribution of property of company.

275.—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.

276.—(1) The liquidator may—

(*a*) in the case of a members' voluntary winding up, with the sanction of a special resolution of the company, and, in the case of a creditors' voluntary winding up, with the sanction of the court or the committee of inspection or (if there is no such committee) a meeting of the creditors, exercise any of the powers given by paragraphs (*d*), (*e*) and (*f*) of subsection (1) of section 231 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 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.

Power of court to appoint and remove liquidator in a voluntary winding up.

277.—(1) If from any cause whatever there is no liquidator acting, the court may appoint a liquidator.

(2) The court may, on cause shown, remove a liquidator and appoint another liquidator.

Notice by liquidator of

278.—(1) The liquidator shall, within 14 days after his appointment, deliver to the registrar of companies for registration a notice of his

his appointment.

appointment.

(2) If the liquidator fails to comply with the requirements of this section, he shall be liable to a fine not exceeding £50.

Provisions as to arrangement binding creditors.

279.—(1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by a special resolution and on the creditors if acceded to by three-fourths in number and value of the creditors.

(2) Any creditor or contributory may, within 3 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.

280.—(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 in relation to the enforcing of calls or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.

(2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit or may make such other order on the application as it thinks just.

(3) An office copy of an order made by virtue of this section annulling the resolution to wind up or staying the proceedings in the winding up shall forthwith be forwarded by the company to the registrar of companies for registration.

(4) If a company fails to comply with subsection (3), the company and every officer of the company who is in default shall be liable to a fine not exceeding £25.

Costs of voluntary winding up.

281.—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.

282.—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.

(iv) Provisions Applicable to every mode of Winding Up.

Proof and Ranking of Claims.

283.—(1) Subject to subsection (2), 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 which may be subject to any contingency or which sound only in damages, or for some other reason do not bear a certain value.

Debts which may be proved.

(2) Where a company is being wound up, dividends declared by the company more than 6 years preceding the commencement of the winding up which have not been claimed within the said 6 years shall not be a claim admissible to proof against the company for the purposes of the winding up, unless the articles of the company or the conditions of issue provide otherwise.

Application of bankruptcy rules in winding up of

284.—(1) In the winding up of an insolvent company the same rules shall prevail and be observed relating 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 relating to the estates of persons adjudged bankrupt, and all persons who in any such case would

insolvent companies.

be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up and make such claims against the company as they respectively are entitled to by virtue of this section.

(2) Section 331 of the Irish Bankrupt and Insolvent Act, 1857, shall apply in the winding up of an insolvent company and accordingly the reference in that section to the filing of the petition shall be read as a reference to the presentation of a petition for the winding up of the company by the court or the passing of a resolution for voluntary winding up, as the case may be, and where, before the presentation of a petition for the winding up of the company by the court, a resolution has been passed by the company for voluntary winding up, shall be read as a reference to the passing of the resolution.

(3) Subsection (2) shall not apply to a judgment mortgage created before the operative date.

Preferential payments in a winding up.

285.—(1) In this section "***the relevant date***" means—

(i) where the company is ordered to be wound up compulsorily, the date of the appointment (or first appointment) of a provisional liquidator or, if no such appointment was made, the date of the winding-up order, unless in either case the company had commenced to be wound up voluntarily before that date; and

(ii) where subparagraph (i) does not apply, the date of the passing of the resolution for the winding up of the company.

(2) In a winding up there shall be paid in priority to all other debts—

(*a*) the following rates and taxes,—

(i) all local rates due from the company at the relevant date and having become due and payable within 12 months next before that date;

(ii) all assessed taxes, including income tax and corporation profits tax, assessed on the company up to the 5th day of April next before the relevant date and not exceeding in the whole one year's assessment;

(iii) any amount due at the relevant date in respect of sums which an employer is liable under the Finance (No. 2) Act, 1959 , and any regulations thereunder to deduct from emoluments to which Part II of that Act applies paid by him during the period of 12 months next before the relevant date reduced by any amount which he was under that Act and any regulation thereunder liable to repay during the said period, with the addition of interest payable under section 8 of that 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 the 4 months next before the relevant date;

(*c*) all wages (whether payable for time or for piece work) of any workman or labourer in respect of services rendered to the company during the 4 months next before the relevant date;

(*d*) all accrued holiday remuneration becoming payable to any clerk, servant, workman or labourer (or in the case of his death to any other person in his right) on the termination of his employment before or by the effect of the winding-up order or resolution;

(*e*) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts due in respect of contributions payable during the 12 months next before the relevant date by the company as the employer of any persons under the Insurance (Intermittent Unemployment) Act, 1942 , or the Social Welfare Acts, 1952 to 1961;

(*f*) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another

company, all amounts (including costs) due in respect of compensation or liability for compensation under the Workmen's Compensation Acts, 1934 to 1955 (being amounts which have accrued before the relevant date), to the extent that the company is not effectively indemnified by insurers against liability for such compensation;

(*g*) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts due from the company in respect of damages and costs or liability for damages and costs, payable to a person employed by it in connection with an accident occurring before the relevant date and in the course of his employment with the company, to the extent that the company is not effectively indemnified by insurers against such damages and costs.

(3) Subject to subsection (4), and notwithstanding anything in paragraphs (*b*) and (*c*) of subsection (2) the sum to which priority is to be given under those paragraphs respectively shall not, in the case of any one claimant, exceed £300.

(4) Where a claimant under paragraph (*c*) of subsection (2) is a farm labourer who has entered into a contract for 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 such part thereof as the court may decide to be due under the contract, proportionate to the time of service up to the relevant date.

(5) Where any compensation under the Workmen's Compensation Acts, 1934 to 1955 is a weekly payment, the amount due in respect thereof shall, for the purposes of paragraph (*f*) of subsection (2) be taken to be the amount of the lump sum for which the weekly payment could be redeemed if the employer made an application for that purpose under the said Acts.

(6) Where any payment has been made—

(*a*) to any clerk, servant, workman or labourer in the employment of a company, on account of wages or salary; or

(*b*) to any such clerk, servant, workman or labourer or, in the case of his death, to any other person in his right, on account of accrued holiday remuneration;

out of money advanced by some person for that purpose, the person by whom the money was advanced shall, in a winding up, have a right of priority in respect of the money so advanced and paid up to the amount by which the sum, in respect of which the clerk, servant, workman or labourer or other person in his right, would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

(7) 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 they 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.

(8) 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, and in the case of debts to which priority is given by paragraph (*e*) of subsection (2), formal proof thereof shall not be required except in so far as is otherwise provided by rules of court.

(9) Subject to subsection (10), in the event of a landlord or other person distraining or having distrained on any goods or effects of the company within 3 months next before the relevant date, 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.

(10) In respect of any money paid under any such charge as is referred to in subsection (9), the landlord or other person shall have the

same rights of priority as the person to whom the payment is made.

(11) Any remuneration in respect of a period of holiday, absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period.

(12) This section shall not apply in the case of a winding up where the relevant date occurred before the operative date, and in such a case, the provisions relating to preferential payments which would have applied if this Act had not been passed shall be deemed to remain in full force.

Effect of Winding Up on antecedent and other Transactions.

Fraudulent preference.

286.—(1) Subject to subsection (2), any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company within 6 months before the commencement of its winding up which, had it been made or done by or against an individual within 6 months before the presentation of a bankruptcy petition on which he is adjudged a bankrupt, would be deemed in his bankruptcy a fraudulent preference, shall in the event of the company being wound up be deemed a fraudulent preference of its creditors and be invalid accordingly.

(2) In relation to things made or done before the operative date, subsection (1) shall have effect with the substitution, for references to 6 months, of references to 3 months.

(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.

Liabilities and rights of certain persons who have been fraudulently -preferred.

287.—(1) Where—

(*a*) a company is being wound up; and

(*b*) anything made or done on or after the operative date is void under section 286 as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt;

then (without prejudice to any rights or liabilities arising apart from this section) the person preferred shall be subject to the same liabilities and shall have the same rights as if he had undertaken to be personally liable as surety for the debt to the extent of the charge on the property or the value of his interest, whichever is the less.

(2) The value of the said person's interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all encumbrances other than those to which the charge for the company's debt was then subject.

(3) On any application made to the court in relation to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the court shall have jurisdiction to determine any questions relating to the payment arising between the person to whom the payment was made and the surety or guarantor, and to grant relief in respect thereof notwithstanding that it is not necessary so to do for the purposes of the winding up, and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of an action for the recovery of the sum paid.

(4) Subsection (3) shall apply, with the necessary modifications, in relation to transactions other than the payment of money as it applies to payments.

Circumstances in which floating charge is invalid.

288.—(1) Subject to subsection (2), where a company is being wound up, a floating charge on the undertaking or property of the company created within 12 months before 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 5 per cent. per annum.

(2) In relation to a charge created more than 3 months before the operative date, subsection (1) shall have effect with the substitution for "12 months" of "3 months".

Other circumstances in which floating charge is invalid.

289.—(1) Subject to subsection (2), where—

(*a*) a company is being wound up; and

(*b*) the company was within 12 months before the commencement of the winding up indebted to any officer of the company; and

(*c*) such indebtedness was discharged whether wholly or partly by the company or by any other person; and

(*d*) the company created a floating charge on any of its assets or property within 12 months before the commencement of the winding up in favour of the officer to whom such company was indebted;

then (without prejudice to any rights or liabilities arising apart from this section) such charge shall be invalid to the extent of the repayment referred to in paragraph (*c*) unless it is proved that the company immediately after the creation of the charge was solvent.

(2) Subsection (1) shall not apply if the charge referred to in paragraph (*d*) was created before the operative date.

(3) In this section, "***officer***" includes the spouse, child or nominee of an officer.

Disclaimer of onerous property in case of company being wound up.

290.—(1) Subject to subsections (2) and (5), 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 which 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 12 months after the commencement of the winding up or such extended period as may be allowed by the court, disclaim the property.

(2) Where any such property as aforesaid 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 12 months after he has become aware thereof or such extended period as may be allowed by the court.

(3) 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.

(4) 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.

(5) 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 28 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.

(6) 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 shall be deemed to be a debt proved and admitted in the winding up.

(7) Subject to subsection (8), 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 may think 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.

(8) Where the property disclaimed is of a leasehold nature, the court shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee by demise, except upon the terms of making that person—

(*a*) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or

(*b*) if the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date;

and in either event (if the case so requires), as if the lease had comprised only the property comprised in the vesting order, 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, encumbrances and interests created therein by the company.

(9) Any person damaged by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the damages, 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.

291.—(1) Subject to subsections (2) to (4), 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.

(2) 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 subsection (1), be substituted for the date of the commencement of the winding up.

(3) A person who purchases in good faith under a sale by the sheriff any goods of a company on which an execution has been levied shall in all cases acquire a good title to them against the liquidator.

(4) The rights conferred by subsection (1) on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit.

(5) For the purposes of this section, an execution against goods shall be taken to be completed by seizure and sale, and an attachment of

a debt shall be deemed to be completed by receipt of the debt, and an execution against land shall be deemed to be completed by seizure and, in the case of an equitable interest, by the appointment of a receiver.

(6) Nothing in this section shall give any validity to any payment constituting a fraudulent preference.

(7) In this section, "***goods***" includes all chattels personal and "***sheriff***" includes any officer charged with the execution of a writ or other process.

Duties of sheriff as to goods taken in execution.

292.—(1) Subject to subsection (3), where any goods of a company are taken in execution, and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the sheriff that a provisional liquidator has been appointed or that a winding-up order has been made or that a resolution for voluntary winding up has been passed, the sheriff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or the money so delivered, and the liquidator may sell the goods or a sufficient part thereof for the purpose of satisfying that charge.

(2) Subject to subsection (3), where under an execution in respect of a judgment for a sum exceeding £20 the goods of a company are sold or money is paid in order to avoid sale, the sheriff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for 14 days, and if within that time notice is served on him of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up of the company and an order is made or a resolution is passed, as the case may be, for the winding up of the company, the sheriff shall pay the balance to the liquidator who shall be entitled to retain it as against the execution creditor.

(3) The rights conferred by this section on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit.

(4) In this section, "***goods***" includes all chattels personal and "***sheriff***" includes any officer charged with the execution of a writ or other process.

Offences antecedent to or in the course of Winding Up.

Offences by officers of companies in liquidation.

293.—(1) Subject to subsection (2), if any person, being a past or present officer of a company which at the time of the commission of the alleged offence is being wound up, whether by 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 disclose to the liquidator when he requests such disclosure 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 12 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 £10 or upwards, or conceals any debt due to or from the company; or

(*e*) within 12 months next before the commencement of the winding up or at any time thereafter fraudulently removes any part of

the property of the company to the value of £10 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 12 months next before the commencement of the winding up or at any time thereafter conceals, destroys, mutilates or falsifies or is privy to the concealment, destruction, mutilation or falsification of any book or paper affecting or relating to the property or affairs of the company; or

(*j*) within 12 months next before the commencement of the winding up or at any time thereafter makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company; or

(*k*) within 12 months next before the commencement of the winding up or at any time thereafter fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company; or

(*l*) after the commencement of the winding up or at any meeting of the creditors of the company within 12 months next before the commencement of the winding up attempts to account for any part of the property of the company by fictitious losses or expenses; or

(*m*) has within 12 months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for; or

(*n*) within 12 months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit for or on behalf of the company, any property which the company does not subsequently pay for; or

(*o*) within 12 months next before the commencement of the winding up or at any time thereafter pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing is in the ordinary way of business of the company; or

(*p*) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up;

he shall, in the case of an offence mentioned in paragraph (*m*), (*n*) or (*o*), be liable, on conviction on indictment, to penal servitude for a term not exceeding 5 years or to imprisonment for a term not exceeding 2 years or to a fine not exceeding £1,000 or to both such penal servitude or imprisonment and such fine and, in the case of an offence mentioned in any other paragraph, be liable, on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine not exceeding £500 or to both, or, in the case of any offence under this subsection, be liable, on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding £100 or to both.

(2) It shall be a good defence to a charge under any of paragraphs (*a*), (*b*), (*c*), (*d*), (*f*), (*n*) and (*o*) of subsection (1), if the accused proves that he had no intent to defraud and to a charge under any of paragraphs (*h*), (*i*) and (*j*) of subsection (1), if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(3) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under paragraph (*o*) of

subsection (1), every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid shall also be guilty of an offence and shall be liable to be punished in the same way as if he had been guilty of an offence under the said paragraph (*o*).

(4) For the purposes of this section, "***officer***" shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

Alteration or falsification of books.

294.—If any officer or contributory of any company being wound up, destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of a false or fraudulent entry in any register, book of account or document belonging to the company with intent to defraud or to deceive any person, he shall be liable, on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine not exceeding £500 or to both or, on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding £100 or to both.

Frauds by officers of companies which have gone into liquidation.

295.—If any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up—

(*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 2 months before the date of any unsatisfied judgment or order for payment of money obtained against the company;

he shall be liable, on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine not exceeding £500 or to both or, on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding £100 or to both.

Liability where proper books of account not kept.

296.—(1) If it is shown that proper books of account were not kept by a company throughout the period of 2 years immediately preceding the commencement of its winding up, or the period between the incorporation of the company and the commencement of the winding up, whichever is the shorter, every officer of the company who is in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on the default was excusable, be liable, on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine not exceeding £500 or to both or, on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding £100 or to both.

(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 persons concerned for fraudulent trading of company.

297.—(1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the court on the application of the liquidator or any creditor or contributory of the company, may, if it thinks proper so to do, declare that any persons 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.

On the hearing of an application under this subsection the liquidator may himself give evidence or call witnesses.

(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 person 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 person liable or any company or person acting on his behalf, 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 person liable, 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 person who was knowingly a party to the carrying on of the business in manner aforesaid, shall be liable, on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine not exceeding £500 or to both or, on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding £100 or to both.

(4) 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.

Power of court to assess damages against directors.

298.—(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 or liquidator, or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of the liquidator or of any creditor or contributory, examine the conduct of the promoter, director, 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 sums to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the court thinks just.

(2) This section shall have effect notwithstanding that the offence is one for which the offender may be criminally liable.

Prosecution of criminal offences committed by officers and members of company.

299.—(1) If it appears to the court in the course of a winding up by the court that any past or present 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 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 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, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as the Attorney General may require.

(3) If it appears to the court in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty as aforesaid, and that no report relating 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, this section shall have effect as though the report had been made in pursuance of subsection (2).

(4) 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 institutes proceedings accordingly, 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 proceedings) to give 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.

(5) If any person fails or neglects to give assistance in the manner required by subsection (4), 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 in relation to a liquidator the court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands 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.

Supplementary Provisions as to Winding Up.

Disqualification for appointment as liquidator.

300.—A body corporate shall not be qualified for appointment as liquidator of a company whether in a winding up by the court or in a voluntary winding up and—

(*a*) any appointment made in contravention of this provision shall be void; and

(*b*) any body corporate which acts as liquidator of a company shall be liable to a fine not exceeding £100.

Corrupt inducement affecting appointment as liquidator.

301.—Any person who gives or agrees or offers to give to any member or creditor of a company any valuable consideration with a view to securing his own appointment or nomination or to securing or preventing the appointment or nomination of some person other than himself as the company's liquidator shall be liable to a fine not exceeding £100.

Enforcement of duty of liquidator to make returns.

302.—(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 14 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 of companies, make an order directing the liquidator to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the liquidator.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a liquidator in respect of any such default as aforesaid.

Notification that a company is in liquidation.

303.—(1) Where a company is being wound up, whether by 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 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 any of the following persons who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver, shall be liable to a fine not exceeding £50.

Books of company to

304.—When a company is being wound up, all books and papers of the company and of the liquidators shall, as between the

be evidence.

contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be recorded therein.

Disposal of books and papers of company in winding up.

305.—(1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidator may be disposed of as follows—

(*a*) in the case of a winding up by 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 special 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, so, however, that such books and papers shall be retained by the liquidator for a period of 3 years from the date of the dissolution of the company and, in the absence of any direction as to their disposal, he may then dispose of them as he thinks fit.

(2) If a liquidator fails to comply with the requirements of this section he shall be liable to a fine not exceeding £100.

Information about progress of liquidation.

306.—(1) If, where a company is being wound up, the winding up is not concluded within 2 years after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the registrar of companies a statement in the prescribed form and containing the prescribed particulars about the proceedings in and position of the liquidation.

(2) If a liquidator fails to comply with this section, he shall be liable to a fine not exceeding £100.

(3) An offence under this section may be prosecuted by the registrar of companies.

Unclaimed dividends and balances to be paid into Companies Liquidation Account.

307.—(1) Where a company has been wound up voluntarily and is about to be dissolved, the liquidator shall lodge to an account to be known as The Companies Liquidation Account in the Bank of Ireland in such manner as may be prescribed by rules of court the whole unclaimed dividends admissible to proof and unapplied or undistributable balances.

(2) The Companies Liquidation Account shall be under the control of the court.

(3) Any application by a person claiming to be entitled to any dividend or payment out of a lodgment made in pursuance of subsection (1), and any payment out of such lodgment in satisfaction of such claim, shall be made in manner prescribed by rules of court.

(4) At the expiration of 7 years from the date of any lodgment made in pursuance of subsection (1), the amount of the lodgment remaining unclaimed shall be paid into the Exchequer, but where the court is satisfied that any person claiming is entitled to any dividend or payment out of the moneys paid into the Exchequer, it may order payment of the same and the Minister for Finance shall issue such sum as may be necessary to provide for that payment.

Resolutions passed at adjourned meetings of creditors and contributories.

308.—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.

Meetings to ascertain wishes of creditors and contributories.

309.—(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 report the result thereof to the court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or the articles.

Provisions as to Dissolution.

Power of court to declare dissolution of company void.

310.—(1) Where a company has been dissolved, the court may at any time within 2 years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within 14 days after the making of the order, or such further time as the court may allow, to deliver to the registrar of companies for registration an office copy of the order, and if that person fails to do so, he shall be liable to a fine not exceeding £5.

Power of registrar to strike defunct company off register.

311.—(1) Where the registrar of companies has reasonable cause to believe that a company is not carrying on business, he may send to the company by post a letter inquiring whether the company is carrying on business.

(2) If the registrar does not within one month of sending the letter receive any answer thereto, he shall within 14 days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in *Iris Oifigiúil* with a view to striking the name of the company off the register.

(3) If the registrar either receives an answer to the effect that the company is not carrying on business, or does not within one month after sending the second letter receive any answer, he may publish in *Iris Oifigiúil* and send to the company by post a notice that at the expiration of 3 months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register, and the company will be dissolved.

(4) If in any case where a company is being wound up the registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of 6 consecutive months, the registrar shall publish in *Iris Oifigiúil* and send to the company or the liquidator, if any, a like notice as is provided in subsection (3).

(5) Subject to subsections (6) and (7), 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 *Iris Oifigiúil* and on the publication in *Iris Oifigiúil* of this notice, the company shall be dissolved.

(6) The liability, if any, of every director, officer and member of the company shall continue and may be enforced as if the company had not been dissolved.

(7) Nothing in subsection (5) or (6) shall affect the power of the court to wind up a company the name of which has been struck off the register.

(8) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the court, on an application made (on notice to the registrar) by the company or member or creditor before the expiration of 20 years from the publication in *Iris Oifigiúil* of the notice aforesaid, may, if satisfied that the company was at the time of the striking off carrying on business or otherwise that it is just that the company be restored to the register, order that the name of the company 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 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.

(9) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or, if no office has been registered, to the care of some officer of the company, or, if there is no officer of the company whose name and address are known to the registrar of companies, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

Rules of Court.

Rules of Court for winding up.

312.— Section 68 of the Courts of Justice Act, 1936 (which confers power on a rule-making authority to make rules regulating the practice and procedure of the court in certain cases) shall extend to the making of rules in respect of the winding up of companies whether by the court or voluntarily.

Disposal of documents filed with Registrar.

Disposal of documents filed with registrar.

313.—The registrar of companies shall, after the expiration of 20 years from the dissolution of a company, send all the documents filed in connection with such company to the Public Record Office.

PART VII.

Receivers.

Disqualification of body corporate for appointment as receiver.

314.—A body corporate shall not be qualified for appointment as receiver of the property of a company, and any body corporate which acts as such a receiver shall be liable to a fine not exceeding £100.

Disqualification of undischarged bankrupt from acting as receiver.

315.—(1) If any person being an undischarged bankrupt acts as receiver of the property of a company on behalf of debenture holders, he shall, subject to subsection (2), be liable on conviction on indictment to imprisonment for a term not exceeding 2 years, or on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding £100 or to both.

(2) Subsection (1) shall not apply to a receiver where the appointment under which he acts and the bankruptcy were both before the operative date.

Power of receiver to apply to the court for directions and his liability on contracts.

316.—(1) A receiver of the property of a company appointed under the powers contained in any instrument may apply to the court for directions in relation to any particular matter arising in connection with the performance of his functions, and on any such application, the court may give such directions, or make such order declaring the rights of persons before the court or otherwise, as the court thinks just.

(2) A receiver of the property of a company shall be personally liable on any contract entered into by him in the performance of his functions (whether such contract is entered into by him in the name of such company or in his own name as receiver or otherwise) unless the contract provides that he is not to be personally liable on such contract, and he shall be entitled in respect of that liability to indemnity out of the assets; but nothing in this subsection shall be taken as limiting any right to indemnity which he would have apart from this subsection, or as limiting his liability on contracts entered into without authority or as conferring any right to indemnity in respect of that liability.

(3) Where a receiver of the property of a company has been appointed or purported to be appointed and it is subsequently discovered that the charge or purported charge in respect of which he was so appointed or purported to be appointed was not effective as a charge on such property or on some part of such property, the court may, if it thinks fit, on the application of such receiver, order that he be relieved wholly or to such extent as the court shall think fit from personal liability in respect of anything done or omitted by him in relation to any property

purporting to be comprised in the charge by virtue of which he was appointed or purported to be appointed which if such property had been effectively included in such charge or purported charge would have been properly done or omitted by him and he shall be relieved from personal liability accordingly, but in that event the person by whom such receiver was appointed or purported to be appointed shall be personally liable for everything for which, but for such order, such receiver would have been liable.

(4) This section shall apply whether the receiver was appointed before, on, or after the operative date, but subsection (2) shall not apply to contracts entered into before the operative date.

Notification that receiver appointed.

317.—(1) Where a receiver 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 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 has been appointed.

(2) If default is made in complying with the requirements of this section, the company and any of the following persons who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver, shall be liable to a fine of £20.

Power of court to fix remuneration of receiver.

318.—(1) The Court may, on an application made to it by the liquidator of a company or by any creditor or member of the 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 of the property of the company notwithstanding that the remuneration of such receiver has been fixed by or under that instrument.

(2) Subject to subsection (3), the power of the court under subsection (1) shall, where no previous order has been made in relation thereto under that subsection—

(*a*) extend to fixing the remuneration for any period before the making of the order or the application therefor; and

(*b*) be exercisable notwithstanding that the receiver has died or ceased to act before the making of the order or the application therefor; and

(*c*) where the receiver has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that fixed by the court for that period, extend to requiring him or his personal representatives to account for the excess or such part thereof as may be specified in the order.

(3) The power conferred by paragraph (*c*) of subsection (2) shall not be exercised in relation to any period before the making of the application for the order unless in the opinion of the court there are special circumstances making it proper for the power to be so exercised.

(4) The court may from time to time on an application made by the liquidator or by any creditor or member of the company or by the receiver, vary or amend an order made under subsection (1).

(5) This section shall apply whether the receiver was appointed before, on, or after the operative date and to periods before, as well as to periods after, the operative date.

Information to be given when receiver is appointed.

319.—(1) Where a receiver of the whole or substantially the whole of the property of a company (hereinafter in this section and in section 320 referred to as "***the receiver***") is appointed on behalf of the holders of any debentures of the company secured by a floating charge, then subject to the provisions of this section and section 320—

(*a*) the receiver shall forthwith send notice to the company of his appointment; and

(*b*) there shall, within 14 days after receipt of the notice, or such longer period as may be allowed by the court or by the receiver, be made out and submitted to the receiver in accordance with section 320 a statement in the prescribed form as to the affairs of the company; and

(*c*) the receiver shall within 2 months after receipt of the said statement send to the registrar of companies, to the court, to the

company, to any trustees for the debenture holders on whose behalf he was appointed and, so far as he is aware of their addresses, to all such debenture holders, a copy of the statement and of any comments he sees fit to make thereon.

(2) The receiver shall within one month after the expiration of the period of 6 months from the date of his appointment and of every subsequent period of 6 months, and within one month after he ceases to act as receiver of the property of the company, send to the registrar of companies an abstract in the prescribed form showing the assets of the company of which he has taken possession since his appointment, their estimated value, the proceeds of sale of any such assets since his appointment, his receipts and payments during that period of 6 months or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and the aggregate amounts of his receipts and of his payments during all preceding periods since his appointment.

(3) Where a receiver is appointed under the powers contained in any instrument, this section shall have effect with the omission of the references to the court in subsection (1), and in any other case, references to the court shall be taken as referring to the court by which the receiver was appointed.

(4) Subsection (1) shall not apply in relation to the appointment of a receiver to act with an existing receiver or in place of a receiver dying or ceasing to act, except that, where that subsection applies to a receiver who dies or ceases to act before it has been fully complied with, the references in paragraphs (*b*) and (*c*) thereof to the receiver shall (subject to subsection (5)) include references to his successor and to any continuing receiver.

Nothing in this subsection shall be taken as limiting the meaning of "***the receiver***" where used in or in relation to subsection (2).

(5) This section and section 320, where the company is being wound up, shall apply notwithstanding that the receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.

(6) Nothing in subsection (2) shall be taken to prejudice the duty of the receiver to render proper accounts of his receipts and payments to the persons to whom, and at the times at which, he may be required to do so apart from that subsection.

(7) If the receiver makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding £100.

Contents of statement to be submitted to receiver.

320.—(1) The statement as to the affairs of a company required by section 319 to be submitted to the receiver (or his successor) shall show as at the date of the receiver's appointment particulars of the company's assets, debts and liabilities, the names and residences 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.

(2) The said statement shall be submitted by, and be verified by affidavit of, one or more of the persons who are, at the date of the receiver's appointment, the directors and by the person who is at that date the secretary of the company, or by such of the persons hereafter in this subsection mentioned as the receiver (or his successor), may require to submit and verify the statement, that is, persons—

(*a*) who are or have been officers of the company;

(*b*) who have taken part in the formation of the company at any time within one year before the date of the receiver's appointment;

(*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 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) Any person making the statement and affidavit shall be allowed, and shall be paid by the receiver (or his successor) out of his receipts, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the receiver (or his successor) may consider reasonable, subject to an appeal to the court.

(4) Where the receiver is appointed under the powers contained in any instrument, this section shall have effect with the substitution for references to an affidavit of references to a statutory declaration; and in any other case references to the court shall be taken to refer to the court by which the receiver was appointed.

(5) If any person without reasonable excuse makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding £100.

(6) References in this section to the receiver's successor shall include a continuing receiver.

Delivery to registrar of accounts of receivers.

321.—(1) Except where subsection (2) of section 319 applies, every receiver of the property of a company shall, within one month after the expiration of the period of 6 months from the date of his appointment and of every subsequent period of 6 months, and within one month after he ceases to act as receiver, deliver to the registrar of companies for registration an abstract in the prescribed form showing the assets of the company of which he has taken possession since his appointment, their estimated value, the proceeds of sale of any such assets since his appointment, his receipts and his payments during that period of 6 months or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and the aggregate amounts of his receipts and of his payments during all the preceding periods since his appointment.

(2) Every receiver who makes default in complying with this section shall be liable to a fine not exceeding £100.

Enforcement of duty of receiver to make returns.

322.—(1) If any receiver of the property of a company—

(*a*) having made default in filing, delivering or making any return, account or other document, or in giving any notice, which a receiver is by law required to file, deliver, make or give, fails to make good the default within 14 days after the service on him of a notice requiring him to do so; or

(*b*) having been appointed under the powers contained in any instrument, has, after being required at any time by the liquidator of the company to do so, failed to render proper accounts of his receipts and payments and to vouch the same 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 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 of companies, 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, and in either case the order may provide that all costs of and incidental to the application shall be borne by the receiver.

(3) Nothing in this section shall be taken to prejudice the operation of any enactments imposing penalties on receivers in respect of any such default as is mentioned in subsection (1).

Construction of references to receiver.

323.—It is hereby declared that, unless the contrary intention appears—

(*a*) any reference in this Act to a receiver of the property of a company includes a reference to a receiver and manager of the property of a company and to a manager of the property of a company and includes a reference to a receiver or to a receiver and manager or to a manager, of part only of that property, and to a receiver only of the income arising from that property or from part thereof; and

(*b*) any reference in this Act to the appointment of a receiver under powers contained in any instrument includes a reference to an appointment made under powers which, by virtue of any enactment, are implied in and have effect as if contained in an instrument.

PART VIII.

Application of Act to Companies Formed or Registered under former Acts.

Application of Act to companies formed and registered under former Companies Acts.

324.—(1) Subject to subsection (2), in the application of this Act to existing companies, it shall apply in the same manner—

(*a*) in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by shares;

(*b*) in the case of a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by guarantee; and

(*c*) in the case of a company other than a limited company, as if the company had been formed and registered under this Act as an unlimited company.

(2) Reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Joint Stock Companies Acts, the Companies Act, 1862, or the Companies (Consolidation) Act, 1908, as the case may be.

Application of Act to companies registered but not formed under former Companies Acts.

325.—(1) Subject to subsection (2), this Act shall apply to every company registered (in a register kept in the State) but not formed under the Joint Stock Companies Acts, the Companies Act, 1862, or the Companies (Consolidation) Act, 1908, in the same manner as it is in Part IX declared to apply to companies registered but not formed under this Act.

(2) Reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Joint Stock Companies Acts, the Companies Act, 1862, or the Companies (Consolidation) Act, 1908, as the case may be.

Application of Act to unlimited companies re-registered as limited companies under former Companies Acts.

326.—(1) Subject to subsection (2), this Act shall apply to every unlimited company registered (in a register kept in the State) as a limited company in pursuance of the Companies Act, 1879, or section 57 of the Companies (Consolidation) Act, 1908, in the same manner as it applies to an unlimited company registered in pursuance of this Act as a limited company.

(2) Reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered as a limited company under the said Act of 1879 or the said section 57, as the case may be.

Provisions as to companies registered under Joint Stock Companies Acts.

327.—(1) A company registered under the Joint Stock Companies Acts may cause its shares to be transferred in manner hitherto in use, or in such other manner as the company may direct.

(2) The power of altering articles under section 15 shall, in the case of an unlimited company formed and registered under the Joint Stock

Companies Acts, extend to altering any regulations relating to the amount of capital or to its distribution into shares, notwithstanding that those regulations are contained in the memorandum.

PART IX.

Companies not Formed under this Act Authorised to Register under this Act.

Companies capable of being registered.

328.—(1) With the exceptions and subject to the provisions contained in this section—

(*a*) any company consisting of seven or more members, which was in existence on the 2nd day of November, 1862, including any company registered under the Joint Stock Companies Acts; and

(*b*) any company formed after the date aforesaid, whether before or after the operative date, in pursuance of any statute other than this Act, or of letters patent, or being otherwise duly constituted according to law, and consisting of seven or more members;

may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee; and the registration shall not be invalid by reason that it has taken place with a view to the company's being wound up.

(2) This section shall not apply to a company registered under the Companies Act, 1862, or the Companies (Consolidation) Act, 1908, or to a company which has not its registered office or principal place of business in the State.

(3) A company having the liability of its members limited by statute or letters patent, and not being a joint stock company as hereinafter defined, shall not register in pursuance of this section.

(4) A company, having the liability of its members limited by statute or letters patent, shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee.

(5) A company that is not a joint stock company as hereinafter defined shall not register in pursuance of this section as a company limited by shares.

(6) A company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy at a general meeting summoned for the purpose.

(7) Where a company, not having the liability of its members limited by statute or letters patent, is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person or by proxy at the meeting.

(8) Where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring 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 ceased to be a member, and of the costs 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 a specified amount.

(9) In computing any majority under this section when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.

Definition of joint stock company.

329.—For the purposes of this Part, as far as relates to registration of companies as companies limited by shares, a joint stock company means a company having a permanent paid up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the

holders of those shares or that stock, and no other persons, and such a company when registered with limited liability under this Act shall be deemed to be a company limited by shares.

Requirements for registration of joint stock companies.

330.—Before the registration in pursuance of this Part of a joint stock company, there shall be delivered to the registrar the following documents—

(*a*) a list showing the names, addresses and occupations of all persons who, on a day named in the list, not being more than 6 clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number;

(*b*) a copy of any statute, charter, letters patent, deed of settlement, contract of co-partnery or other instrument constituting or regulating the company; and

(*c*) if the company is intended to be registered as a limited company, a statement specifying the following particulars—

(i) the nominal share capital of the company and the number of shares into which it is divided, or the amount of stock of which it consists;

(ii) the number of shares taken and the amount paid on each share;

(iii) the name of the company with the addition of the word "***limited***" or "***teoranta***" as the last word thereof; and

(iv) in the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee.

Requirements for registration of company not being a joint stock company.

331.—Before the registration in pursuance of this Part of any company not being a joint stock company, there shall be delivered to the registrar—

(*a*) a list showing the names, addresses and occupations of the directors of the company; and

(*b*) a copy of any statute, letters patent, deed of settlement, contract of co-partnery or other instrument constituting or regulating the company; and

(*c*) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

Verification of lists of members and directors of company for purposes of registration.

332.—The lists of members and directors and any other particulars relating to the company required to be delivered to the registrar shall be verified by a statutory declaration of any two or more directors or other principal officers of the company.

Registrar may require evidence as to nature of company.

333.—The registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint stock company as hereinbefore defined.

Change of name for purposes of registration.

334.—(1) Subject to subsection (2), where the name of a company seeking registration under this Part is one by which it may not be so registered by reason of the name being, in the opinion of the Minister, undesirable, it may, with the approval of the Minister signified in writing, change its name with effect from its registration as aforesaid.

(2) The like assent of the members of the company shall be required to the change of name as is by section 328 required to the registration under this Act.

Addition of "***limited***" or "***teoranta***" to name.

335.—(1) Subject to subsection (2), when a company registers in pursuance of this Part with limited liability, the word "***limited***" or "***teoranta***" shall form and be registered as part of its name.

(2) Subsection (1) shall not be taken as excluding the operation of section 24.

Certificate of registration of existing companies.

336.—On compliance with the requirements of this Part relating to registration, and on payment of such fees, if any, as are payable under the following provisions of this Act, the registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited and thereupon the company shall be so incorporated.

Vesting of property on registration.

337.—(1) All property, real and personal (including things in action) belonging to or vested in a company at the date of its registration in pursuance of this Part, shall on registration pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

(2) Section 12 of the Finance Act, 1895, shall not operate so as to require a company which registers under this Part to deliver to the Revenue Commissioners any document in connection with a vesting under subsection (1).

Saving for existing liabilities.

338.—Registration of a company in pursuance of this Part shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into by, to, with or on behalf of, the company before registration.

Continuation of existing actions.

339.—(1) Subject to subsection (2), all actions and other legal proceedings which at the time of the registration of a company in pursuance of this Part are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place.

(2) Execution shall not issue against the effects of any individual member of the company on any judgment, decree or order obtained in any such action or proceeding, but, in the event of the property and effects of the company being insufficient to satisfy the judgment, decree or order, an order may be obtained for winding up the company.

Effect of registration under this Part.

340.—(1) When a company is registered in pursuance of this Part, subsections (2) to (7) shall have effect.

(2) All provisions contained in any statute or instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles.

(3) All the provisions of this Act shall apply to the company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows—

(*a*) Table A or Tábla A shall not apply unless adopted by special resolution;

(*b*) the provisions of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered;

(*c*) subject to the provisions of this section, the company shall not have power to alter any provision contained in any statute relating to the company;

(*d*) subject to the provisions of this section, the company shall not have power without the sanction of the Minister, to alter any provision contained in any letters patent relating to the company;

(*e*) the company shall not have power to alter any provision contained in a charter or letters patent relating to the objects of the company;

(*f*) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid;

(*g*) in the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid, and, in the event of the death or bankruptcy of any contributory, the provisions of this Act relating to the personal representatives of deceased contributories and to the assignees of bankrupt contributories shall apply.

(4) The provisions of this Act relating to—

(*a*) the registration of an unlimited company as limited;

(*b*) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up;

(*c*) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up;

shall apply notwithstanding any provisions contained in any statute, charter or other instrument constituting or regulating the company.

(5) Nothing in this section shall authorise the company to alter any such provisions contained in any instrument constituting or regulating the company, as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act.

(6) None of the provisions of this Act (apart from those of subsection (4) of section 205) shall derogate from any power of altering its constitution or regulations which may, by virtue of any statute or other instrument constituting or regulating the company, be vested in the company.

(7) In this section, "***instrument***" includes deed of settlement, contract of co-partnery and letters patent.

Power to substitute memorandum and articles for deed of settlement.

341.—(1) Subject to subsections (2) to (4), a company registered in pursuance of this Part may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

(2) The provisions of section 10 relating to applications to the court for cancellation of alterations of the objects of a company and matters consequential on the passing of resolutions for such alterations shall, so far as applicable, apply to an alteration under this section with the following modifications—

(*a*) there shall be substituted for the printed copy of the altered memorandum required to be delivered to the registrar of companies a printed copy of the substituted memorandum and articles; and

(*b*) on the delivery to the registrar of a printed copy of the substituted memorandum and articles or on the date when the alteration is no longer liable to be cancelled by order of the court, whichever last occurs, the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum

and those articles, and the company's deed of settlement shall cease to apply to the company.

(3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.

(4) In this section, "***deed of settlement***" includes any contract of co-partnery or other instrument constituting or regulating the company, not being a statute, charter or letters patent.

Power of court to stay or restrain proceedings.

342.—The provisions of this Act relating to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of a company registered in pursuance of this Part, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

Actions stayed on winding-up order.

343.—Where an order has been made for winding up a company registered in pursuance of this Part, no action or proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

PART X.

Winding up of Unregistered Companies.

Meaning of unregistered company.

344.—For the purposes of this Part, "***unregistered company***" shall include any trustee savings bank certified under the Trustee Savings Banks Acts, 1863 to 1958, any partnership, whether limited or not, any association and any company with the following exceptions—

(*a*) a company as defined by section 2;

(*b*) a partnership, association or company which consists of less than eight members and is not formed outside the State.

Winding up of unregistered companies.

345.—(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 relating to winding up shall apply to an unregistered company, with the exceptions and additions mentioned in this section.

(2) The principal place of business in the State of an unregistered company shall, for all the purposes of the winding up, be deemed to be the registered office of the company.

(3) No unregistered company shall be wound up under this Act voluntarily.

(4) The circumstances in which an unregistered company may be wound up are as follows—

(*a*) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;

(*b*) if the company is unable to pay its debts;

(*c*) if the court is of opinion that it is just and equitable that the company should be wound up.

(5) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts—

(*a*) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding £50 then due, has served on the company, by leaving at its principal place of business in the State, or by delivering to the secretary or some director or principal officer of the company, or by serving otherwise in such manner as the court may approve or direct, a demand in writing requiring the company to pay the sum so due, and the company has, for 3 weeks after the service of the demand, neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor;

(*b*) if any action or other proceeding has been instituted against any member for any debt or demand due or claimed to be due, from the company, or from him in his character of member, and notice in writing of the institution of the action or proceeding

having been served on the company by leaving the same at its principal place of business in the State, or by delivering it to the secretary, or some director 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 10 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;

(*c*) if in the State or in any country recognised by the Minister for the purposes of section 250, execution or other process issued on a judgment, decree or order obtained in any court in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied;

(*d*) if it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts.

(6) A petition for winding up a trustee savings bank may be presented by the Minister for Finance as well as by any person authorised under the other provisions of this Act to present a petition for winding up a company.

(7) Where a company incorporated outside the State which has been carrying on business in the State ceases to carry on business in the State, 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.

(8) Subject to such modifications as may be made by rules of court, the Bankruptcy Acts shall apply to limited partnerships as if limited partnerships were ordinary partnerships, and, upon all the partners of a limited partnership being adjudged bankrupt, the assets of the limited partnership shall vest in the Official Assignee.

Contributories in winding up of unregistered company.

346.—(1) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the costs and expenses of winding up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid.

(2) In the event of the death or bankruptcy of any contributory, the provisions of this Act relating to the personal representatives of deceased contributories and to the assignees of bankrupt contributories respectively shall apply.

Power of court to stay or restrain proceedings.

347.—The provisions of this Act relating 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.

Actions stayed on winding-up order.

348.—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.

Provisions of this Part to be cumulative.

349.—The provisions of this Part relating to unregistered companies shall be in addition to and not in restriction of any provisions hereinbefore contained in this Act relating 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.

Saving for enactments providing for winding

350.—Nothing in this Part shall affect the operation of any enactment which provides for any partnership, association or company being wound up, or being wound up as a company or as an unregistered company under the Companies (Consolidation) Act, 1908 or any enactment

up under former Companies Acts.

repealed by that Act.

PART XI.

Companies Incorporated Outside the State Establishing a Place of Business Within the State.

Application of this Part.

351.—This Part shall apply to all companies incorporated outside the State which, after the operative date, establish a place of business within the State, and to companies incorporated outside the State which have, before the operative date, established a place of business within the State and continue to have an established place of business within the State on the operative date.

Documents to be delivered to registrar by certain companies incorporated outside the State.

352.—(1) Companies incorporated outside the State, which, after the operative date, establish a place of business within the State, shall, within one month of the establishment of the place of business, deliver to the registrar of companies 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 or Irish language, a certified translation thereof;

(*b*) a list of the directors and secretary of the company containing the particulars mentioned in subsection (2);

(*c*) the names and addresses of some one or more persons resident in the State authorised to accept on behalf of the company service of process and any notices required to be served on the company and also the address of the company's principal place of business in the State.

(2) Subject to subsection (3), the list referred to in paragraph (*b*) of subsection (1) shall contain the following particulars—

(*a*) in relation to each director—

(i) in the case of an individual, his present Christian name and surname, and any former Christian name or surname, his usual residential address, his nationality (if not Irish) and his business occupation (if any), and particulars of any other directorships of bodies corporate incorporated in the State held by him; and

(ii) in the case of a body corporate, its corporate name and registered or principal office;

(*b*) in relation to the secretary or, where there are joint secretaries, in relation to each of them—

(i) in the case of an individual, his present Christian name and surname, any former Christian name and surname and his usual residential address; and

(ii) in the case of a body corporate, its corporate name and registered or principal office.

Paragraphs (*b*), (*c*) and (*d*) of subsection (12) of section 195 shall apply for the purpose of the construction of references in this subsection to present and former Christian names and surnames as they apply for the purpose of the construction of such references in that section.

(3) 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 mentioned in paragraph (*b*) of subsection (2).

(4) Companies to which this Part applies, other than those mentioned in subsection (1), shall, if on the operative date they have not delivered to the registrar the documents and particulars specified in subsection (1) of section 274 of the Companies (Consolidation) Act,

1908, deliver the documents and particulars mentioned in subsection (1) of this section within 2 months after the operative date.

Return to be delivered to registrar where documents altered.

353.—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 other instrument constituting or defining the constitution of the company; or

(*b*) the directors or secretary of the company or the particulars contained in the list of the directors and secretaries; or

(*c*) the names or addresses of the persons authorised to accept service on behalf of the company or the address of its principal place of business in the State;

the company shall, within the prescribed time, deliver to the registrar of companies for registration a return containing the prescribed particulars of the alteration.

Accounts of company to which this Part applies to be delivered to registrar.

354.—(1) Every company to which this Part applies shall, in every calendar year, make out a balance sheet and profit and loss account and, if the company is a holding company, group accounts, in such form and containing such particulars and including such documents, as under the provisions of this Act it would, if it had been a company within the meaning of this Act, have been required to make out and lay before the company in general meeting, and deliver copies of those documents to the registrar of companies.

(2) If any such document as is mentioned in subsection (1) is not written in the English or Irish language, there shall be annexed to it a certified translation thereof.

(3) The Minister may grant to any company or to any class of companies exemption from the obligation imposed by subsection (1) subject to such conditions as he may think fit.

(4) Subsection (1) shall not apply to any company having provisions in its constitution that would entitle it to rank as a private company if it had been registered in the State.

Obligation to state name of company to which this Part applies, whether limited and country where incorporated.

355.—Every company to which this Part applies shall—

(*a*) in every prospectus inviting subscriptions for its shares or debentures in the State state the country in which the company is incorporated; and

(*b*) exhibit conspicuously on every place where it carries on business in the State 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 on all billheads and letter-paper, and in all notices 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 billheads, letter-paper, notices and other official publications of the company in the State, and to be affixed on every place where it carries on its business.

Service of documents

356.—(1) Subject to subsection (2), any process or notice required to be served on a company to which this Part applies shall be

on company to which this Part applies.

sufficiently served if addressed to any person whose name has been delivered to the registrar of companies under the foregoing provisions of this Part and left at or sent by post to the address which has been so delivered.

(2) A document may be served on any such company by leaving it at or sending it by post to any place of business established by the company in the State—

(*a*) where the company makes default in delivering to the registrar the name and address of a person resident in the State who is authorised to accept on behalf of the company service of process or notices; 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.

(3) This section shall cease to apply to a company on the expiration of two years after it has given the notice referred to in section 357.

Notice to be given when company to which this Part applies ceases to carry on business in the State.

357.—If any company to which this Part applies ceases to have a place of business in the State, it shall forthwith give notice of the fact to the registrar of companies, and as from the date on which notice is so given, the obligation of the company to deliver any document to the registrar shall cease.

Penalties for non-compliance with this Part.

358.—If any 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 the company who knowingly and wilfully authorises or permits the default shall be liable to a fine not exceeding £100.

Construction of section 275 of Companies (Consolidation) Act, 1908.

359.— In its application to the State, section 275 of the Companies (Consolidation) Act, 1908, shall be deemed to have always applied as if—

(*a*) the words "in Northern Ireland or in Great Britain or in a British possession" were substituted for the words "in a British possession"; and

(*b*) the words "the State" were substituted for the words "the United Kingdom".

Interpretation of this Part.

360.—For the purposes of this Part—

"***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 and 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;

"***secretary***" includes any person occupying the position of secretary by whatever name called.

PART XII.

Restrictions on Sale of Shares and Offers of Shares for Sale.

Prospectuses relating to companies

361.—(1) Subject to subsection (2), it shall not be lawful for any person to issue, circulate or distribute in the State any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside the State, whether the company has

incorporated outside the State.

or has not established or, when formed, will or will not establish a place of business in the State unless the prospectus is dated and—

(*a*) contains particulars relating to the following matters—

(i) the instrument constituting or defining the constitution of the company;

(ii) the enactments or provisions having the force of an enactment, by or under which the incorporation of the company was effected;

(iii) an address in the State where the said instrument, enactments or provisions or copies thereof, and if the same are in any language other than the English or Irish language, a translation thereof in English or Irish certified in the prescribed manner, can be inspected;

(iv) the date on which and the country in which the company was incorporated;

(v) whether the company has established a place of business in the State, and if so, the address of its principal place of business in the State;

(*b*) subject to the provisions of this section, states the matters specified in Part I of the Third Schedule and sets out the reports specified in Part II of that Schedule, subject always to the provisions contained in Part III of that Schedule.

(2) In the application of Part I of the Third Schedule for the purposes of subsection (1), paragraph 2 thereof shall have effect with the substitution, for the reference to the articles, of a reference to the constitution of the company.

(3) Any condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement imposed by paragraph (*a*) or paragraph (*b*) of subsection (1), or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(4) Subject to subsection (5), it shall not be lawful for any person to issue to any person in the State a form of application for shares in or debentures of such a company or intended company as is mentioned in subsection (1) unless the form is issued with a prospectus which complies with this Part and the issue whereof in the State does not contravene the provisions of section 363.

(5) Subsection (4) 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 relating to the shares or debentures.

(6) Subject to subsection (7), in the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

(*a*) as regards any matter not disclosed, he proves that he did not know the same; 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.

(7) In the event of failure to include in a prospectus a statement relating to the matters contained in paragraph 16 of the Third Schedule, no director or other person shall incur any liability in respect of the failure unless it is proved that he had knowledge of the matters not disclosed.

(8) This section—

(*a*) 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; and

(*b*) except in so far as it requires a prospectus to be dated, shall not apply to the issue of a prospectus or form of application relating to shares or debentures which are or are to be in all respects uniform with shares or debentures issued within the preceding 2 years and for the time being dealt in or quoted on a recognised stock exchange;

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.

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

Exclusion of section 361 and relaxation of Third Schedule in case of certain prospectuses.

362.—(1) Where—

(*a*) it is proposed to offer to the public by a prospectus issued generally any shares in or debentures of a company incorporated or to be incorporated outside the State, whether the company has or has not established, or when formed will or will not establish, a place of business in the State; and

(*b*) application is made to a recognised stock exchange for permission for those shares or debentures to be dealt in or quoted on that stock exchange;

there may, on the request of the applicant, be given by or on behalf of that stock exchange a certificate of exemption, that is a certificate that, having regard to the proposals (as stated in the request) as to the size and other circumstances of the issue of shares or debentures, and as to any limitation as to the number and class of persons to whom the offer is to be made, compliance with the requirements of the Third Schedule would be unduly burdensome.

(2) If a certificate of exemption is given and if the proposals aforesaid are adhered to and the particulars and information required to be published in connection with the application for permission to the stock exchange are so published, then—

(*a*) a prospectus giving the particulars and information aforesaid in the form in which they are so required to be published shall be deemed to comply with the requirements of the Third Schedule; and

(*b*) except in so far as it requires a prospectus to be dated and subject to paragraph (*c*), section 361 shall not apply to any issue, after the permission applied for is given, of a prospectus relating to the shares or debentures; and

(*c*) subsection (4) of section 361 shall apply to any issue, after the permission applied for is granted, of a form of application relating to the shares or debentures as if the reference to a prospectus were a reference to a prospectus giving the particulars and information aforesaid in the form in which they are so required to be published.

Provisions as to expert's consent and allotment.

363.—(1) It shall not be lawful for any person to issue, circulate or distribute in the State any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside the State, whether the company has or has not established, or when formed will or will not establish, a place of business in the State—

(*a*) if, where the prospectus includes a statement purporting to be made by an expert, he has not given, or has before delivery of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included, or there does not appear in the prospectus a statement that he has given and

has not withdrawn his consent as aforesaid; and

(*b*) if the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by provisions corresponding to the provisions (other than penal provisions) of sections 56 and 57 so far as applicable.

(2) In this section, "***expert***" includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him, and for the purposes of this section, a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

Registration of prospectus.

364.—(1) It shall not be lawful for any person to issue, circulate or distribute in the State any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside the State, whether the company has or has not established, or when formed will or will not establish, a place of business in the State, unless before the issue, circulation or distribution of the prospectus in the State, a copy thereof certified by the chairman and two other directors of the company as having been approved by a resolution of the managing body has been delivered for registration to the registrar of companies as defined in this Act and the prospectus states on the face of it that a copy of it has been so delivered and there is endorsed on or attached to the copy—

(*a*) any consent to the issue of the prospectus required by section 363;

(*b*) a copy of any contract required by paragraph 14 of the Third Schedule to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof or, if in the case of a prospectus deemed by virtue of a certificate granted under section 362 to comply with the requirements of that Schedule, a contract or a copy thereof or a memorandum of a contract is required to be available for inspection in connection with the application under that section to the stock exchange in question, a copy, or as the case may be, a memorandum of that contract; and

(*c*) where the persons making any report required by Part II of that Schedule have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 29 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(2) The references in paragraph (*b*) of subsection (1) to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a language other than the English or Irish language, be taken as references to a copy of a translation of the contract in English or Irish or a copy embodying a translation in English or Irish, of the parts in the foreign language, as the case may be, being a translation certified in the prescribed manner to be a correct translation, and the reference to a copy of a contract required to be available for inspection shall include a reference to a copy of a translation thereof or a copy embodying a translation of parts thereof.

Penalty for contravention of sections 361 to 364.

365.—Any person who is knowingly responsible for the issue, circulation or distribution of a prospectus, or for the issue of a form of application for shares or debentures, in contravention of any of the provisions of sections 361 to 364 shall be liable—

(*a*) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine not exceeding £500 or both; or

(*b*) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding £100 or to both.

Civil liability for mis-statements in prospectus.

366.—Section 49 shall extend to every prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside the State, whether the company has or has not established, or when formed will or will not establish, a place of business in the State with the substitution for references to section 46 of references to section 363.

Interpretation of

367.—(1) Where any document by which any shares in or debentures of a company incorporated outside the State are offered for sale to

provisions as to prospectuses.

the public would, if the company concerned had been a company within the meaning of this Act, have been deemed by virtue of section 51 to be a prospectus issued by the company, that document shall be deemed to be, for the purpose of this Part, a prospectus issued by the company.

(2) An offer of shares or debentures for subscription or sale to any person 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 Part.

(3) This Part shall not apply to a prospectus or to a form of application for shares or debentures first published or issued in a country recognised for the purpose of this section if the prospectus or form of application complies with the law for the time being in force in the country in which the prospectus or form of application was first published or issued.

(4) In this Part, "***prospectus***", "***shares***" and "***debentures***" have the same meanings as when used in relation to a company incorporated under this Act and "***recognised***" means recognised by order made by the Minister.

PART XIII.

General Provisions as to Registration.

Registration office.

368.—(1) For the purposes of the registration of companies under this Act, the Minister shall maintain and administer an office or offices in the State at such places as the Minister thinks fit.

(2) The Minister may appoint such registrars and assistant registrars as he thinks necessary for the registration of companies under this Act, and may make regulations with respect to their duties and may remove any persons so appointed.

(3) The Minister may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies.

(4) Whenever any act is by this Act or by any statute directed to be done to or by the registrar of companies, it shall, until the Minister otherwise directs, be done to or by the existing registrar of joint stock companies or, in his absence, to or by such person as the Minister may for the time being authorise.

Fees.

369.— (1) Subject to subsection (2), in respect of the several matters mentioned in the first column of the table set out in Part I of the Eighth Schedule, there shall, subject to the limitations imposed by Part II of that Schedule, be paid to the registrar the several fees specified in the second column of that table.

(2) No fees shall be charged in respect of the registration in pursuance of Part IX of a company if it is not registered as a limited company, or if before its registration as a limited company, the liability of the shareholders was limited by statute or letters patent.

(3) All fees paid to the registrar in pursuance of this Act shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct.

Inspection, production and evidence of documents kept by registrar.

370.—(1) Any person may—

(*a*) inspect the documents kept by the registrar of companies, on payment of such fee as may be fixed by the Minister;

(*b*) require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the registrar, on payment for the certificate, certified copy or extract of such fees as the Minister may fix.

(2) No process for compelling the production of any document kept by the registrar shall issue from any court except with the leave of

that court, and any such process if issued shall bear thereon a statement that it is issued with the leave of the court.

(3) A copy of, or extract from, any document kept and registered at the office for the registration of companies, certified to be a true copy under the hand of the registrar, assistant registrar or other officer authorised by the Minister (whose official position it shall not be necessary to prove), shall in all legal proceedings be admissible in evidence as of equal validity with the original document.

Enforcement of duty to comply with Act.

371.—(1) If a company or any officer of a company having made default in complying with any provision of this Act fails to make good the default within 14 days after the service of a notice on the company or officer requiring it or him 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 of companies, make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of the company responsible for the default.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default as aforesaid.

PART XIV.

Miscellaneous Provisions relating to Banking Companies, Partnerships and Unregistered Companies.

Provisions relating to Banking Companies.

Prohibition of banking partnerships with more than ten members.

372.—No company, association or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a company under this Act, or is formed in pursuance of some other statute.

Notice to be given to customers on registration of banking company with limited liability.

373.—(1) Where a banking company which was in existence on the 7th day of August, 1862, proposes to register as a limited company under this Act, it shall, at least 30 days before so registering, give notice of its intention so to register to every person who has a banking account with the company, either by delivery of the notice to him, or by posting it to him at, or by delivering it at, his last known address.

(2) If the company omits to give the notice required by this section then, as between the company and the person for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects the account down to the time at which notice is given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

Liability of bank of issue unlimited in respect of notes.

374.—(1) Subject to subsection (2), a bank of issue which registers under this Act as a limited company shall not be entitled to limited liability in respect of its notes, and the members thereof shall be liable in respect of its notes in the same manner as if it had been registered as unlimited.

(2) If, in the event of a company to which subsection (1) applies being wound up, the general assets are insufficient to satisfy the claims of both the note-holders and the general creditors, then the members, after satisfying the remaining demands of the note-holders, shall be liable to contribute towards payment of the debts of the general creditors a sum equal to the amount received by the note-holders out of the general assets.

(3) For the purposes of this section, "***the general assets***" means the funds available for payment of the general creditors as well as the note-holders.

(4) Any bank of issue registered under this Act as a limited company may state on its notes that the limited liability does not extend to its

notes, and that the members of the company are liable in respect of its notes in the same manner as if it had been registered as an unlimited company.

Privileges of banks making annual return.

375.—(1) Where a company carrying on the business of bankers has duly forwarded to the registrar of companies the annual return required by section 125 and has added thereto a statement of the names of the several places where it carries on business, the company shall not be required to furnish any returns under the Bankers (Ireland) Act, 1825, or section 22 of the Bankers (Ireland) Act, 1845.

(2) The fact of the said annual return and statement having been duly forwarded may be proved in any legal proceedings by the certificate of the registrar.

Prohibition of Partnerships with more than twenty Members.

Prohibition of partnerships with more than twenty members.

376.—No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any business (other than the business of banking), 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 statute.

Application of certain Provisions of this Act to Unregistered Companies.

Application of certain provisions of this Act to unregistered companies.

377.—(1) The provisions of this Act specified in the second column of the Ninth Schedule (which respectively relate to the matters referred to in the first column of that Schedule) shall apply to all bodies corporate incorporated in and having a principal place of business in the State, other than those mentioned in subsection (2), as if they were companies registered under this Act and subject to any limitations mentioned in relation to those provisions respectively in the third column of that Schedule and to such adaptations and modifications (if any) as may be prescribed.

(2) The said provisions shall not apply by virtue of this section to any of the following bodies—

(*a*) any body corporate incorporated by or registered under any public general statute; and

(*b*) any body corporate not formed for the purpose of carrying on a business which has for its object the acquisition of gain by the body or by the individual members thereof; and

(*c*) any body corporate which is prohibited by statute or otherwise from making any distribution of its income or property among its members while it is a going concern or when it is in liquidation; and

(*d*) any body corporate for the time being exempted by direction of the Minister.

(3) The said provisions shall apply also in like manner in relation to any unincorporated body of persons entitled by virtue of letters patent to any of the privileges conferred by the Chartered Companies Act, 1837, and not registered under any other public general statute, but subject to the like exceptions as are provided for in the case of bodies corporate by paragraphs (*b*), (*c*) and (*d*) of subsection (2).

(4) This section shall not repeal or revoke in whole or in part any enactment, charter or other instrument constituting or regulating any body in relation to which the said provisions are applied by virtue of this section, or restrict the power of the Government to grant a charter in lieu of or supplementary to any such charter as aforesaid; but in relation to any such body, the operation of any such enactment, charter or instrument shall be suspended in so far as it is inconsistent with any of the said provisions as they apply for the time being to that body.

(5) Every body to which this section applies and which was in existence before the operative date shall within six months after the operative date deliver to the registrar of companies for registration a certified copy of the charter, statutes, memorandum and articles, or other instrument constituting or defining the constitution of the body.

(6) Every body to which this section applies and which comes into existence on or after the operative date shall within three months after coming into existence deliver to the registrar of companies for registration a certified copy of the charter, statutes, memorandum and articles

or other instrument constituting or defining the constitution of the body.

(7) If default is made in complying with subsection (5) or (6), the body and every officer of the body who is in default shall be liable to a fine not exceeding £100.

PART XV.

General.

Form of Registers.

Form of registers, minute books and books of account.

378.—(1) Any register, index, minute book or book of account required by this Act to be kept by a company or by the registrar of companies may be kept either by making entries in bound books or by recording the matters in question in any other manner.

(2) Where any register, index, minute book or book of account to be kept by a company is not kept by making entries in a bound book but by some other means, adequate precautions shall be taken for guarding against falsification and facilitating its discovery, and where default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a fine not exceeding £50.

Service of Documents.

Service of documents on a company.

379.—(1) A document may be served on a company by leaving it at or sending it by post to the registered office of the company or, if the company has not given notice to the registrar of companies of the situation of its registered office, by registering it at the office for the registration of companies.

(2) For the purposes of this section, any document left at or sent by post to the place for the time being recorded by the registrar of companies as the situation of the registered office of a company shall be deemed to have been left at or sent by post to the registered office of the company notwithstanding that the situation of its registered office may have been changed.

Offences.

Penalty for false statements.

380.—If any person in any return, report, certificate, balance sheet or other document required by or for the purposes of any of the provisions of this Act specified in the Tenth Schedule, wilfully makes a statement false in any material particular, knowing it to be false, he shall be liable

(*a*) on conviction on indictment, to imprisonment for a term not exceeding 3 years or a fine not exceeding £500 or both; or

(*b*) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding £100 or both.

Penalty for improper use of word "***limited***" or "***teoranta***".

381.—If any person or persons trade or carry on business under any name or title of which "***limited***" or "***teoranta***" or any contraction or imitation of either word, is the last word, that person or those persons shall, unless duly incorporated with limited liability, be liable to a fine not exceeding £100.

Prosecution of companies on indictment.

382.—(1) Where a company is charged either alone or jointly with some other person with an indictable offence the subsequent provisions of this section shall have effect.

(2) The company may appear at all stages of the proceedings by a representative and the answer to any question to be put to a person charged with an indictable offence may be made on behalf of the company by that representative but if the company does not so appear it shall not be necessary to put the questions and the District Court may, notwithstanding its absence, take depositions and send forward the

company for trial.

(3) Any right of objection or election conferred upon the accused person by any enactment may be exercised on behalf of the company by its representative.

(4) Any plea which may be entered or signed by an accused person, whether before the District Court or before the trial judge, may be entered in writing on behalf of the company by its representative, and, if the company does not appear by its representative or, though it does so appear, fails to enter any such plea, the trial shall proceed as though the company had duly entered a plea of not guilty.

(5) In this section, "***representative***" in relation to a company means a person duly appointed by the company to represent it for the purpose of doing any act or thing which the representative of a company is by this section authorised to do, but a person so appointed shall not, by virtue only of being so appointed, be qualified to act on behalf of the company before any court for any other purpose.

(6) A representative for the purpose of this section need not be appointed under the seal of the company and a statement in writing purporting to be signed by a managing director of the company or by some other person (by whatever name called) having, or being one of the persons having, the management of the affairs of the company, to the effect that the person named in the statement has been appointed as the representative of the company for the purposes of this section shall be admissible without further proof as evidence that that person has been so appointed.

(7) In this section, "***company***" includes a company incorporated outside the State which has an established place of business in the State.

Meaning of "***officer in default***".

383.—For the purpose of any provision in this Act which provides that an officer of a company who is in default shall be liable to a fine or penalty, "***officer who is in default***" means any officer of the company who knowingly and wilfully authorises or permits the default, refusal or contravention mentioned in the provision.

Production and inspection of books when offence suspected.

384.—(1) If on an application to a Judge of the High Court by the Attorney General, the Minister or a Superintendent of the Garda Síochána, there is shown to be reasonable cause to believe that any person has, while an officer of a company, committed an offence in connection with the management of the company's affairs and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company, an order may be made—

(*a*) authorising any person named therein to inspect the said books or papers or any of them for the purpose of investigating and obtaining evidence of the offence; or

(*b*) requiring the secretary of the company or such other officer thereof as may be named in the order to produce the said books or any of them to a person named in the order at a place so named.

(2) Subsection (1) shall apply also in relation to any books or papers of a person carrying on the business of banking so far as they relate to the company's affairs, as it applies to any books or papers of or under the control of the company, except that no such order as is referred to in paragraph (*b*) thereof shall be made by virtue of this subsection.

(3) The decision of a Judge of the High Court on an application under this section shall be final subject to an appeal to the Supreme Court on a question of law.

(4) In this section, "***company***" includes a company incorporated outside the State which has an established place of business in the State.

Summary proceedings.

385.—(1) All offences under this Act made punishable by any term of imprisonment not exceeding 6 months or by any fine not exceeding £100 or by such imprisonment and such fine, may be prosecuted summarily.

(2) Summary proceedings in relation to an offence under this Act may be brought and prosecuted by the Attorney General or by the Minister.

(3) Notwithstanding subsection (4) of section 10 of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under

this Act may be instituted within 3 years from the date of the offence.

Minimum, fine for second or subsequent offences.

386.—Where a person is convicted of an offence under this Act and is subsequently convicted of another offence under this Act, the fine to be imposed by the court in respect of such second or subsequent offence shall not be less than £50 unless the court, having regard to all the circumstances of the case, otherwise decides.

Saving for privileged communications.

387.—Where proceedings are instituted under this Act against any person, nothing in section 170 or 299 shall be taken to require any person who has acted as solicitor for the company to disclose any privileged communication made to him otherwise than as such solicitor.

Proof of incorporation of companies incorporated outside the State.

388.—A copy of any Act by which a corporation is incorporated, purporting to be published by the Government publishers of any country prescribed by the Minister for the purposes of this section, shall without further proof be *prima facie* evidence of the incorporation of that corporation.

Proof of certificates as to incorporation.

389.—A certificate signed by any person purporting to hold the office of registrar of companies or assistant registrar of companies or any office similar thereto in any country prescribed by the Minister for the purposes of this section, certifying that a company named in such certificate has been incorporated in that country, shall be *prima facie* evidence of such incorporation without proof of the signature of the person signing such certificate and without proof that the person signing such certificate holds that office.

Legal Proceedings.

Security for costs by company.

390.—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 to officers of company.

391.—(1) If in any proceeding for negligence, default, breach of duty or breach of trust against an officer of a company or a person employed by a company as auditor, it appears to the court hearing the case that that officer or 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 the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that court may relieve him, either wholly or partly from his liability on such terms as the court may think fit.

(2) Where any such officer or person as aforesaid 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 direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge may think proper.

General Provisions as to the Minister.

Annual report by the minister.

392.—The Minister shall cause a general annual report of matters within this Act to be prepared and laid before both Houses of the Oireachtas.

Expenses.

393.—The expenses incurred by the Minister in the administration of this Act shall to such extent as may be sanctioned by the Minister for Finance be paid out of moneys provided by the Oireachtas.

Authentication of documents issued by the Minister.

394.—Any approval, sanction, direction or licence or revocation of licence which under this Act may be given or made by the Minister may be under the hand of any person authorised in that behalf by the Minister.

Power to alter Tables and Forms.

395.—(1) The Minister shall have power by order to alter or add to the requirements of this Act as to the matters to be stated in a company's balance sheet, profit and loss account and group accounts, and in particular of those of the Sixth Schedule; and any reference in this Act to the Sixth Schedule shall be construed as a reference to that Schedule with any alterations or additions made by orders for the time being in force under this subsection.

(2) The Minister may by order—

(*a*) alter Table A, Tábla A and the Third, Seventh and Eighth Schedules; and

(*b*) alter or add to Tables B, C, D and E in the First Schedule and the form in Part II of the Fifth Schedule;

but no alteration made by the Minister in Table A or in Tábla A shall affect any company registered before the alteration, or repeal in relation to that company any portion of Table A or Tábla A.

Laying of orders before Houses of Oireachtas and power to revoke or amend orders and to prescribe forms.

396.—(1) Every order made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and if a resolution annulling the order is passed by either House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

(2) The Minister may by order revoke or amend an order (other than an order made under subsection (2) of section 1) made under this Act.

(3) The Minister may by order prescribe forms to be used in connection with any of the provisions of this Act other than those relating to the winding up of companies.

Supplemental.

Restriction of section 58 of Solicitors Act, 1954.

397.—Notwithstanding section 58 of the Solicitors Act, 1954 , a person to whom paragraph (*a*) or (*b*) of subsection (1) of section 162 applies may draw or prepare any document for the purposes of this Act other than a deed or a memorandum or articles of association.

Provisions as to winding-up proceedings commenced before the operative date.

398.—(1) The provisions of this Act relating to winding up (other than subsections (2) and (3)) shall not apply to any company of which the winding up commenced before the operative date but every such company shall be wound up in the same manner and with the same incidents as if this Act (apart from the enactments aforesaid) had not been passed, and for the purposes of the winding up, the Act or Acts under which the winding up commenced shall be deemed to remain in full force.

(2) An office copy of every order staying the proceedings in a winding up commenced as aforesaid shall forthwith be forwarded by the company or by such person as the court may direct, to the registrar of companies for registration.

(3) If a company fails to comply with subsection (2), the company and every officer of the company who is in default shall be liable to a fine not exceeding £25, and if any other person fails to comply with subsection (2) such person shall be liable to a fine not exceeding £25.

Amendments of other Acts.

399.—The enactments set out in the Eleventh Schedule shall have effect subject to the amendments specified in that Schedule.

SCHEDULES

FIRST SCHEDULE.

Sections 2 , 13 , 16 , 395 .

Table A, Tábla A, and Tables B, C, D and E.

TABLE A.

Part I.

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES NOT BEING A PRIVATE COMPANY.

Interpretation.

1. In these regulations:

"***the Act***" means the Companies Act, 1963 (No. 33 of 1963);

"***the directors***" means the directors for the time being of the company or the directors present at a meeting of the board of directors and includes any person occupying the position of director by whatever name called;

"***the register***" means the register of members to be kept as required by section 116 of the Act;

"***secretary***" means any person appointed to perform the duties of the secretary of the company;

"***the office***" means the registered office for the time being of the company;

"***the seal***" means the common seal of the company.

Expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and any other modes of representing or reproducing words in a visible form.

Unless the contrary intention appears, words or expressions contained in these regulations shall bear the same meaning as in the Act or in any statutory modification thereof in force at the date at which these regulations become binding on the company.

Share Capital and Variation of Rights.

2. Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, any share in the company may be issued with such preferred, deferred or other special rights or such restrictions, whether in regard to dividend, voting, return of capital or otherwise, as the company may from time to time by ordinary resolution determine.

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, whether or not the company is being wound up, be varied or abrogated with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall 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. If at any adjourned meeting of such holders a quorum as above defined is not present those members who are present shall be a quorum. Any holders of shares of the class present in person or by proxy may demand a poll.

4. The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking *pari passu* therewith.

5. Subject to the provisions of these regulations relating to new shares, the shares shall be at the disposal of the directors, and they may (subject to the provisions of the Act) allot, grant options over or otherwise dispose of them to such persons, on such terms and conditions and at such times as they may consider to be in the best interests of the company and its shareholders, but so that no share shall be issued at a discount, except in accordance with the provisions of the Act, and so that in the case of shares offered to the public for subscription, the amount payable on application on each share shall not be less than 5 per cent. of the nominal amount of the share.

6. The company may exercise the powers of paying commissions conferred by section 59 of the Act, provided that the rate per cent. and the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by that section, and the rate of the commission shall not exceed the rate of 10 per cent. of the price at which the shares in respect whereof the same is paid are issued or an amount equal to 10 per cent. of such price (as the case may be). Such commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in one way and partly in the other. The company may also, on any issue of shares, pay such brokerage as may be lawful.

7. Except as required by law, no person shall be recognised by the company as holding any share upon any trust, and the company shall not be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any share or any interest in any fractional part of a share or (except only as by these regulations or by law otherwise provided) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder: this shall not preclude the company from requiring the members or a transferee of shares to furnish the company with information as to the beneficial ownership of any share when such information is reasonably required by the company.

8. Every person whose name is entered as a member in the register shall be entitled without payment to receive within 2 months after allotment or lodgment of a transfer (or within such other period as the conditions of issue shall provide) one certificate for all his shares or several certificates each for one or more of his shares upon payment of 2s. 6d. for every certificate after the first or such less sum as the directors shall from time to time determine, so, however, 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 such holders. Every certificate shall be under the seal and shall specify the shares to which it relates and the amount paid up thereon.

9. If a share certificate be defaced, lost or destroyed, it may be renewed on payment of 2s. 6d. or such less sum and on such terms (if any) as to evidence and indemnity and the payment of out-of-pocket expenses of the company of investigating evidence as the directors think fit.

10. The company shall not give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company or in its holding company, but this regulation shall not prohibit any transaction permitted by section 60 of the Act.

Lien.

11. The company shall have a first and paramount lien on every share (not being a fully paid share) for all moneys (whether immediately payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a first and paramount lien on all

shares (other than fully paid shares) standing registered in the name of a single person for all moneys immediately 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 on a share shall extend to all dividends payable thereon.

12. 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 a sum in respect of which the lien exists is immediately payable, nor until the expiration of 14 days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is immediately 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.

13. To give effect to any such sale, the directors may authorise some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

14. 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 immediately payable, and the residue, if any, shall (subject to a like lien for sums not immediately payable as existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

Calls on Shares.

15. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment thereof made payable at fixed times, provided that no call shall exceed one-fourth of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last preceding call, and each member shall (subject to receiving at least 14 days' notice specifying the time or times and place of payment) pay to the company at the time or times and place so specified the amount called on his shares. A call may be revoked or postponed as the directors may determine.

16. A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed and may be required to be paid by instalments.

17. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

18. 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 on the sum from the day appointed for payment thereof to the time of actual payment at such rate, not exceeding 5 per cent. per annum, as the directors may determine, but the directors shall be at liberty to waive payment of such interest wholly or in part.

19. Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall, for the purposes of these regulations, be deemed to be a call duly made and payable on the date on which, by the terms of issue, the same becomes payable, and in case of non-payment all the relevant provisions of these regulations as to payment of interest and expenses, forfeiture or otherwise, shall apply as if such sum had become payable by virtue of a call duly made and notified.

20. The directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

21. 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 payable) pay interest at such rate not exceeding (unless the company in general meeting otherwise directs) 5 per cent. per annum, as may be agreed upon between the directors and the member paying such sum in advance.

Transfer of Shares.

22. 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 the holder of the share until the name of the transferee is entered in the register in respect thereof.

23. Subject to such of the restrictions of these regulations as may be applicable, any member may transfer all or any of his shares by instrument in writing in any usual or common form or any other form which the directors may approve.

24. The directors may decline to register the transfer of a share (not being a fully paid share) to a person of whom they do not approve, and they may also decline to register the transfer of a share on which the company has a lien. The directors may also decline to register any transfer of a share which, in their opinion, may imperil or prejudicially affect the status of the company in the State or which may imperil any tax concession or rebate to which the members of the company are entitled or which may involve the company in the payment of any additional stamp or other duties on any conveyance of any property made or to be made to the company.

25. The directors may also decline to recognise any instrument of transfer unless—

(*a*) a fee of 2s. 6d. or such lesser sum as the directors may from time to time require, 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; and

(*c*) the instrument of transfer is in respect of one class of share only.

26. If the directors refuse to register a transfer they shall, within 2 months after the date on which the transfer was lodged with the company, send to the transferee notice of the refusal.

27. The registration of transfers may be suspended at such times and for such periods, not exceeding in the whole 30 days in each year, as the directors may from time to time determine.

28. The company shall be entitled to charge a fee not exceeding 2s. 6d. on the registration of every probate, letters of administration, certificate of death or marriage, power of attorney, notice as to stock or other instrument.

Transmission of Shares.

29. In the case of the death of a member, the survivor or survivors where the deceased was a joint holder, and the personal representatives of the deceased where he was a sole holder, shall be the only persons recognised by the company as having any title to his interest in the shares; but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.

30. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such evidence being produced as may from time to time properly be required by the directors and subject as hereinafter provided, elect either to be registered himself as holder of the share or to have some person nominated by him registered as the transferee thereof, 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 that member before his death or bankruptcy, as the case may be.

31. If the person so becoming entitled elects to be registered himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects. If he elects to have another person registered, he shall testify his election by executing to that person a transfer of the share. All the limitations, restrictions and provisions of these regulations relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.

32. 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, so, however, that the directors may at any time give notice requiring any such person to elect either to be registered himself or to transfer the share, and if the notice is not complied with within 90 days, the directors may thereupon withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with.

Forfeiture of Shares.

33. 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 the 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.

34. The notice shall name a further day (not earlier than the expiration of 14 days from the date of service 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.

35. 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.

36. 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.

37. 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 payable by him to the company in respect of the shares, but his liability shall cease if and when the company shall have received payment in full of all such moneys in respect of the shares.

38. A statutory declaration that the declarant is a director or the secretary 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.

39. The provisions of these regulations as to forfeiture shall apply in the case of nonpayment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value 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.

40. The company may by ordinary resolution convert any paid up shares into stock, and reconvert any stock into paid up shares of any denomination.

41. 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; and the directors may from time to time fix the minimum amount of stock transferable but so that such minimum shall

not exceed the nominal amount of each share from which the stock arose.

42. The holders of stock shall, according to the amount of stock held by them, have the same rights, privileges and advantages in relation to dividends, voting at meetings of the company and other matters as if they held the shares from which the stock arose, but no such right, privilege or advantage (except participation in the dividends and profits of the company and in the assets on winding up) shall be conferred by an amount of stock which would not, if existing in shares, have conferred that right privilege or advantage.

43. Such of the regulations of the company as are applicable to paid up shares shall apply to stock, and the words "***share***" and "***shareholder***" therein shall include "***stock***" and "***stockholder***".

Alteration of Capital.

44. 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.

45. 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*) subdivide its existing shares, or any of them, into shares of smaller amount than is fixed by the memorandum of association

subject, nevertheless, to section 68 (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.

46. The company may by special resolution reduce its share capital, any capital redemption reserve fund or any share premium account in any manner and with and subject to any incident authorised, and consent required, by law.

General Meetings.

47. All general meetings of the company shall be held in the State.

48. (1) Subject to paragraph (2) of this regulation, the company shall in each year hold a general meeting as its annual general meeting in addition to any other meeting in that year, and shall specify the meeting as such in the notices calling it; and not more than 15 months shall elapse between the date of one annual general meeting of the company and that of the next.

(2) So long as the 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 year following. Subject to regulation 47, the annual general meeting shall be held at such time and place as the directors shall appoint.

49. All general meetings other than annual general meetings shall be called extraordinary general meetings.

50. 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 132 of the Act. If at any time there are not within the State sufficient directors capable of acting to form a quorum, any director or any 2 members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Notice of General Meetings.

51. Subject to sections 133 and 141 of the Act, an annual general meeting and a meeting called for the passing of a special resolution shall be called by 21 days' notice in writing at the least, and a meeting of the company (other than an annual general meeting or a meeting for the passing of a special resolution) shall be called by 14 days' notice in writing at the least. The notice shall be exclusive of the day on which

it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of the meeting, and in the case of special business, the general nature of that business, and shall be given, in manner hereinafter mentioned, to such persons as are, under the regulations of the company, entitled to receive such notices from the company.

52. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at the meeting.

Proceedings at General Meetings.

53. All business shall be deemed special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the accounts, balance sheets and the reports of the directors and auditors, the election of directors in the place of those retiring, the re-appointment of the retiring auditors and the fixing of the remuneration of the auditors.

54. 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 present in person shall be a quorum.

55. 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 or to such other day and at such other time and place as the directors may determine, 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.

56. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, the directors present shall elect one of their number to be chairman of the meeting.

57. If at any meeting no director is willing to act as chairman or if no director is present within 15 minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

58. 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 30 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.

59. 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—

(*a*) by the chairman; or

(*b*) by at least three members present in person or by proxy; or

(*c*) by any member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or

(*d*) by a member or members holding shares in the company conferring the right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

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 containing the minutes 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 such resolution.

The demand for a poll may be withdrawn

60. Except as provided in regulation 62, 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.

61. Where there is 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.

62. 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, and any business other than that on which a poll is demanded may be proceeded with pending the taking of the poll.

Votes of Members.

63. Subject to any rights or restrictions for the time being attached to any class or classes of shares, on a show of hands every member present in person and every proxy shall have one vote, so, however, that no individual shall have more than one vote, and on a poll every member shall have one vote for each share of which he is the holder.

64. Where there are 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.

65. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, receiver, guardian or other person appointed by that court, and any such committee, receiver, guardian or other person may vote by proxy on a show of hands or on a poll.

66. No member shall be entitled to vote at any general meeting unless all calls or other sums immediately payable by him in respect of shares in the company have been paid.

67. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

68. Votes may be given either personally or by proxy.

69. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing, or, if the appointer is a body corporate, either under seal or under the hand of an officer or attorney duly authorised. A proxy need not be a member of the company.

70. 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 office or at such other place within the State as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 48 hours before the time appointed for the taking of the poll, and, in default, the instrument of proxy shall not be treated as valid.

71. An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances permit—

“

Limited.

I/We of _____ in the County of

_____, being a member/ members of the above-named company hereby appoint

_____ of _____ or failing him,

_____ of

_____

as my/our proxy to vote for me/us on my/our behalf at the (annual or extra-ordinary, as the case may be) general meeting of the company to be held on the _____ day of _____, 19___ and at any adjournment thereof.

Signed this _____ day of _____, 19_____

This form is to be used *in favour of/against the resolution.

Unless otherwise instructed the proxy will vote as he thinks fit.

*Strike out whichever is not desired.”

72. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

73. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed or the transfer of the share in respect of which the proxy is given, if no intimation in writing of such death, insanity, revocation or transfer as aforesaid is received by the company at the office before the commencement of the meeting or adjourned meeting at which the proxy is used.

Bodies Corporate acting by Representatives at Meetings.

74. Any body corporate which is a member of the company may, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the company or of any class of members of the company, and the person so authorised shall be entitled to exercise the same powers on behalf of the body corporate which he represents as that body corporate could exercise if it were an individual member of the company.

Directors.

75. The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum of association or a majority of them.

76. The remuneration of the directors shall from time to time be determined by the company in general meeting. Such remuneration shall be deemed to accrue from day to day. The directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings of the company or in connection with the business of the company.

77. The shareholding qualification for directors may be fixed by the company in general meeting and unless and until so fixed, no qualification shall be required.

78. A director of the company may be or become a director or other officer of, or otherwise interested in, any company promoted by the company or in which the company may be interested as shareholder or otherwise, and no such director shall be accountable to the company for any remuneration or other benefits received by him as a director or officer of, or from his interest in, such other company unless the

company otherwise directs.

Borrowing Powers.

79. The directors may exercise all the powers of the company to borrow money, and to mortgage or charge its undertaking, property and uncalled capital, or any part thereof, and to issue debentures, debenture stock and other securities, whether outright or as security for any debt, liability or obligation of the company or of any third party, so, however, that the amount for the time being remaining undischarged of moneys borrowed or secured by the directors as aforesaid (apart from temporary loans obtained from the company's bankers in the ordinary course of business) shall not at any time, without the previous sanction of the company in general meeting, exceed the nominal amount of the share capital of the company for the time being issued, but nevertheless no lender or other person dealing with the company shall be concerned to see or inquire whether this limit is observed. No debt incurred or security given in excess of such limit shall be invalid or ineffectual except in the case of express notice to the lender or the recipient of the security at the time when the debt was incurred or security given that the limit hereby imposed had been or was thereby exceeded.

Powers and Duties of Directors.

80. The business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and registering the company and may exercise all such powers of the company as are not, by the Act or by these regulations, required to be exercised by the company in general meeting, subject, nevertheless, to any of these regulations, to the provisions of the Act and to such directions, being not inconsistent with the aforesaid regulations or provisions, as may be given by the company in general meeting; but no direction given by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that direction had not been given.

81. The directors may from time to time and at any time by power of attorney appoint any company, firm or person or body of persons, whether nominated directly or indirectly by the directors, to be the attorney or attorneys of the company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under these regulations) and for such period and subject to such conditions as they may think fit, and any such power of attorney may contain such provisions for the protection of persons dealing with any such attorney as the directors may think fit, and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

82. The company may exercise the powers conferred by section 41 of the Act with regard to having an official seal for use abroad, and such powers shall be vested in the directors.

83. A director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company shall declare the nature of his interest at a meeting of the directors in accordance with section 194 of the Act.

84. A director shall not vote in respect of any contract or arrangement in which he is so interested, and if he shall so vote, his vote shall not be counted, nor shall he be counted in the quorum present at the meeting but neither of these prohibitions shall apply to—

(*a*) any arrangement for giving any director any security or indemnity in respect of money lent by him to or obligations undertaken by him for the benefit of the company; or

(*b*) any arrangement for the giving by the company of any security to a third party in respect of a debt or obligation of the company for which the director himself has assumed responsibility in whole or in part under a guarantee or indemnity or by the deposit of a security; or

(*c*) any contract by a director to subscribe for or underwrite shares or debentures of the company; or

(*d*) any contract or arrangement with any other company in which he is interested only as an officer of such other company or as a

holder of shares or other securities in such other company;

and these prohibitions may at any time be suspended or relaxed to any extent and either generally or in respect of any particular contract, arrangement or transaction by the company in general meeting.

85. A director may hold any other office or place of profit under the company (other than the office of auditor) in conjunction with his office of director for such period and on such terms as to remuneration and otherwise as the directors may determine, and no director or intending director shall be disqualified by his office from contracting with the company either with regard to his tenure of any such other office or place of profit or as vendor, purchaser or otherwise, nor shall any such contract or any contract or arrangement entered into by or on behalf of the company in which any director is in any way interested, be liable to be avoided, nor shall any director so contracting or being so interested be liable to account to the company for any profit realised by any such contract or arrangement by reason of such director holding that office or of the fiduciary relation thereby established.

86. A director, notwithstanding his interest, may be counted in the quorum present at any meeting whereat he or any other director is appointed to hold any such office or place of profit under the company or whereat the terms of any such appointment are arranged, and he may vote on any such appointment or arrangement other than his own appointment or the arrangement of the terms thereof.

87. Any director may act by himself or his firm in a professional capacity for the company, and he or his firm shall be entitled to remuneration for professional services as if he were not a director; but nothing herein contained shall authorise a director or his firm to act as auditor to the company.

88. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for moneys paid to the company shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by such person or persons and in such manner as the directors shall from time to time by resolution determine.

89. 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.

90. The directors on behalf of the company may pay a gratuity or pension or allowance on retirement to any director who has held any other salaried office or place of profit with the company or to his widow or dependants, and may make contributions to any fund and pay premiums for the purchase or provision of any such gratuity, pension or allowance.

Disqualification of Directors.

91. The office of director shall be vacated if the director—

(*a*) ceases to be a director by virtue of section 180 of the Act; or

(*b*) is adjudged bankrupt in the State or in Northern Ireland or Great Britain or makes any arrangement or composition with his creditors generally; or

(*c*) becomes prohibited from being a director by reason of any order made under section 184 of the Act; or

(*d*) becomes of unsound mind; or

(*e*) resigns his office by notice in writing to the company; or

(*f*) is convicted of an indictable offence unless the directors otherwise determine; or

(*g*) is for more than 6 months absent without permission of the directors from meetings of the directors held during that period.

Rotation of Directors.

92. At the first annual general meeting of the company all the directors shall retire from office, and at the annual 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.

93. 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.

94. A retiring director shall be eligible for re-election.

95. The company, at the meeting at which a director retires in manner aforesaid, may fill the vacated office by electing a person thereto, and in default the retiring director shall, if offering himself for re-election, be deemed to have been re-elected, unless at such meeting it is expressly resolved not to fill such vacated office, or unless a resolution for the re-election of such director has been put to the meeting and lost.

96. No person other than a director retiring at the meeting shall, unless recommended by the directors, be eligible for election to the office of director at any general meeting unless not less than 3 nor more than 21 days before the day appointed for the meeting there shall have been left at the office notice in writing signed by a member duly qualified to attend and vote at the meeting for which such notice is given, of his intention to propose such person for election and also notice in writing signed by that person of his willingness to be elected.

97. The company may from time to time by ordinary resolution 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.

98. The directors shall have power at any time and from time to time to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these regulations. Any director so appointed shall hold office only until the next following annual general meeting, and shall then be eligible for re-election but shall not be taken into account in determining the directors who are to retire by rotation at such meeting.

99. The company may, by ordinary resolution, of which extended notice has been given in accordance with section 142 of the Act, remove any director before the expiration of his period of office notwithstanding anything in these regulations or in any agreement between the company and such director. Such removal shall be without prejudice to any claim such director may have for damages for breach of any contract of service between him and the company.

100. The company may, by ordinary resolution, appoint another person in place of a director removed from office under regulation 99 and without prejudice to the powers of the directors under regulation 98 the company in general meeting may appoint any person to be a director either to fill a casual vacancy or as an additional director. A person appointed in place of a director so removed or to fill such a vacancy 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.

101. 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. Where there is 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. If the directors so resolve, it shall not be necessary to give notice of a meeting of directors to any director who, being resident in the State, is for the time being absent from the State.

102. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be two.

103. The continuing directors may act notwithstanding any vacancy in their number 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 or director 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.

104. The directors may elect a chairman of their meetings and determine the period for which be is to hold office, but if no such chairman is elected, or, if at any meeting the chairman is not present within 5 minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

105. The directors may delegate any of their powers to committees consisting of such member or members of the board 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.

106. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within 5 minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

107. 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 where there is an equality of votes, the chairman shall have a second or casting vote.

108. 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.

109. A resolution in writing signed by all the directors for the time being entitled to receive notice of a meeting of the directors shall be as valid as if it had been passed at a meeting of the directors duly convened and held.

Managing Director.

110. The directors may from time to time appoint one or more of themselves to the office of managing director for such period and on such terms as to remuneration and otherwise as they think fit, and, subject to the terms of any agreement entered into in any particular case, may revoke such appointment. A director so appointed shall not, whilst holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors but (without prejudice to any claim he may have for damages for breach of any contract of service between him and the company), his appointment shall be automatically determined if he ceases from any cause to be a director.

111. A managing director shall receive such remuneration whether by way of salary, commission or participation in the profits, or partly in one way and partly in another, as the directors may determine.

112. The directors may entrust to and confer upon a managing director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and either collaterally with or to the exclusion of their own powers, and may from time to time revoke, withdraw, alter or vary all or any of such powers.

Secretary.

113. The secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.

114. A provision of the Act or these regulations requiring or authorising a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the secretary.

The Seal.

115. The seal shall be used only by the authority of the directors or of a committee of directors authorised by the directors in that behalf, and every instrument to which the seal shall be affixed shall be signed by a director and shall be countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.

Dividends and Reserve.

116. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

117. 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.

118. No dividend shall be paid otherwise than out of profits.

119. 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 any 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 as the directors may lawfully determine. The directors may also, without placing the same to reserve, carry forward any profits which they may think it prudent not to divide.

120. Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but no amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this regulation as paid on the share. All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it shall rank for dividend as from a particular date, such share shall rank for dividend accordingly.

121. The directors may deduct from any dividend payable to any member all sums of money (if any) immediately payable by him to the company on account of calls or otherwise in relation to the shares of the company.

122. Any general meeting declaring a dividend or bonus may direct payment of such dividend or bonus wholly or partly by the distribution of specific assets and in particular of paid up shares, debentures or debenture stock of any other company or in any one or more of such ways, and the directors shall give effect to such resolution, and where any difficulty arises in regard to such distribution, the directors may settle the same as they think expedient, and in particular may issue fractional certificates and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any members upon the footing of the value so fixed, in order to adjust the rights of all the parties, and may vest any such specific assets in trustees as may seem expedient to the directors.

123. Any dividend, interest or other moneys payable in cash in respect of any shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder, or, where there are joint holders, to the registered address of that one of the joint holders who is first named on the register or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give

effectual receipts for any dividends, bonuses or other moneys payable in respect of the shares held by them as joint holders.

124. No dividend shall bear interest against the company.

Accounts.

125. The directors shall cause proper books of account to be kept relating 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; and

(*b*) all sales and purchases of goods by the company; and

(*c*) the assets and liabilities of the company.

Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.

126. The books of account shall be kept at the office or, subject to section 147 of the Act, at such other place as the directors think fit, and shall at all reasonable times be open to the inspection of the directors.

127. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members, not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

128. The directors shall from time to time, in accordance with sections 148, 150, 157 and 158 of the Act cause to be prepared and to be laid before the annual general meeting of the company such profit and loss accounts, balance sheets, group accounts and reports as are required by those sections to be prepared and laid before the annual general meeting of the company.

129. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the annual general meeting of the company together with a copy of the directors' report and auditors' report shall, not less than 21 days before the date of the annual general meeting be sent to every person entitled under the provisions of the Act to receive them.

Capitalisation of Profits.

130. The company in general meeting may upon the recommendation of the directors resolve that any sum for the time being standing to the credit of any of the company's reserves (including any capital redemption reserve fund or share premium account) or to the credit of profit and loss account be capitalised and applied on behalf of the members who would have been entitled to receive the same if the same had been distributed by way of dividend and in the same proportions either in or towards paying up amounts for the time being unpaid on any shares held by them respectively or in paying up in full unissued shares or debentures of the company of a nominal amount equal to the sum capitalised (such shares or debentures to be allotted and distributed credited as fully paid up to and amongst such holders in the proportions aforesaid) or partly in one way and partly in another, so however, that the only purpose for which sums standing to the credit of the capital redemption reserve fund or the share premium account shall be applied shall be those permitted by sections 62 and 64 of the Act.

131. Whenever such a resolution as aforesaid shall have been passed, the directors shall make all appropriations and applications of the undivided profits resolved to be capitalised thereby and all allotments and issues of fully paid shares or debentures, if any, and generally shall do all acts and things required to give effect thereto with full power to the directors to make such provision as they shall think fit for the case of shares or debentures becoming distributable in fractions (and, in particular, without prejudice to the generality of the foregoing, to sell the

shares or debentures represented by such fractions and distribute the net proceeds of such sale amongst the members otherwise entitled to such fractions in due proportions) and also to authorise any person to enter on behalf of all the members concerned into an agreement with the company providing for the allotment to them respectively credited as fully paid up of any further shares or debentures to which they may become entitled on such capitalisation or, as the case may require, for the payment up by the application thereto of their respective proportions of the profits resolved to be capitalised of the amounts remaining unpaid on their existing shares and any agreement made under such authority shall be effective and binding on all such members.

Audit.

132. Auditors shall be appointed and their duties regulated in accordance with sections 160 to 163 of the Act.

Notices.

133. 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. 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 the notice of a meeting at the expiration of 24 hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

134. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the register in respect of the share.

135. 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 Official Assignee in bankruptcy or by any like description at the address 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.

136. Notice of every general meeting shall be given in any manner hereinbefore authorised to—

(*a*) every member; and

(*b*) every person upon whom the ownership of a share devolves by reason of his being a personal representative or the Official Assignee in bankruptcy of a member, where the member but for his death or bank ruptcy would be entitled to receive notice of the meeting; and

(*c*) the auditor for the time being of the company.

No other person shall be entitled to receive notices of general meetings.

Winding Up.

137. If the company is wound up, the liquidator may, with the sanction of a special resolution of the company and any other sanction required by the Act, divide among the members in specie or kind the whole or any part of the assets of the company (whether they shall consist of property of the same kind or not) and may, for such purpose, set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members. The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the contributories as the liquidator, with the like sanction, shall think fit, but so that no member shall be compelled to accept any shares or other securities whereon there is any liability.

Indemnity.

138. Every director, managing director, agent, auditor, secretary and other officer for the time being of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in relation to his acts while acting in such office, in which judgment is given in his favour or in which he is acquitted or in connection with any application under section 391 of the Act in which relief is granted to him by the court.

PART II.

Regulations for the Management of a Private Company Limited by Shares.

1. The regulations contained in Part I of Table A (with the exception of regulations 24, 51, 54, 84 and 86) shall apply.

2. The company is a private company and accordingly—

(*a*) the right to transfer shares is restricted in the manner hereinafter prescribed;

(*b*) the number of members of the company (exclusive of persons who are in the employment of the company and of persons who, having been formerly in the employment of the company, were while in such employment, and have continued after the determination of such employment to be, members of the company) is limited to fifty, so, however, that where two or more persons hold one or more shares in the company jointly, they shall, for the purpose of this regulation, be treated as a single member;

(*c*) any invitation to the public to subscribe for any shares or debentures of the company is prohibited;

(*d*) the company shall not have power to issue share warrants to bearer.

3. The directors may, in their absolute discretion, and without assigning any reason therefor, decline to register any transfer of any share, whether or not it is a fully paid share.

4. Subject to sections 133 and 141 of the Act, an annual general meeting and a meeting called for the passing of a special resolution shall be called by 21 days' notice in writing at the least and a meeting of the company (other than an annual general meeting or a meeting for the passing of a special resolution) shall be called by 7 days' notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given and shall specify the day, the place and the hour of the meeting and, in the case of special business, the general nature of that business and shall be given in manner authorised by these regulations to such persons as are under the regulations of the company entitled to receive such notices from the company.

5. 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, two members present in person or by proxy shall be a quorum.

6. Subject to section 141 of the Act, a resolution in writing signed by all the members for the time being entitled to attend and vote on such resolution at a general meeting (or being bodies corporate by their duly authorised representatives) shall be as valid and effective for all purposes as if the resolution had been passed at a general meeting of the company duly convened and held, and if described as a special resolution shall be deemed to be a special resolution within the meaning of the Act.

7. A director may vote in respect of any contract, appointment or arrangement in which he is interested, and he shall be counted in the quorum present at the meeting.

8. The directors may exercise the voting powers conferred by the shares of any other company held or owned by the company in such manner in all respects as they think fit and in particular they may exercise the voting powers in favour of any resolution appointing the directors or any of them as directors or officers of such other company or providing for the payment of remuneration or pensions to the

directors or officers of such other company. Any director of the company may vote in favour of the exercise of such voting rights, notwithstanding that he may be or may be about to become a director or officer of such other company, and as such or in any other manner is or may be interested in the exercise of such voting rights in manner aforesaid.

9. Any director may from time to time appoint any person who is approved by the majority of the directors to be an alternate or substitute director. The appointee, while he holds office as an alternate director, shall be entitled to notice of meetings of the directors and to attend and vote thereat as a director and shall not be entitled to be remunerated otherwise than out of the remuneration of the director appointing him. Any appointment under this regulation shall be effected by notice in writing given by the appointer to the secretary. Any appointment so made may be revoked at any time by the appointer or by a majority of the other directors or by the company in general meeting. Revocation by an appointer shall be effected by notice in writing given by the appointer to the secretary.

Note.—Regulations 3, 4 and 5 of this Part are alternative to regulations 24, 51 and 54 respectively of Part I. Regulations 7 and 8 of this Part are alternative to regulations 84 and 86 of Part I.

TABLE B.

Form of Memorandum of Association of a Company Limited by Shares.

1. The name of the company is "The Western Mining Company, Limited".

2. The objects for which the company is established are the mining of minerals of all kinds and the doing of all such other things as are incidental or conducive to the attainment of the above object.

3. The liability of the members is limited.

4. The share capital of the company is £200,000, divided into 200,000 shares of £1 each.

We, the several persons whose names and addresses are subscribed, wish to be formed into a company in pursuance of this memorandum of association, and we 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 Subscriber
1. James Walsh of in the County of Solicitor.	50
2. John Murphy of in the County of Engineer.	2,700
3. Patrick Ryan of in the County of Geologist.	1,250
4. Thomas O'Connell of in the County of Engineer.	500
5. Daniel Clarke of in the County of Geologist.	50

6. Patrick Byrne of

in the County of

Accountant. 300

7. John Collins of

in the County of

Solicitor. 150

Total Shares taken 5,000

Dated the _____day of _____, 19 _____

Witness to the above Signatures :

Name :

Address :

TABLE C.

Form of Memorandum and Articles of Association of a Company Limited by Guarantee and not Having a Share Capital.

Memorandum of Association.

1. The name of the company is "The Scientific Research Association, Limited."

2. The objects for which the company is established are the promotion of research into matters of a scientific nature and the doing of all such other things as are incidental or conducive to the attainment of the above object.

3. The liability of the members is limited.

4. 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 £1.

We, the several persons whose names and addresses are subscribed, wish to be formed into a company in pursuance of this memorandum of association.

Names, Addresses and Descriptions of Subscribers.

1. Charles O'Brien of _____ in the County of _____ University Professor.

2. Francis Power of _____ in the County of _____Research Chemist.

3. James O'Connor of _____ in the _____County of Biologist.

4. Thomas Daly of _____ in the County of _____ Science Teacher.

5. Richard O'Donnell of _____ in the _____County of Librarian.

6. Joseph Murray of _____ in the County of _____ Physicist.

7. Michael Nolan of _____ in the County of _____Statistician.

Dated the _____ day of _____, 19_____

Witness to the above signatures:

Name:

Address:

Articles of Association to Accompany Preceding Memorandum of Association.

Interpretation.

1. In these articles:—

"***the Act***" means the Companies Act, 1963 (No. 33 of 1963);

"***the directors***" means the directors for the time being of the company or the directors present at a meeting of the board of directors and includes any person occupying the position of director by whatever name called;

"***secretary***" means any person appointed to perform the duties of the secretary of the company;

"***the seal***" means the common seal of the company;

"***the office***" means the registered office for the time being of the company.

Expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography and any other modes of representing or reproducing words in a visible form.

Unless the contrary intention appears, words or expressions contained in these articles shall bear the same meaning as in the Act or any statutory modification thereof in force at the date at which these articles become binding on the company.

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. All general meetings of the company shall be held in the State.

5. (1) Subject to paragraph (2), the company shall 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; and not more than 15 months shall elapse between the date of one annual general meeting of the company and that of the next.

(2) So long as the 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. Subject to article 4, the annual general meeting shall be held at such time and at such place in the State as the directors shall appoint.

6. All general meetings other than annual 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 requisitionists, as provided by section 132 of the Act. If at any time there are not within the State 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 sections 133 and 141 of the Act, an annual general meeting and a meeting called for the passing of a special resolution shall be called by 21 days' notice in writing at the least, and a meeting of the company (other than an annual general meeting or a meeting for the passing of a special resolution) shall be called by 14 days' notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given and shall specify the place, the day and the hour of meeting and, in the case of special business, the general nature of that business and shall be given, in manner hereinafter mentioned, to such persons as are, under the articles of the company, entitled to receive such notices from the company.

9. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

Proceedings at General Meetings.

10. All business shall be deemed special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting with the exception of declaring a dividend, the consideration of the accounts, balance sheets and the reports of the directors and auditors, the election of directors in the place of those retiring, the re-appointment of the retiring auditors, 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 present in person 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, or to such other day and at such other time and place as the directors may determine, 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 general meeting of the company, or if there is no such chairman, or if he is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, the directors present shall elect one of their number to be chairman of the meeting.

14. If at any meeting no director is willing to act as chairman or if no director is present within 15 minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

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 30 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—

(*a*) by the chairman; or

(*b*) by at least three members present in person or by proxy; or

(*c*) by any member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting.

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 containing the minutes of 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 such resolution.

The demand for a poll may be withdrawn.

17. Except as provided in article 19, 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. Where there is 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, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

20. Subject to section 141 of the Act, a resolution in writing signed by all the members for the time being entitled to attend and vote on such resolution at a general meeting (or being bodies corporate by their duly authorised representatives) shall be as valid and effective for all purposes as if the resolution had been passed at a general meeting of the company duly convened and held, and if described as a special resolution shall be deemed to be a special resolution within the meaning of the Act.

Votes of Members.

21. Every member shall have one vote.

22. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, receiver, guardian, or other person appointed by that court, and any such committee, receiver, guardian, or other person may vote by proxy on a show of hands or on a poll.

23. No member shall be entitled to vote at any general meeting unless all moneys immediately payable by him to the company have been paid.

24. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting whose decision shall be final and conclusive.

25. Votes may be given either personally or by proxy.

26. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing, or, if the appointer is a body corporate, either under seal or under the hand of an officer or attorney duly authorised. A proxy need not be a member of the company.

27. 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 office or at such other place within the State as is specified for that purpose in the notice convening the meeting not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 48 hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.

28. An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances permit—

“

Limited.

I/We _____ of

_____ in the County of _____,

being a member/ members of the above-named company hereby appoint _____ of

_____ or failing him,

_____ of

_____

as my/our proxy to vote for me/us on my/our behalf at the (annual or extraordinary, as the case may be) general meeting of the company to be held on the _____ day of _____, 19___ and at any adjournment thereof.

Signed this _____ day of _____, 19_____

This form is to be used *in favour of/against the resolution. Unless otherwise instructed the proxy will vote as he thinks fit.

*Strike out whichever is not desired.”

29. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

30. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, if no intimation in writing of such death, insanity or revocation as aforesaid is received by the company at the office before the commencement of the meeting or adjourned meeting at which the proxy is used.

Bodies Corporate acting by Representatives at Meetings.

31. Any body corporate which is a member of the company may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company, and the person so authorised shall be entitled to exercise the same powers on behalf of the body corporate which he represents as that body corporate could exercise if it were an individual member of the company.

Directors.

32. The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum of association or a majority of them.

33. The remuneration of the directors shall from time to time be determined by the company in general meeting. Such remuneration shall be deemed to accrue from day to day. The directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings of the company or in connection with the business of the company.

Borrowing Powers.

34. The directors may exercise all the powers of the company to borrow money and to mortgage or charge its undertaking and property or any part thereof, and to issue debentures, debenture stock and other securities, whether outright or as security for any debt, liability or obligation of the company or of any third party.

Powers and Duties of Directors.

35. The business of the company shall be managed by the directors, who may pay all expenses incurred in promoting 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 the provisions of the Act and of these articles and to such directions, being not inconsistent with the aforesaid provisions, as may be given by the company in general meeting: but no direction given by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that direction had not been given.

36. The directors may from time to time and at any time by power of attorney appoint any company, firm or person or body of persons, whether nominated directly or indirectly by the directors, to be the attorney or attorneys of the company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under these articles) and for such period and subject to such conditions as they may think fit, and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors may think fit, and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

37. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for moneys paid to the company, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by such person or persons and in such manner as the directors shall from time to time by resolution determine.

38. 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.

Disqualification of Directors.

39. The office of director shall be vacated if the director—

(*a*) without the consent of the company in general meeting holds any other office or place of profit under the company; or

(*b*) is adjudged bankrupt in the State or in Northern Ireland or Great Britain or makes any arrangement or composition with his creditors generally; or

(*c*) becomes prohibited from being a director by reason of any order made under section 184 of the Act; or

(*d*) becomes of unsound mind; or

(*e*) resigns his office by notice in writing to the company; or

(*f*) is convicted of an indictable offence unless the directors otherwise determine; or

(*g*) 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 194 of the Act.

Voting on Contracts.

40. A director may vote in respect of any contract in which he is interested or any matter arising thereout.

Rotation of Directors.

41. At the first annual general meeting of the company, all the directors shall retire from office and at the annual 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.

42. The directors to retire in every year shall be those who have been longest in office since the last election, but as between persons who became directors on the same day, those to retire shall (unless they otherwise agree amongst themselves) be determined by lot.

43. A retiring director shall be eligible for re-election.

44. The company, at the meeting at which a director retires in manner aforesaid, may fill the vacated office by electing a person thereto, and in default the retiring director shall, if offering himself for re-election, be deemed to have been re-elected, unless at such meeting it is expressly resolved not to fill such vacated office or unless a resolution for the re-election of such director has been put to the meeting and lost.

45. No person other than a director retiring at the meeting shall, unless recommended by the directors, be eligible for election to the office of director at any general meeting unless, not less than 3 nor more than 21 days before the date appointed for the meeting, there has been left at the office notice in writing, signed by a member duly qualified to attend and vote at the meeting for which such notice is given, of his intention to propose such a person for election, and also notice in writing signed by that person of his willingness to be elected.

46. The company may from time to time by ordinary resolution 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.

47. The directors shall have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these articles. Any director so appointed shall hold office only until the next annual general meeting, and shall then be eligible for re-election, but shall not be taken into account in determining the directors who are to retire by rotation at such meeting.

48. The company may by ordinary resolution of which extended notice has been given in accordance with section 142 of the Act remove any director before the expiration of his period of office, notwithstanding anything in these articles or in any agreement between the company and such director. Such removal shall be without prejudice to any claim such director may have for damages for breach of any contract of service between him and the company.

49. The company may by ordinary resolution appoint another person in place of a director removed from office under article 48. Without prejudice to the powers of the directors under article 47, the company in general meeting may appoint any person to be a director, either to fill a casual vacancy or as an additional director. A person appointed in place of a director so removed or to fill such a vacancy 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.

50. 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. Where there is 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. If the directors so resolve it shall not be necessary to give notice of a meeting of directors to any director who being resident in the State is for the time being absent from the State.

51. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be two.

52. The continuing directors may act notwithstanding any vacancy in their number but, if and so long as their number is reduced below

the number fixed by or pursuant to the articles of the company as the necessary quorum of directors, the continuing directors or director 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.

53. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but, if no such chairman is elected, or if at any meeting the chairman is not present within 5 minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

54. The directors may delegate any of their powers to committees consisting of such member or members of the board 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.

55. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within 5 minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

56. 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 when there is an equality of votes, the chairman shall have a second or casting vote.

57. 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 is 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.

58. A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid as if it had been passed at a meeting of the directors duly convened and held.

Secretary.

59. The secretary shall be appointed by the directors for such term and at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.

60. A provision of the Act or these articles requiring or authorising a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the secretary.

The Seal.

61. The seal shall be used only by the authority of the directors or of a committee of directors authorised by the directors in that behalf, and every instrument to which the seal shall be affixed shall be signed by a director and shall be countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.

Accounts.

62. The directors shall cause proper books of account to be kept relating 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.

Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.

63. The books of account shall be kept at the office or, subject to section 147 of the Act, at such other place as the directors think fit, and shall at all reasonable times be open to the inspection of the directors.

64. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

65. The directors shall from time to time in accordance with sections 148, 150, 157 and 158 of the Act cause to be prepared and to be laid before the annual general meeting of the company such profit and loss accounts, balance sheets, group accounts and reports as are required by those sections to be prepared and laid before the annual general meeting of the company.

66. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the annual general meeting of the company together with a copy of the directors' report and auditors' report shall, not less than 21 days before the date of the annual general meeting, be sent to every person entitled under the provisions of the Act to receive them.

Audit.

67. Auditors shall be appointed and their duties regulated in accordance with sections 160 to 163 of the Act.

Notices.

68. 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. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of 24 hours after the letter containing the same is posted and in any other case at the time at which the letter would be delivered in the ordinary course of post.

69. Notice of every general meeting shall be given in any manner hereinbefore authorised to—

(*a*) every member;

(*b*) every person being a personal representative or the Official Assignee in bankruptcy of a member where the member but for his death or bankruptcy would be entitled to receive notice of the meeting; and

(*c*) the auditor for the time being of the company.

No other person shall be entitled to receive notices of general meetings.

Names, Addresses and Descriptions of Subscribers.

1. Charles O'Brien of _____ in the County of _____ University Professor.

2. Francis Power of _____ in the County of _____ Research Chemist.

3. James O'Connor of _____ in the County of _____ Biologist.

4. Thomas Daly of _____ in the County of _____ Science Teacher.

5. Richard O'Donnell of _____ in the County of _____ Librarian.

6. Joseph Murray of _____ in the County of _____ Physicist.

7. Michael Nolan of _____ in the County of _____ Statistician.

Dated the _____ day of _____, 19 _____

Witness to the above signatures:

Name:

Address:

TABLE D.

part I.

Form of Memorandum and Articles of Association of a Company limited by guarantee and having a Share Capital.

Memorandum of Association.

1. The name of the company is "The Western Counties Tourist Development Company, Limited."

2. The objects for which the company is established are the promotion of tourism in the western counties of Ireland by providing facilities for tourists, and the doing of all such other things as are incidental or conducive to the attainment of the above object.

3. The liability of the members is limited.

4. 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 £5.

5. The share capital of the company is £10,000 divided into 10,000 shares of £1 each.

We, the several persons whose names and addresses are subscribed, wish to be formed into a company in pursuance of this memorandum of association, and we 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 subscriber*
1. Patrick Walsh of _____ in the County of _____ Solicitor	100
2. Thomas Murphy of _____ in the County of _____ Hotel Proprietor	500
3. James Ryan of _____ in the County of _____ Engineer	45
4. Francis O'Brien of _____ in the County of _____ Travel Agent	100
5. Thomas Duffy of _____ in the County of _____ Farmer	100
6. Joseph Moran of _____ in the County of _____ Architect	150
7. Martin O'Reilly of _____ in the County of _____ Clerk	5
Total shares taken	1,000

Dated the _____ day of _____, 19 _____

Witness to the above signatures:

Name:

Address:

Part II.

Articles of Association to accompany preceding Memorandum of Association where the company is not a private company.

1. The number of members with which the company proposes to be registered is 100 but the directors may from time to time register an increase of members.

2. The regulations of Table A, Part I, set out in the First Schedule to the Companies Act, 1963, shall be deemed to be incorporated with these articles and shall apply to the company.

Names, Addresses and Descriptions of Subscribers.

1. Patrick Walsh of _____ in the County of _____ Solicitor.

2. Thomas Murphy of _____ in the County of _____ Hotel Proprietor.

3. James Ryan of _____ in the County of _____ Engineer.

4. Francis O'Brien of _____ in the County of _____ Travel Agent.

5. Thomas Duffy of _____ in the County of _____ Farmer.

6. Joseph Moran of _____ in the County of _____ Architect.

7. Martin O'Reilly of _____ in the County of _____ Clerk.

Dated the _____ day of _____, 19 _____

Witness to the above signatures:

Name:

Address:

Part III.

Articles of Association to accompany preceding Memorandum of Association where the company is a private company.

1. The number of members with which the company proposes to be registered is 40 but the directors may from time to time, subject to Article 2, register an increase of members.

2. The regulations of Table A, Part II, set out in the First Schedule to the Companies Act, 1963, shall be deemed to be incorporated with these articles and shall apply to the company.

Names, Addresses and Descriptions of Subscribers.

1. Patrick Walsh of _____ in the County of _____ Solicitor.

2. Thomas Murphy of _____ in the County of _____ Hotel Proprietor.

3. James Ryan of _____ in the County of _____ Engineer.

4. Francis O'Brien of _____ in the County of _____ Travel Agent.

5. Thomas Duffy of _____ in the County of _____ Farmer.

6. Joseph Moran of _____ in the County of _____ Architect.

7. Martin O'Reilly of _____ in the County of _____ Clerk.

Dated the _____ day of _____, 19 _____

Witness to the above signatures:

Name:

Address:

TABLE E.

PART I.

Form of Memorandum and Articles of Association of an Unlimited Company having a Share Capital.

Memorandum of Association.

1. The name of the company is "The Turf Harvester Company".

2. The objects for which the company is established are the development of improved methods of cutting and harvesting turf and the doing of all such things as are incidental or conducive to the attainment of the above object.

We, the several persons whose names and addresses are subscribed, wish to be formed into a company in pursuance of this memorandum of association, and we 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 Subscriber*
1. Patrick O'Connor of _____ in the County of _____, Merchant	100
2. Joseph O'Brien of _____ in the County of _____, Solicitor	500
3. Thomas Ryan of _____ in the County of _____, Engineer	50
4. James Murphy of _____ in the County of _____, Engineer	500
5. Patrick Nolan of_____ in the County of _____, Farmer	350
6. James Byrne of _____ in the County of _____, Metal Worker	50
7. James Duffy of _____ in the County of _____, Farmer	50
Total shares taken	1,600

Dated the _____ day of _____, 19 _____

Witness to the above signatures:

Name:

Address:

Part II.

Articles of Association to accompany preceding Memorandum of Association where the company is not a private company.

1. The number of members with which the company proposes to be registered is 100 but the directors may from time to time register an increase of members.

2. The share capital of the company is £10,000 divided into 10,000 shares of £1 each.

3. 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*) subdivide 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.

4. Subject to sections 133 and 141 of the Act, an annual general meeting and a meeting called for the passing of a special resolution shall be called by 21 days' notice in writing at the least, and a meeting of the company other than—

(*a*) an annual general meeting, or

(*b*) a meeting for the passing of a special resolution;

shall be called by 7 days' notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and, shall specify the place, the day and the hour of the meeting, and, in the case of special business, the general nature of that business, and shall be given in manner authorised by these articles to such persons as are, under the articles of the company, entitled to receive such notices from the company.

5. The regulations of Table A, Part I, set out in the First Schedule to the Companies Act, 1963 (other than regulations 40 to 46 (inclusive) and 51) shall be deemed to be incorporated with these articles and shall apply to the company.

Names, Addresses and Descriptions of Subscribers.

1. Patrick O'Connor of _____ in the County of _____ Merchant.

2. Joseph O'Brien of _____ in the County of _____ Solicitor.

3. Thomas Ryan of _____ in the County of _____ Engineer.

4. James Murphy of _____ in the County of _____ Engineer.

5. Patrick Nolan of _____ in the County of _____ Farmer.

6. James Byrne of _____ in the County of _____, Metal Worker.

7. James Duffy of _____ in the County of _____, Farmer.

Dated the _____ day of _____, 19 _____

Witness to the above signatures:

Name:

Address:

Part III.

Articles of Association to accompany preceding Memorandum of Association where the company is a private company.

1. The number of members with which the company proposes to be registered is 40 but the directors may from time to time, subject to Article 4, register an increase of members.

2. The share capital of the company is £10,000 divided into 10,000 shares of £1 each.

3. 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*) subdivide 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.

4. The regulations of Table A, Part II set out in the First Schedule to the Companies Act, 1963, (with the exception of regulations 40 to

46 (inclusive) of Part I of that Table), shall be deemed to be incorporated with these articles and shall apply to the company.

Names, Addresses and Descriptions of Subscribers.

1. Patrick O'Connor of_____ in the County of_____, Merchant.

2. Joseph O'Brien of_____in the County of_____, Solicitor.

3. Thomas Ryan of_____ in the County of_____, Engineer.

4. James Murphy of_____ in the County of_____, Engineer.

5. Patrick Nolan of_____ in the County of_____, Farmer.

6. James Byrne of_____ in the County of_____, Metal Worker.

7. James Duffy of_____ in the County of_____, Farmer.

Dated the _____ day of _____, 19 _____

Witness to the above signatures:

Name:

Address:

SECOND SCHEDULE.

Form of Statement in lieu of Prospectus to be delivered to Registrar by a Private Company on becoming a Public Company and Reports to be set out therein.

Section 35 .

Part I.

Form of Statement and Particulars to be contained therein.

THE COMPANIES ACT, 1963.

Statement in lieu of prospectus delivered for registration by

(*Insert the name of the company*)

Pursuant to section 35 of the Companies Act, 1963.

Delivered for registration by

1.	The nominal share capital of the company.	1. £	
		2. Shares	
2.	Divided into	of £	each
		”	
		” £	each
3.	Amount, if any, of above capital which consists of redeemable preference	3. Shares	each

shares.	of £
4. The earliest date on which the company has power to redeem these shares.	4.
5. Names, descriptions and addresses of directors or proposed directors.	5.
	6. shares of £
	on which £ paid up.
	shares of £
6. Number of shares issued and amounts paid up thereon.	on which £ paid up.
7. Amount of commissions paid or payable in connection with the issue of any shares or debentures.	7. £
8. 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.	8. £
9. Unless more than 2 years have elapsed since the date on which the company was entitled to commence business:—	9.
(*a*) Amount of preliminary expenses.	(*a*) £
(*b*) By whom these expenses have been paid or are payable.	(*b*)
(*c*) Amount paid to any promoter.	(*c*) Name of promoter: Amount £
(*d*) Consideration for the payment.	(*d*) Consideration:
(*e*) Any other benefit given to any promoter.	(*e*) Name of promoter: Nature and value of benefit:
(*f*) Consideration for giving of benefit.	(*f*) Consideration:
10. 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.	10.
11. Number and amount of shares and debentures issued within the 2 years preceding the date of this statement as fully or partly paid up otherwise than for cash or agreed to be so issued at the date of this statement.	11. (*a*) shares of £ fully paid (*b*) shares upon which £ per share credited as paid. (*c*) debentures £
Consideration for the issue of those shares or debentures.	(*d*) Consideration

12. (*a*) Number, description and amount of any shares or debentures which any person has or is entitled to be given an option to subscribe for, or to acquire from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.

(*b*) Period during which option is exercisable.

(*c*) Price to be paid for shares or debentures subscribed for or acquired under option.

(*d*) Consideration for option or right to option.

(*e*) Persons to whom option or right to option was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures.

13. (*a*) Names and addresses of vendors of property (1) purchased or acquired by the company within the 2 years preceding the date of this statement or (2) agreed or proposed to be purchased or acquired by the company, except where the contract for its purchase or acquisition was entered into in the ordinary course of business and there is no connection between the contract and the company ceasing to be a private company or where the amount of the purchase money is not material.

(*b*) Amount (in cash, shares or debentures) paid or payable to each separate vendor.

(*c*) Amount paid or payable in cash, shares or debentures for any such property, specifying the amount paid or payable for goodwill.

14. Short particulars of any transaction relating to any such property which was completed within the 2 preceding years and in which any vendor to the company or any person who is, or was at the time thereof, a promoter,

12. (*a*) shares of £ and debentures of £

(*b*) Until

(*c*)

(*d*) Consideration:

(*e*) Names and addresses:

13. (*a*)

(*b*)

(*c*) Total purchase price £ _____

Cash £

Shares £

Debentures £ _____

Goodwill £ _____

14.

director or proposed director of the company, had any interest direct or indirect.

15. Dates of, parties to, and general nature of every material contract (other than contracts entered into in the ordinary course of business carried on or intended to be carried on by the company or entered into more than 2 years before the delivery of this statement). 15.

16. Time and place at which the contracts or copies thereof may be inspected or (1) in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, and (2) in the case of a contract wholly or partly in a language other than English or Irish, a copy of a translation thereof in English or Irish or embodying a translation in English or Irish of the parts not in English or Irish, as the case may be, being a translation certified in the prescribed manner to be a correct translation. 16.

17. Names and addresses of the auditors of the company. 17.

18. Full particulars of the nature and extent of the interest of every director in any property purchased or acquired by the company within the 2 years preceding the date of this statement or proposed to be purchased or acquired by the company or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered or to be rendered to the company by him or by the firm. 18.

19. Rates of the dividends, if any, paid by the company in respect of each class of shares in the company in each of the 5 financial years immediately preceding the date of this statement or since the incorporation of the company whichever period is the shorter. 19.

20. Particulars of the cases in which no dividends have been paid in respect of any class of shares in any of these years. 20.

(Signatures of the persons above-named as directors or proposed directors or of their agents authorised in writing).

Date

Part II.

Reports to be set out.

1. If unissued shares or debentures of the company are to be applied in the purchase of a business, a report made by accountants (who

shall be named in the statement) upon—

(*a*) the profits or losses of the business in respect of each of the 5 financial years immediately preceding the delivery of the statement to the registrar; and

(*b*) the assets and liabilities of the business at the last date to which the accounts of the business were made up.

2. (1) If unissued shares or debentures of the company are to be applied directly or indirectly in any manner resulting in the acquisition of shares in a body corporate which by reason of the acquisition or anything to be done in consequence thereof or in connection therewith will become a subsidiary of the company, a report made by accountants (who shall be named in the statement) upon the profits and losses and assets and liabilities of the other body corporate in accordance with subparagraph (2) or (3), as the case requires, indicating how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company, and what allowance would have had to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired.

(2) If the other body corporate has no subsidiaries, the report referred to in subparagraph (1) shall—

(*a*) so far as regards profits and losses, deal with the profits or losses of the body corporate in respect of each of the 5 financial years immediately preceding the delivery of the statement to the registrar; and

(*b*) so far as regards assets and liabilities, deal with the assets and liabilities of the body corporate at the last date to which the accounts of the body corporate were made up.

(3) If the other body corporate has subsidiaries, the report referred to in subparagraph (1) shall—

(*a*) so far as regards profits and losses, deal separately with the other body corporate's profits or losses as provided by subparagraph (2), and in addition deal either—

(i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the other body corporate; or

(ii) separately with the profits or losses of each subsidiary, so far as they concern members of the other body corporate;

or, instead of dealing separately with the other body corporate's profits or losses, deal as a whole with the profits or losses of the other body corporate and, so far as they concern members of the other body corporate, with the combined profits or losses of its subsidiaries; and

(*b*) so far as regards assets and liabilities, deal separately with the other body corporate's assets and liabilities as provided by subparagraph (2) and in addition, deal either—

(i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the other body corporate's assets and liabilities; or

(ii) separately with the assets and liabilities of each subsidiary;

and shall indicate in relation to the assets and liabilities of the subsidiaries, the allowance to be made for persons other than members of the company.

Part III.

Provisions applying to Parts I and II.

3. In this Schedule, "***vendor***" includes a vendor as defined in Part III of the Third Schedule and "***financial year***" has the meaning assigned to it in that Part of that Schedule.

4. If in the case of a business which has been carried on, or of a body corporate which has been carrying on business, for less than 5 years, the accounts of the business or body corporate have been made up only in respect of 4 years, 3 years, 2 years or one year, Part II shall have effect as if references to 4 years, 3 years, 2 years or one year, as the case may be, were substituted for references to 5 years.

5. Any report required by Part II shall either indicate by way of note any adjustments relating to the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or shall make those adjustments and indicate that adjustments have been made.

6. Any report by accountants required by Part II shall be made by accountants qualified under this Act for appointment as auditors of the company.

THIRD SCHEDULE.

Matters to be specified in Prospectus and Reports to be set out therein.

Sections 35 , 44 , 45 , 47 , 53 , 361 , 362 , 364 , 395.

Part I.

Matters to be specified.

1. (*a*) The nominal share capital of the company;

(*b*) If the nominal share capital of the company is divided into shares of different classes, the amount of each class;

(*c*) If the nominal share capital of the company includes founders' or management or deferred shares, the nature and extent of the interest of the holders of such shares in the property and profits of the company;

(*d*) If the share capital of the company includes redeemable preference shares or shares which are redeemable in accordance with a resolution passed under section 65, the amount of the premium (if any) payable on redemption, the earliest and latest dates on which the company has power to redeem those shares and whether redemption is at the option of the company or obligatory;

(*e*) The number of shares of each class in the share capital of the company which have been issued and the amount paid up on each share of each class.

2. 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.

3. The names, addresses and descriptions of the directors or proposed directors.

4. 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 of 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.

5. The time of the opening of the subscription lists.

6. The amount payable on application and allotment on each share, and, in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the 5 preceding years, the amount actually allotted and the amount, if any, paid on the shares so allotted.

7. The number, description and amount of any shares in or debentures of the company which any person has, or is entitled to be given, an option to subscribe for, together with the following particulars of the option—

(*a*) the period during which it is exercisable;

(*b*) the price to be paid for shares or debentures subscribed for under it;

(*c*) the consideration, if any, given or to be given for it or for the right to it;

(*d*) the names and addresses of the persons to whom it or the right to it was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures.

8. The number and amount of shares and debentures which within the 5 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.

9. (1) In relation to any property to which this paragraph applies—

(*a*) the names and addresses of the vendors;

(*b*) 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;

(*c*) short particulars of any transaction relating to the property completed within the 5 preceding years in which any vendor of the property to the company or any person who is, or was at the time of the transaction, a promoter or a director or proposed director of the company had any interest direct or indirect.

(2) The property to which this paragraph applies is property purchased or acquired by the company or proposed to be so 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 the issue of the prospectus, other than property—

(*a*) the contract for the purchase or acquisition whereof was entered into in the ordinary course of the company's business, the contract not being made in contemplation of the issue nor the issue in consequence of the contract; or

(*b*) in relation to which the amount of the purchase money is not material.

10. The amount, if any, paid or payable as purchase money in cash, shares or debentures for any property to which paragraph 9 applies, specifying the amount, if any, payable for goodwill.

11. The amount, if any, paid within the 5 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, and the rate of any such commission.

12. The amount or estimated amount of preliminary expenses and the persons by whom any of those expenses have been paid or are payable and the amount or estimated amount of the expenses of the issue and the persons by whom any of those expenses have been paid or are payable.

13. Any amount or benefit paid or given within the 5 preceding years or intended to be paid or given to any promoter and the consideration for the payment or the giving of the benefit.

14. The dates of, parties to and general nature of 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 5 years before the date of issue of the prospectus.

15. The names and addresses of the auditors of the company.

16. Full particulars of the nature and extent of the interest, if any, of every director in the promotion of or in the property acquired or proposed to be acquired by the company or, where the interest of such 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.

17. 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.

18. In the case of a company which has been carrying on business, or of a business which has been carried on for less than 3 years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.

Part II.

Reports to be set out.

19. (1) A report by the auditors of the company relating to—

(*a*) profits and losses and assets and liabilities, in accordance with subparagraph (2) or (3), as the case requires; and

(*b*) the rates of the dividends, if any, paid by the company in respect of each class of shares in the company for each of the 5 financial years immediately preceding the issue of the prospectus, 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 for any of those years;

and, if no accounts have been made up for any part of the period of 5 years ending on a date 3 months before the issue of the prospectus, containing a statement of that fact.

(2) If the company has no subsidiaries, the report shall—

(*a*) so far as regards profits and losses, deal with the profits or losses of the company in respect of each of the 5 financial years immediately preceding the issue of the prospectus; and

(*b*) so far as regards assets and liabilities, deal with the assets and liabilities of the company at the last date to which the accounts of the company were made up.

(3) If the company has subsidiaries, the report shall—

(*a*) so far as regards profits and losses, deal separately with the company's profits or losses as provided by subparagraph (2), and in addition, deal either—

(i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the company; or

(ii) separately with the profits or losses of each subsidiary, so far as they concern members of the company;

or instead of dealing separately with the company's profits or losses, deal as a whole with the profits or losses of the company and, so far as they concern members of the company, with the combined profits or losses of its subsidiaries; and

(*b*) so far as regards assets and liabilities, deal separately with the company's assets and liabilities as provided by subparagraph (2) and in addition, deal either—

(i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the company's assets and liabilities; or

(ii) separately with the assets and liabilities of each subsidiary;

and shall indicate in relation to the assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.

20. 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—

(*a*) the profits or losses of the business for each of the 5 financial years immediately preceding the issue of the prospectus; and

(*b*) the assets and liabilities of the business at the last date to which the accounts of the business were made up.

21. (1) If—

(*a*) 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 any manner resulting in the acquisition by the company of shares in any other body corporate; and

(*b*) by reason of that acquisition or anything to be done in consequence thereof or in connection therewith that body corporate will become a subsidiary of the company;

a report made by accountants (who shall be named in the prospectus) upon—

(i) the profits or losses of the other body corporate for each of the 5 financial years immediately preceding the issue of the prospectus; and

(ii) the assets and liabilities of the other body corporate at the last date to which the accounts of the body corporate were made up.

(2) The said report shall—

(*a*) indicate how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company and what allowance would have had to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired; and

(*b*) where the other body corporate has subsidiaries, deal with the profits or losses and the assets and liabilities of the body corporate and its subsidiaries in the manner provided by subparagraph (3) of paragraph 19 in relation to the company and its

subsidiaries.

Part III.

Provisions applying to Parts I and II.

22. Paragraphs 12 (so far as it relates to preliminary expenses) and 16 shall not apply in the case of a prospectus issued more than 2 years after the date on which the company is entitled to commence business.

23. 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.

24. 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 and "purchase money" included the consideration for the lease, and "sub-purchaser" included a sub-lessee.

25. References in paragraph 7 to subscribing for shares or debentures shall include acquiring them from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.

26. For the purposes of paragraph 9, where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors.

27. If in the case of a company or other body corporate which has been carrying on business or of a business which has been carried on for less than 5 years, the accounts of the company, body corporate or business have been made up only in respect of 4 years, 3 years, 2 years or one year, Part II shall have effect as if references to 4 years, 3 years, 2 years or one year, as the case may be, were substituted for references to 5 years.

28. In Part II, "***financial year***" means the year in respect which the accounts of the company or of the body corporate 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, body corporate or business terminates, the accounts of the company, body corporate or business have been made up for a period greater or less than a year, that greater or less period shall for the purposes of that Part be deemed to be a financial year.

29. Any report required by Part II shall either indicate by way of note any adjustments relating to the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or shall make those adjustments and indicate that adjustments have been made.

30. Any report by accountants required by Part II shall be made by accountants qualified under this Act for appointment as auditors of the company.

FOURTH SCHEDULE.

Form of Statement in lieu of Prospectus to be delivered to Registrar by a Company which does not issue a Prospectus or which does not make an Allotment on a Prospectus issued, and Reports to be set out therein.

Section 54 .

Part I.

Form of Statement and Particulars to be contained therein.

THE COMPANIES ACT, 1963.

Statement in lieu of prospectus delivered for registration by

(*Insert the name of the Company*).

Pursuant to section 54 of the Companies Act, 1963.

Delivered for registration by

1. The nominal share capital of the company.	1. £
2. Divided into	2. shares of £ each " " " " " "
3. Amount, if any, of above capital which consists of redeemable preference shares.	2. shares of £ each
4. The earliest date on which the company has power to redeem these shares.	4.
5. Names, descriptions and addresses, of directors or proposed directors.	5.
6. 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.	6.
7. Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.	7. (*a*) shares of £ fully paid (*b*) shares upon which £ per share credited as paid. (*c*) £ debentures.
8. The consideration for the intended issue of those shares and debentures.	8.
9. Number, description and amount of any shares or debentures which any person has or is entitled to be given an option to subscribe for, or to acquire from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.	9. shares of £ and debentures of £
10. Period during which option is exercisable.	10. Until
11. Price to be paid for shares or debentures subscribed for or acquired under option.	11.

12. Consideration for option or right to option.	12.
13. Persons to whom option or right to option was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures.	13. Names and addresses—
14. Names and addresses of vendors of property purchased or acquired by the company within the two years preceding the date of this statement, or agreed or proposed to be purchased or acquired by the company except where the contract for its purchase or acquisition was entered into in the ordinary course of the business carried on or intended to be carried on by the company or the amount of the purchase money is not material.	14.
15. Amount (in cash, shares or debentures) payable to each vendor.	15.
	16. Total purchase price £ Cash £ Shares £ Debentures £
16. Amount, if any, paid or payable (in cash or shares or debentures) for any such property, specifying the amount, if any, paid or payable for goodwill.	Goodwill £
17. Short particulars of any transaction relating to any such property which was completed within the two preceding years and in which any vendor to the company or any person who is, or was at the time thereof, a promoter, director or proposed director of the company had any interest direct or indirect.	17.
18. 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.	18. Amount paid Amount payable
19. Rate of the commission.	19. Rate per cent.
20. The number of shares, if any, which persons have agreed to subscribe absolutely for a commission.	20.
21. Unless more than 2 years have elapsed since the company was entitled to commence business, the estimated amount of preliminary expenses.	21. £
22. By whom those expenses have been paid or are payable.	22.
	23. Name of promoter Amount £
23. Amount paid or intended to be paid to any promoter and the name of the promoter.	
24. Consideration for the payment.	24.
25. Any other benefit given or intended to be given to any promoter and the name of the promoter.	25. (*a*) Name of promoter (*b*) Nature and value of benefit
26. Consideration for giving of benefit.	26.

27. Dates of, parties to and general nature of every material contract (other than contracts entered into in the ordinary course of the business carried on or intended to be carried on by the company or entered into more than two years before the delivery of this statement). 27.

28. Time and place at which the contracts or copies thereof may be inspected or (1) in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, and (2) in the case of a contract wholly or partly in a language other than the English or Irish language, a copy of a translation thereof in English or Irish or embodying a translation in English or Irish of the parts in a language other than English or Irish, as the case may be, being a translation certified in the prescribed manner to be a correct translation. 28.

29. Names and addresses of the auditors of the company. 29.

30. Full particulars of the nature and extent of the interest of every director in the promotion of the company or in any property purchased or acquired by the company within the 2 years preceding the date of this statement, or proposed to be purchased or acquired, 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. 30.

(Signatures of the persons above-named as directors or proposed directors or of their agents authorised in writing). _____

_____

Date _____

Part II.

Reports to be set out.

1. Where it is proposed to acquire a business, a report made by accountants (who shall be named in the statement) upon—

(*a*) the profits or losses of the business in respect of each of the 5 financial years immediately preceding the delivery of the statement to the registrar; and

(*b*) the assets and liabilities of the business at the last date to which the accounts of the business were made up.

2. (1) Where it is proposed to acquire shares in a body corporate which by reason of the acquisition or anything to be done in consequence thereof or in connection therewith will become a subsidiary of the company, a report made by accountants (who shall be named in the statement) relating to the profits and losses and assets and liabilities of the other body corporate in accordance with subparagraph (2) or (3), as the case requires, indicating how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company, and what allowance would have had to be made, in relation to assets and

liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired.

(2) If the other body corporate has no subsidiaries, the report referred to in subparagraph (1) shall—

(*a*) so far as regards profits and losses, deal with the profits or losses of the body corporate in respect of each of the 5 financial years immediately preceding the delivery of the statement to the registrar; and

(*b*) so far as regards assets and liabilities, deal with the assets and liabilities of the body corporate at the last date to which the accounts of the body corporate were made up.

(3) If the other body corporate has subsidiaries, the report referred to in subparagraph (1) shall—

(*a*) so far as regards profits and losses, deal separately with the other body corporate's profits or losses as provided by subparagraph (2), and in addition deal either—

(i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the other body corporate; or

(ii) separately with the profits or losses of each subsidiary, so far as they concern members of the other body corporate;

or, instead of dealing separately with the other body corporate's profits or losses, deal as a whole with the profits or losses of the other body corporate and, so far as they concern members of the other body corporate, with the combined profits or losses of its subsidiaries; and

(*b*) so far as regards assets and liabilities, deal separately with the other body corporate's assets and liabilities as provided by subparagraph (2), and, in addition, deal either—

(i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the other body corporate's assets and liabilities; or

(ii) separately with the assets and liabilities of each subsidiary;

and shall indicate in relation to the assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.

Part III.

Provisions applying to Parts I and II.

3. In this Schedule, "***vendor***" includes a vendor as defined in Part III of the Third Schedule, and "***financial year***" has the meaning assigned to it in that Part of that Schedule.

4. If in the case of a business which has been carried on, or of a body corporate which has been carrying on business, for less than 5 years, the accounts of the business or body corporate have been made up only in respect of 4 years, 3 years, 2 years or one year, Part II shall have effect as if references to 4 years, 3 years, 2 years or one year, as the case may be, were substituted for references to 5 years.

5. Any report required by Part II shall either indicate by way of note any adjustments in relation to the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or shall make those adjustments and indicate that adjustments have been made.

6. Any report by accountants required by Part II shall be made by accountants qualified under this Act for appointment as auditors of the company.

FIFTH SCHEDULE.

Contents and Form of Annual Return of a Company Having a Share Capital.

Sections 125 , 395.

PART I.

Contents.

1. The address of the registered office of the company.

2. (1) If the register of members is, under this Act, kept elsewhere than at the registered office of the company, the address of the place where it is kept.

(2) If any register of holders of debentures of the company is, under this Act, kept elsewhere than at the registered office of the company, the address of the place where it is kept.

3. A summary, distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, specifying the following particulars:

(*a*) the amount of the share capital of the company and the number of shares into which it is divided;

(*b*) the number of shares taken from the incorporation 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*) the discount allowed on the issue of any shares issued at a discount or 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.

4. 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 of companies under this Act, or which would have been required so to be registered if created after the 1st day of July, 1908.

5. A list—

(*a*) containing the names, addresses and occupations of all persons who, on the 14th day after the company's annual general meeting for the year, are members of the company, and of persons who have ceased to be members since the date of the last return or, in the case of the first return, since the incorporation of the company;

(*b*) stating 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, since 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.

If the names aforesaid are not arranged in alphabetical order the list must have annexed thereto an index sufficient to enable the name of any person therein to be easily found.

6. All such particulars relating to the persons who, at the date of the return, are the directors of the company and any person who, at that date, is the secretary of the company as are by this Act required to be contained in the register of the directors and secretaries of a company.

Part II.

Form

ANNUAL RETURN of Limited,

made up to the day of , 19

(being the 14th day after the date of the annual general meeting for the year 19_____).

1. Address.

(*Address of the registered office of the company*).

2. Situation of the Registers of Members and Debenture-holders.

(*a*) (*Address of place at which the register of members is kept, if other than the registered office of the company*).

(*b*) (*Address of any place other than the registered office of the company where any register of holders of debentures of the company is kept*).

3. Summary of Share Capital and Debentures.

(*a*) *Nominal Share Capital*.

Nominal share capital £_____divided into

(*Insert number and Class*) shares of_____each

shares of_____each

shares of_____each

shares of_____each

shares of_____each

(*b*) *Issued Share Capital and Debentures.*

	Number	*Class*	
	_____	_____	shares
	_____	_____	shares
	_____	_____	shares
	_____	_____	shares
Number of shares of each class taken up to the date of this return (which number must agree with the total shown in the list as held by existing members).	_____	_____	shares
	_____	_____	shares
	_____	_____	shares
Number of shares of each class issued subject to payment wholly in cash.	_____	_____	shares

	_____	_____	shares
	_____	_____	shares
	_____	_____	shares
Number of shares of each class issued as fully paid up for a consideration other than cash.	_____	_____	shares
	_____	_____	shares
Number of shares of each class issued as partly paid up for a consideration other than cash and the extent to which each such share is so paid up.	_____	_____	shares issued as paid up to the extent of £ __ per share.
	_____	_____	shares issued as paid up to the extent of £ __ per share.
	_____	_____	shares issued as paid up to the extent of £ __ per share.
	_____	_____	shares issued as paid up to the extent of £ __ per share.

	_____	_____	shares
	_____	_____	shares
	_____	_____	shares
Number of shares (if any) of each class issued at a discount.	_____	_____	shares

Amount of discount on the issue of shares which has not been written off at the date of this return. £_____

	Number	*Class*	
£_____ per share on	_____	_____	shares
£_____ per share on	_____	_____	shares
£_____ per share on	_____	_____	shares
Amount called up on number of shares of each class } £_____ per share on	_____	_____	shares

Total amount of calls received including payments on application and allotment and any sums received on shares forfeited. £_____

		Number	*Class*	
Total amount, if any, agreed to be considered as paid on number of	} £ _____ }	_____	_____	shares

shares of each class issued as fully paid up for a consideration other than cash.	on	_____	_____	shares
		_____	_____	shares
		_____	_____	shares
		_____	_____	shares
		_____	_____	shares
Total amount, if any, agreed to be considered as paid on number of shares of each class issued as partly paid up for a consideration other than cash.	£ _____ } on	_____	_____	shares
		_____	_____	shares
	}	_____	_____	shares

Total amount of calls unpaid. £_____

Total amount of sums, if any, paid by way of commission in respect of any shares or debentures. £_____

Total amount of sums, if any, allowed by way of discount in respect of any debentures since the date of the last return. £_____

	Number	*Class*	
	_____	_____	shares
	_____	_____	shares
	_____	_____	shares
Total number of shares of each class forfeited.	_____	_____	shares

Total amount paid, if any, on shares forfeited. £_____

Note:—Where a company has converted any of its shares into stock then, where appropriate, the references to shares in paragraph 3 shall be taken as references to stock and references to number of shares shall be taken as references to amount of stock.

4. Particulars of Indebtedness.

Total amount of indebtedness of the company in respect of all mortgages and charges which are required to be registered with the registrar of companies under the Companies Act, 1963, or which would have been required so to be registered if created after 1st July, 1908. £_____

5. List of Past and Present Members.

List of persons holding shares in the company on the 14th day after the annual general meeting for 19 ____ and of persons who have held shares therein at any time since the date of the last return, or in the case of the first return, of the incorporation of the company.

			Account of Shares.		
			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 (*a*) persons who are still members and (*b*) persons who have ceased to be members‡		
Folio in register ledger containing particulars	Names, Addresses and Occupations	Number of shares held by existing members at date of return *†	Number†	Date of Registration of	Remarks

transfer

(*a*) (*b*)

*The total number of shares held by each member must be stated, and the totals must be added up so as to agree with the number of shares stated in the Summary of Share Capital and Debentures to have been taken up.

†When the shares are of different classes these columns should be sub-divided so that the number of each class held or transferred may be shown separately.

‡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.

Notes.

(1) If the return for any of the 5 immediately preceding years has given as at the date of that return the full particulars required as to past and present members and the shares held and transferred by them, only such of the particulars need be given as relate to persons ceasing to be or becoming members since the date of the last return and to shares transferred since that date.

(2) If the company is not a private company, the return need not give any particulars relating to shares transferred by persons who are still members or who have ceased to be members or the dates of registration of the transfers.

(3) If the names in the list are not arranged in alphabetical order, an index sufficient to enable the name of any person to be readily found must be annexed.

(4) Where a company has converted any of its shares into stock then, where appropriate, the references to shares in paragraph 5 shall be taken as references to stock and references to number of shares shall be taken as references to amount of stock.

6. Particulars of Directors and Secretaries.

Particulars of the persons who are directors of the company at the date of this return.

Present Christian name or names and surname	Any former Christian name or names and surname	Nationality, if not Irish	Usual residential address	Business occupation and particulars of other directorships of bodies corporate incorporated in the State

Particulars of the person who is secretary of the company at the date of this return.

Name (In the case of an individual, present Christian name or names and surname. In the case of a body corporate, the corporate name)	Any former Christian name or names and surname	Usual residential address (In the case of a body corporate the registered or principal office)

Signed _____ Director.

Signed _____ Secretary.

Notes.

"***Director***" includes any person who occupies the position of a director by whatsoever name called, and any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

"***Christian name***" includes a forename, and "***surname***" in the case of a person usually known by a title different from his surname, means that title.

"***Former Christian name***" and "***former surname***" do not include—

(*a*) in the case of a person usually known by a title different from his surname, the name by which he was known previous to the adoption of or succession to the title; or

(*b*) in the case of any person, a former Christian name or surname where that name or surname was changed or disused before the person bearing the name attained the age of 18 years or has been changed or disused for a period of not less than 20 years; or

(*c*) in the case of a married woman, the name or surname by which she was known previous to the marriage.

The names of all bodies corporate incorporated in the State of which the director is also a director, should be given, except bodies corporate of which the company making the return is the wholly-owned subsidiary or bodies corporate which are the wholly-owned subsidiaries either of the company or of another body corporate of which the company is the wholly-owned subsidiary. A body corporate is deemed to be the wholly-owned subsidiary of another if it has no members except that other and that other's wholly-owned subsidiaries and its or their nominees. If the space provided in the form is insufficient, particulars of other directorships should be listed on a separate statement attached to this return.

Where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated.

*Delivered for filing by _____

*This should be printed at the bottom of the first page of the return.

CERTIFICATES AND OTHER DOCUMENTS ACCOMPANYING ANNUAL RETURN.

Certificate to be given by a director and the secretary of every private company.

We certify that the company has not since the date of † (the incorporation of the company/the last annual return) issued any invitation to the public to subscribe for any shares or debentures of the company.

Signed _____ Director.

Signed _____ Secretary.

†in the case of the first return strike out the second alternative. In the case of a second and subsequent return strike out the first alternative.

Further Certificate to be given as aforesaid if the Number of Members of the Company exceeds 50.

We certify that the excess of the number of members of the company over 50 consists wholly of persons who, under paragraph (*b*) of

subsection (1) of section 33 of the Companies Act, 1963, are not to be included in reckoning the number of 50.

Signed _____ Director.

Signed _____ Secretary.

Certified copies of Accounts.

Except in the case of a company which is excluded or exempt from the application of section 128 of the Companies Act, 1963, there must be annexed to this return a written copy, certified both by a director and by the secretary of the company to be a true copy, of every balance sheet laid before the annual general meeting of the company held during the period to which this return relates (including every document required by law to be annexed to the balance sheet) and a copy (certified as aforesaid) of the report of the auditors on, and of the report of the directors accompanying, each such balance sheet. If any such balance sheet or document required by law to be annexed thereto is in a language other than English or Irish there must also be annexed to that balance sheet a translation in English or Irish of the balance sheet or document certified in the prescribed manner to be a correct translation. If any such balance sheet as aforesaid or document required by law to be annexed thereto 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 or documents aforesaid, as the case may be, there must be made such additions to and corrections in the copy as would have been required to be made in the balance sheet or document in order to make it comply with the said requirements, and the fact that the copy has been so amended must be stated thereon.

Banking Companies.

A banking company, in order to avail itself of the benefit of section 375 of the Companies Act, 1963, must add to this return a statement of the names of the several places where it carries on business.

SIXTH SCHEDULE.

Accounts.

Preliminary.

Sections 62 , 149 , 152 , 158 , 395 .

1. Paragraphs 2 to 11 apply to the balance sheet and 12 to 14 to the profit and loss account and are subject to the exceptions and modifications provided for by Parts II and III of this Schedule; and this Schedule has effect in addition to sections 191 and 192.

Part I.

General Provisions as to Balance Sheet and Profit and Loss Account.

Balance Sheet.

2. The authorised share capital, issued share capital, liabilities and assets shall be summarised, with such particulars as are necessary to disclose the general nature of the assets and liabilities, and there shall be specified—

(*a*) any part of the issued capital that consists of redeemable preference shares, the amount of the premium (if any) payable on

redemption, the earliest and latest dates on which the company has power to redeem those shares and whether redemption is at the option of the company or obligatory;

(*b*) any part of the issued capital that consists of preference shares which are redeemable in accordance with a resolution passed under section 65, the amount of the premium (if any) payable on redemption, the earliest and latest dates on which the company has power to redeem those shares and whether redemption is at the option of the company or obligatory;

(*c*) the amount of the share premium account;

(*d*) any sums allowed by way of discount in respect of any pany has power to reissue.

3. There shall be stated under separate headings, so far as they are not written off—

(*a*) the preliminary expenses;

(*b*) any expenses incurred in connection with any issue of share capital or debentures;

(*c*) any sums paid by way of commission in respect of any shares or debentures;

(*d*) any sums allowed by way of discount in respect of any debentures; and

(*e*) the amount of the discount allowed on any issue of shares at a discount.

4. (1) Subject to subparagraphs (2) and (3), the reserves, provisions, liabilities and fixed and current assets shall be classified under headings appropriate to the company's business. Amounts set aside to meet future tax liabilities or for tax equalisation purposes shall be treated as provisions but separately indicated.

(2) Where the amount of any class is not material, it may be included under the same heading as some other class.

(3) Where any assets of one class are not separable from assets of another class, those assets may be included under the same heading.

(4) Fixed assets shall also be distinguished from current assets.

(5) The method or methods used to arrive at the amount of the fixed assets under each heading shall be stated.

5. (1) The method of arriving at the amount of any fixed asset shall, subject to subparagraph (2), be to take the difference between—

(*a*) its cost or, if it stands in the company's books at a valuation, the amount of the valuation; and

(*b*) the aggregate amount provided or written off since the date of acquisition or valuation, as the case may be, for depreciation or diminution in value;

and for the purposes of this paragraph the net amount at which any assets stand in the company's books on the operative date (after deduction of the amounts previously provided or written off for depreciation or diminution in value) shall, if the figures relating to the period before the operative date cannot be obtained without unreasonable expense or delay, be treated as if it were the amount of a valuation of those assets made on the operative date and, where any of those assets are sold, the said net amount less the amount of the sales shall be treated as if it were the amount of the valuation so made of the remaining assets.

(2) Subparagraph (1) shall not apply—

(*a*) to assets for which the figures relating to the period beginning with the operative date cannot be obtained without unreasonable expense or delay; or

(*b*) to assets the replacement of which is provided for wholly or partly—

(i) by making provision for renewals and charging the cost of replacement against the provision so made; or

(ii) by charging the cost of replacement direct to revenue; or

(*c*) to any investments of which the market value (or, in the case of investments not having a market value, their value as estimated

by the directors) is shown either as the amount of the investments or by way of note; or

(*d*) to goodwill, patents or trademarks.

(3) For the assets under each heading whose amount is arrived at in accordance with subparagraph (1), there shall be shown—

(*a*) the aggregate of the amounts referred to in head (*a*) of that subparagraph; and

(*b*) the aggregate of the amounts referred to in head (*b*) thereof.

(4) As respects the assets under each heading whose amount is not arrived at in accordance with subparagraph (1) because their replacement is provided for as mentioned in subparagraph (2) (*b*), there shall be stated—

(*a*) the means by which their replacement is provided for; and

(*b*) the aggregate amount of the provision (if any) made for renewals and not used.

6. (1) Subject to subparagraph (2), the aggregate amounts respectively of capital reserves, revenue reserves and provisions (other than provisions for depreciation, renewals or diminution in value of assets) shall be stated under separate headings.

(2) Subparagraph (1) shall not require a separate statement of any of the 3 amounts referred to in that subparagraph which is not material.

7. (1) There shall also be shown (unless it is shown in the profit and loss account or a statement or report annexed thereto or the amount involved is not material)—

(*a*) where the amount of the capital reserves, of the revenue reserves or of the provisions (other than provisions for depreciation, renewals or diminution in value of assets) shows an increase as compared with the amount at the end of the immediately preceding financial year, the source from which the amount of the increase has been derived; and

(*b*) where—

(i) the amount of the capital reserves or of the revenue reserves shows a decrease as compared with the amount at the end of the immediately preceding financial year; or

(ii) the amount at the end of the immediately preceding financial year of the provisions (other than provisions for depreciation, renewals or diminution in value of assets) exceeded the aggregate of the sums since applied and amounts still retained for the purposes thereof;

the application of the amounts derived from the difference.

(2) Where the heading showing any of the reserves or provisions aforesaid is divided into subheadings, this paragraph shall apply to each of the separate amounts shown in the subheadings instead of applying to the aggregate amount thereof.

8. There shall be shown under separate headings—

(*a*) the aggregate amounts respectively of the company's quoted investments and unquoted investments;

(*b*) the amount of the goodwill so far as ascertainable from the books of the company or from any contracts or documents relating to the purchase or sale of property and so far as not written off;

(*c*) the amount of the patents and trademarks so far as ascertainable and so far as not written off;

(*d*) the aggregate amount of any outstanding loans permitted by section 60 (other than loans to which paragraph (*a*) of subsection (13) refers) indicating separately loans permitted by paragraphs (*b*) and (*c*) of subsection (13);

(*e*) the aggregate amount of bank loans and overdrafts;

(*f*) the net aggregate amount (after deduction of income tax) which is recommended for distribution by way of dividend.

9. Where any liability of the company is secured otherwise than by operation of law on any assets of the company, the fact that that

liability is so secured shall be stated but it shall not be necessary to specify the assets on which the liability is secured.

10. Where any of the company's debentures are held by a nominee of or a trustee for the company, the nominal amount of the debentures and the amount paid for such debentures by the company shall be stated.

11. (1) The matters referred to in subparagraphs (2) to (10) shall be stated by way of note, or in a statement or report annexed, if not otherwise shown.

(2) The amount of any arrears of fixed cumulative dividends on the company's shares and the period for which the dividends or, if there is more than one class, each class of them are in arrear, the amount to be stated before deduction of income tax, except that, in the case of tax free dividends, the amount shall be shown free of tax and the fact that it is so shown shall also be stated.

(3) Particulars of any charge on the assets of the company to secure the liabilities of any other person, including, where practicable, the amount secured.

(4) The general nature of any other contingent liabilities not provided for and, where practicable, the aggregate amount or estimated amount of those liabilities, if it is material.

(5) The aggregate amount or estimated amount, if it is material, of contracts for capital expenditure, so far as not provided for.

(6) If in the opinion of the directors any of the current assets have not a value, on realisation in the ordinary course of the company's business, at least equal to the amount at which they are stated, the fact that the directors are of that opinion.

(7) The aggregate market value of the company's quoted investments where it differs from the amount of the investments as stated, and the stock exchange value of any investments of which the market value is shown (whether separately or not) and is taken as being higher than their stock exchange value.

(8) The basis on which foreign currencies have been converted into Irish currency where the amount of the assets or liabilities affected is material.

(9) The basis on which the amount, if any, set aside for taxation on profits is computed.

(10) Except in the case of the first balance sheet laid before the company after the operative date, the corresponding amounts at the end of the immediately preceding financial year for all items shown in the balance sheet.

Profit and Loss Account.

12. There shall be shown—

(*a*) the amount charged to revenue by way of provision for depreciation, renewals or diminution in value of fixed assets;

(*b*) the amount of the interest on the company's debentures and other fixed loans;

(*c*) the amount of the charge for income tax and other taxation on profits including income tax and other taxation payable outside the State on profits and distinguishing where practicable between income tax and other taxation;

(*d*) the amounts respectively provided for redemption of share capital and for redemption of loans;

(*e*) the amount set aside or proposed to be set aside to, or withdrawn from reserves, excluding amounts which would not, in accordance with good accountancy practice, normally pass through the profit and loss account;

(*f*) the amount set aside to provisions other than provisions for depreciation, renewals or diminution in value of assets or, as the case may be, the amount, if material, withdrawn from such provisions and not applied for the purposes thereof, excluding amounts which would not, in accordance with good accountancy practice, normally pass through the profit and loss

account;

(*g*) the amount of income from investments;

(*h*) the aggregate amount of the dividends paid;

(*i*) the aggregate amount of the dividends proposed.

13. The amount of remuneration of the auditors shall be shown under a separate heading, and for the purposes of this paragraph, any sums paid by the company for the auditors' expenses shall be deemed to be included in the expression "***remuneration***".

14. (1) The matters referred to in subparagraphs (2) to (7) shall be stated by way of note, if not otherwise shown.

(2) If depreciation or replacement of fixed assets is provided for by some method other than a depreciation charge or provision for renewals, or is not provided for, the method by which it is provided for or the fact that it is not provided for, as the case may be, but this subparagraph shall not apply to freehold land.

(3) The basis on which the charge for income tax and other taxation on profits (whether payable in or outside the State) is computed.

(4) Whether or not the amount stated for dividends paid is for dividends subject to deduction of income tax.

(5) Whether or not the amount stated for dividends proposed is for dividends subject to deduction of income tax.

(6) Except in the case of the first profit and loss account laid before the company after the operative date, the corresponding amounts for the immediately preceding financial year for all items shown in the profit and loss account.

(7) Any material respects in which any items shown in the profit and loss account are affected—

(*a*) by transactions of a sort not usually undertaken by the company or otherwise by circumstances of an exceptional or non-recurrent nature; or

(*b*) by any change in the basis of accounting.

Part II.

Special Provisions where the Company is a Holding Company or a Subsidiary Company.

Modifications of and Additions to Requirements as to Company's own Accounts.

15. (1) This paragraph shall apply where the company is a holding company, whether or not it is itself a subsidiary of another body corporate but subparagraphs (4), (5) and (6) shall not apply to a private company taking advantage of subsection (1) of section 154 nor to a company which is at the end of its financial year the wholly owned subsidiary of another body corporate incorporated in the State.

(2) The aggregate amount of assets consisting of shares in, or amounts owing (whether on account of a loan or otherwise) from, the company's subsidiaries, distinguishing shares from indebtedness, shall be set out in the balance sheet separately from all the other assets of the company, and the aggregate amount of its indebtedness (whether on account of a loan or otherwise) to the company's subsidiaries shall be so set out separately from all its other liabilities, and—

(*a*) the references in Part I to the company's investments shall not include investments in its subsidiaries required by this paragraph to be separately set out; and

(*b*) paragraph 5, subparagraph (*a*) of paragraph 12, and subparagraph (2) of paragraph 14 shall not apply in relation to fixed assets consisting of interests in the company's subsidiaries.

(3) There shall be shown by way of note on the balance sheet or in a statement or report annexed thereto the number, description and amount of the shares in and debentures of the company held by its subsidiaries or their nominees, but excluding any of those shares or

debentures in the case of which the subsidiary is concerned as personal representative or in the case of which it is concerned as trustee and neither the company nor any subsidiary thereof is beneficially interested under the trust, otherwise than by way of security only for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

(4) Where group accounts are not submitted, there shall, subject to subparagraph (5), be annexed to the balance sheet a statement showing—

(*a*) the reasons why subsidiaries are not dealt with in group accounts;

(*b*) the net aggregate amount (so far as it concerns members of the holding company) of the subsidiaries' profits after deducting the subsidiaries' losses, or vice versa, for the respective financial years of the subsidiaries ending with or during the financial year of the company—

(i) so far as dealt with in the company's accounts for that year; and

(ii) so far as not so dealt with;

(*c*) the net aggregate amount, so far as concerns members of the holding company, of the subsidiaries' profits after deducting the subsidiaries' losses, or vice versa, for their previous financial years since they respectively became subsidiaries of the holding company—

(i) so far as dealt with in the company's accounts for the year referred to in head (*b*) (i); and

(ii) so far as not dealt with in the company's accounts for that or previous years;

(*d*) any qualifications contained in the report of the auditors of the subsidiaries on their accounts for their respective financial years ending as aforesaid, and any note or saving contained in those accounts to call attention to a matter which, apart from the note or saving, would properly have been referred to in such a qualification, in so far as the matter which is the subject of the qualification or note is not covered by the company's own accounts and is material from the point of view of its members;

or, in so far as the information required by this subparagraph is not obtainable, a statement that it is not obtainable.

(5) Heads (*b*) and (*c*) of subparagraph (4) shall apply only to profits and losses of a subsidiary which may properly be treated in the holding company's accounts as revenue profits or losses.

(6) Where group accounts are not submitted, there shall be annexed to the balance sheet a statement showing, in relation to the subsidiaries, if any, whose financial years did not end with that of the company—

(*a*) the reasons why the company's directors consider the subsidiaries' financial years should not end with that of the company; and

(*b*) the dates on which the subsidiaries' financial years ending last before that of the company respectively ended or the earliest and latest of those dates.

16. (1) The balance sheet of a company which is a subsidiary of another body corporate, whether or not it is itself a holding company, shall show the aggregate amount of its indebtedness to all bodies corporate of which it is a subsidiary or a fellow subsidiary and the aggregate amount of the indebtedness of all such bodies corporate to it, distinguishing in each case between indebtedness in respect of debentures and otherwise.

(2) For the purposes of this paragraph a company shall be deemed to be a fellow subsidiary of another body corporate if both are subsidiaries of the same body corporate but neither is the other's.

Consolidated Accounts of Holding Company and Subsidiaries.

17. Subject to paragraphs 18 to 22, the consolidated balance sheet and profit and loss account shall combine the information contained in the separate balance sheets and profit and loss accounts of the holding company and of the subsidiaries dealt with by the consolidated accounts, but with such adjustments, if any, as the directors of the holding company think necessary.

18. Subject as aforesaid and to Part III, the consolidated accounts shall, in giving the said information, comply, so far as practicable, with the requirements of this Act as if they were the accounts of an actual company.

19. Sections 191 and 192 shall not, by virtue of paragraphs 17 and 18 apply for the purpose of the consolidated accounts.

20. Paragraph 7 shall not apply for the purpose of any consolidated accounts laid before a company with the first balance sheet so laid after the operative date.

21. In relation to any subsidiaries of the holding company not dealt with by the consolidated accounts—

(*a*) subparagraphs (2) and (3) of paragraph 15 shall apply for the purpose of those accounts as if those accounts were the accounts of an actual company of which they were subsidiaries; and

(*b*) there shall be annexed the like statement as is required by subparagraph (4) of that paragraph where there are no group accounts, but as if references therein to the holding company's accounts were references to the consolidated accounts.

22. In relation to any subsidiaries (whether or not dealt with by the consolidated accounts), whose financial years did not end with that of the company, there shall be annexed the like statement as is required by subparagraph (6) of paragraph 15 where there are no group accounts.

Part III

Exceptions for Special Classes of Company.

23. (1) A banking or discount company shall not be subject to the requirements of Part I other than—

(*a*) in relation to its balance sheet, those of paragraphs 2 and 3, paragraph 4 (so far as it relates to fixed and current assets), paragraph 8 (except subparagraph (*e*)), paragraphs 9 and 10 and paragraph 11 (except subparagraph (7)); and

(*b*) in relation to its profit and loss account, those of subparagraphs (*h*) and (*i*) of paragraph 12, paragraph 13 and subparagraphs (1), (4), (5) and (6) of paragraph 14;

but where in its balance sheet capital reserves, revenue reserves or provisions (other than provisions for depreciation, renewals or diminution in value of assets) are not stated separately, any heading stating an amount arrived at after taking into account such a reserve or provision shall be so framed or marked as to indicate that fact, and its profit and loss account shall indicate by appropriate words the manner in which the amount stated for the company's profit or loss has been arrived at.

(2) The accounts of a banking or discount company shall not be deemed, by reason only of the fact that they do not comply with any requirements of Part I from which the company is exempt by virtue of this paragraph, not to give the true and fair view required by this Act.

(3) In this paragraph, "***banking or discount company***" means any company which satisfies the Minister that it ought to be treated for the purposes of this Schedule as a banking company or as a discount company.

24. In relation to an assurance company within the meaning of the Insurance Acts, 1909 to 1961, which is subject to and complies with the requirements of those Acts, relating to the preparation and deposit with the Minister of a balance sheet and profit and loss account, paragraph 23 shall apply as it applies in relation to a banking or a discount company, and such an assurance company shall also not be subject to the requirements of subparagraph (*a*) of paragraph 8 and subparagraphs (3), (4), (6) and (9) of paragraph 11.

25. (1) A company to which this paragraph applies shall not be subject to the following requirements of this Schedule:

(*a*) in relation to its balance sheet, those of paragraph 4 (except so far as that paragraph relates to fixed and current assets) and paragraphs 5, 6 and 7; and

(*b*) in relation to its profit and loss account, those of subparagraph (*a*), (*e*) and (*f*) of paragraph 12;

but a company taking advantage of this paragraph shall be subject, instead of the said requirements, to any prescribed conditions in relation to matters to be stated in its accounts or by way of note thereto and in relation to information to be furnished to the Minister or a person authorised by the Minister to require it.

(2) The accounts of a company shall not be deemed, by reason only of the fact that they do not comply with any of the requirements of Part I from which the company is exempt by virtue of this paragraph, not to give the true and fair view required by this Act.

(3) Subject to subparagraph (4), this paragraph applies to companies of any class prescribed for the purposes thereof, and a class of companies may be so prescribed if it appears to the Minister desirable in the public interest.

(4) If the Minister is of opinion that any of the conditions prescribed for the purposes of this paragraph have not been complied with in the case of any company, the Minister may direct that so long as the direction continues in force this paragraph shall not apply to the company.

26. Where a company entitled to the benefit of any provision contained in this Part is a holding company, the references in Part II to consolidated accounts complying with the requirements of this Act shall, in relation to consolidated accounts of that company, be construed as referring to those requirements in so far only as they apply to the separate accounts of that company.

Part IV.

Interpretation of Schedule.

27. (1) For the purposes of this Schedule—

(*a*) "***provision***" shall, subject to subparagraph (2), mean any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of providing for any known liability of which the amount cannot be determined with substantial accuracy;

(*b*) "***reserve***" shall not, subject as aforesaid, include any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of providing for any known liability;

(*c*) "***capital reserve***" shall not include any amount regarded as free for distribution through the profit and loss account, and "***revenue reserve***" shall mean any reserve other than a capital reserve;

and in this paragraph "***liability***" shall include all liabilities in respect of expenditure contracted for and all disputed or contingent liabilities.

(2) Where—

(*a*) any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets, not being an amount written off in relation to fixed assets before the operative date; or

(*b*) any amount retained by way of providing for any known liability;

is in excess of that which in the opinion of the directors is reasonably necessary for the purpose, the excess shall be treated for the purposes of this Schedule as a reserve and not as a provision.

28. For the purposes aforesaid "***quoted investment***" means an investment for which there has been granted a quotation or permission to

deal on a recognised stock exchange within the State or on any stock exchange of repute outside the State, and "***unquoted investment***" shall be construed accordingly.

SEVENTH SCHEDULE.

Matters to be Expressly Stated in Auditors' Report.

Section 163 .

1. Whether they have obtained all the information and explanations which to the best of their knowledge and belief were necessary for the purposes of their audit.

2. Whether in their opinion, proper books of account have been kept by the company, so far as appears from their examination of those books, and proper returns adequate for the purposes of their audit have been received from branches not visited by them.

3. (1) Whether the company's balance sheet and (unless it is framed as a consolidated profit and loss account) profit and loss account dealt with by the report are in agreement with the books of account and returns.

(2) Whether, in their opinion and to the best of their information and according to the explanations given to them, the said accounts give the information required by this Act in the manner so required and give a true and fair view—

(*a*) in the case of the balance sheet, of the state of the company's affairs as at the end of its financial year; and

(*b*) in the case of the profit and loss account, of the profit or loss for its financial year;

or, as the case may be, give a true and fair view thereof subject to the non-disclosure of any matters (to be indicated in the report) which by virtue of Part III of the Sixth Schedule are not required to be disclosed.

4. In the case of a company which is a holding company and which submits group accounts whether, in their opinion, the group accounts have been properly prepared in accordance with the provisions of this Act so as to give a true and fair view of the state of affairs and profit or loss of the company and its subsidiaries dealt with thereby, so far as concerns members of the company, or, as the case may be, so as to give a true and fair view thereof subject to the non-disclosure of any matters (to be indicated in the report) which by virtue of Part III of the Sixth Schedule are not required to be disclosed.

EIGHTH SCHEDULE.

Fees to be paid to the Registrar of Companies.

Section 369 .

Part I.

Table of Fees.

Matter in respect of which Fee is payable	Amount of Fee
For registration of a company limited by shares	If the nominal capital does not exceed £2,000, the sum of £2. If the nominal capital exceeds £2,000, but does not exceed £5,000, the sum of £2 with the addition of £1 for each £1,000 or part of £1,000 of nominal capital in excess of £2,000. If the nominal capital exceeds £5,000, but does not exceed £100,000, the sum of

	£5 with the addition of 5/– for each £1,000 or part of £1,000 of nominal capital in excess of £5,000. If the nominal capital exceeds £100,000, the sum of £28 15s. 0d. with the addition of £1 for each £1,000 or part of £1,000 of nominal capital in excess of £100,000.
For registration of a company not having a share capital.	If the number of members stated in the articles does not exceed 25, the sum of £2. If the number of members stated in the articles exceeds 25 but does not exceed 100, the sum of £2 with the addition of £1 for each 25 members or fraction of 25 members in excess of the first 25. If the number of members stated in the articles exceeds 100 but is not stated to be unlimited, the sum of £5 with the addition of 5/– for each 50 members or fraction of 50 members after the first 100. If the number of members is stated in the articles to be unlimited, the sum of £50.
For registration of a company limited by guarantee and having a share capital or an unlimited company having a share capital.	The same amount as would be charged for registration if the company were limited by shares or the same amount as would be so charged if the company had not a share capital, whichever is the higher.
For registration of an increase in the share capital of any company.	An amount equal to the difference, if any, between the amount which would have been payable on first registration by reference to its capital as increased and the amount which would have been so payable by reference to its capital immediately before the increase.
For registration of an increase in the membership of a company limited by guarantee or an unlimited company	An amount equal to the difference, if any, between the amount which would have been payable on first registration by reference to its membership as increased and the amount which would have been so payable by reference to its membership immediately before the increase.
For registration of any existing company except such companies as are by this Act exempted from payment of fees in respect of registration under this Act.	The same amount as is charged for registering a new company.
For registering any document by this Act required or authorised to be registered or required to be delivered, sent or forwarded to the registrar.	5/-
For making a record of any fact by this Act required or authorised to be recorded by the registrar.	5/-

Part II.

Limitations on operation of Part I.

1. Where in the case of a company limited by guarantee and having a share capital or an unlimited company having a share capital, an increase of share capital is made at the same time as an increase of membership, the company shall pay whichever fee is the higher, but not both.

2. The total of the fees payable by any company by reference to its membership shall in no case exceed £50.

3. The total of the fees payable by any company by reference to its share capital or of the fees payable by it by reference to its membership and the fees payable by it by reference to its share capital, shall in no case exceed £50.

NINTH SCHEDULE.

Provisions of this Act applied to Unregistered Companies.

Section. 377.

Subject matter	Provisions applied	Limitations on Application
Prospectuses and allotments	Sections 43 to 52, 56, 57, 61 and the Third Schedule.	To apply only so far as may be specified by orders made by the Minister and to such bodies corporate as may be so specified.
Annual return	Sections 125 to 129, 375 and the Fifth Schedule.	Not to apply so as to require particulars in respect of any period before the operative date and in relation to any period thereafter to apply so far only as may be specified as aforesaid and to such bodies corporate as may be so specified.
Accounts and Audit	Sections 147 to 153, 155 to 164, 191, 192, the Sixth Schedule (except subparagraphs (*a*) to (*d*) of paragraph 2, subparagraphs (*c*), (*d*) and (*e*) of paragraph 3 and subparagraph (*d*) of paragraph 8), and the Seventh Schedule.	To apply only so far as may be specified as aforesaid and to such bodies corporate as may be so specified.
In estigations	Sections 165 to 173.	—
Register of directors and secretaries.	Section 195.	—
Registration of documents, enforcement, penalties and other supplemental matters.	Sections 2, 193, 369 to 371, 378 to 380, 383 to 387, subsection (1) of section 395 and the Eighth and Tenth Schedules.	To apply so far only as they have effect in relation to provisions applying by virtue of the foregoing entries in this Schedule.

TENTH SCHEDULE.

Provisions Referred to in Section 380.

Section. 380.

Section or provision of Schedule	Subject Matter
19	Conclusiveness of certificate of incorporation.
35	Statement in lieu of prospectus to be delivered to registrar by company on ceasing to be a private company.
44	Matters to be stated and reports to be set out in prospectus.
54	Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to registrar.
58	Return as to allotments.
99	Registration of charges created by companies.
100(1)	Duty of company to register charges created by company.
101	Duty of company to register charges existing on property acquired.
102	Registration of judgment mortgage.
107	Notice to registrar of appointment of receiver and of receiver ceasing to act.
115	Restrictions on commencement of business.
126	Particulars in annual return of company not having a share capital.
129	Certificates to be sent by private company with annual return.
130	Statutory meeting and statutory report.
163(1), (3)	Auditors' report and right to information and explanations.
179	Restrictions on appointment or advertisement of director.
278	Notice by liquidator of his appointment.
319(2)	Receiver's abstract
321	Delivery to registrar of accounts of receivers.
352	Documents to be delivered to registrar by certain companies incorporated outside the State.
353	Return to be delivered to registrar where documents altered.
354	Accounts of company to which Part XI applies to be delivered to registrar.
355	Obligation to state name of company to which Part XI applies, whether limited, and country where incorporated.
Sch. V, Part I, paras. 1, 2, 4, 6.	Particulars in annual return of company having a share capital.

ELEVENTH SCHEDULE.

Amendments of other Acts.

Section 399 .

The Bankruptcy Acts.

1. (1) The Bankruptcy Acts shall have effect as if for section 53 of the Bankruptcy (Ireland) Amendment Act, 1872 (which relates to the

avoidance of fraudulent preferences) there were substituted the following section:

"53. Every conveyance or transfer of property or charge thereon made, every payment made, every obligation incurred and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own moneys, in favour of any creditor or of any person in trust for any creditor, with a view to giving such creditor, or any surety or guarantor for the debt due to such creditor a preference over the other creditors, shall, if the person making, taking, paying or suffering the same is adjudged bankrupt on a bankruptcy petition or a petition for arrangement, presented within 6 months after the date of making, taking, paying or suffering the same, be deemed fraudulent and void against the assignees or trustees of such bankrupt; but this section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt."

(2) Subparagraph (1) shall not apply in relation to things made or done before the operative date and section 53 of the Bankruptcy (Ireland) Amendment Act, 1872, as originally enacted shall continue to apply to things made or done before the operative date as if this Act had not been passed.

2. Section 287 shall apply also in relation to the said Act of 1872 (with the necessary modification of any reference to a company and to winding up) as if a reference to section 53 of the said Act of 1872 were substituted in section 287 for the reference to section 286.

The Insurance Acts, 1909 to 1961.

3. The Insurance Acts, 1909 to 1961, shall have effect as if for subsection (5) of section 46 of the Insurance Act, 1936 , there were substituted the following subsection:

"(5) Sections 167 and 168 of the Companies Act, 1963, shall apply in relation to an inspector appointed under this section in like manner as they apply to an inspector appointed under section 165 of that Act, and any such refusal as under subsection (3) of the said section 168 is, or might be, made the ground of the punishment of an officer or agent of the company or other body corporate whose affairs are investigated by virtue of the said section 167, shall also be a ground on which the Minister may present a petition for the winding up of such company and upon which the High Court may, on the hearing of any such petition, make an order for the winding up of such company under and in accordance with the Companies Act, 1963."

TWELFTH SCHEDULE.

Enactments Repealed.

Section 3 .

Session and Chapter or Number and Year	Short title	Extent of Repeal
3 & 4 Will. 4, c. 31.	The Sunday Observance Act, 1833.	The whole Act.
45 & 46 Vict., c. 72.	The Revenue, Friendly Societies and National Debt Act, 1882.	Subsection (1) of Section 11 and in the First Schedule the words "6 Geo. 4, c. 42, 8 & 9 Vic., c. 37, s. 22."
8 Edw. 7, c. 69.	The Companies (Consolidation) Act, 1908.	The whole Act.
3 & 4 Geo. 5, c. 25.	The Companies Act, 1913.	The whole Act.
7 & 8 Geo. 5, c. 28.	The Companies (Particulars as to	The whole Act.

	Directors) Act, 1917.	
	The Workmen's Compensation Act,	
No. 9 of 1934	1934.	Subsections (3) and (4) of section 20.
	The Insurance (Intermittent	
No. 7 of 1942	Unemployment) Act, 1942 .	Subsections (1) and (2) of section 27 .
No. 11 of 1952	The Social Welfare Act, 1952.	Subsections (1) and (2) of section 58.
No. 7 of 1959	The Companies Act, 1959 .	The whole Act.
No. 42 of 1959	The Finance (No. 2) Act, 1959 .	Subsections (2) and (3) of section 12 .

THIRTEENTH SCHEDULE.

Enactment Saved.

Section 3 .

The Joint Stock Banking Companies Act, 1857, Part of Section 12 .

Power to form banking partnerships of ten persons.

Notwithstanding anything contained in any Act passed in the session holden in the seventh and eighth years of Queen Victoria, chapter one hundred and thirteen, and intituled “An Act to regulate Joint Stock Banks in England”, or in any other Act, it shall be lawful for any number of persons, not exceeding ten, to carry on in partnership the business of banking, in the same manner and upon the same conditions in all respects as any company of not more than six persons could before the passing of the Joint Stock Banking Companies Act, 1857, have carried on such business.