

COMPANIES ACT 1948

11 & 12 Geo. 6. Chapter 38

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Companies Act, 1948.

11 & 12 Geo. 6. Ch. 38.

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434. Prohibition of partnerships with more than twenty members.

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Fifth 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 go to Allotment on a Prospectus issued and Reports to be set out therein.

Sixth Schedule.—Contents and Form of Annual Return of a Company having a Share Capital.

Seventh Schedule.—Conditions as to Interests in Shares and Debentures of Exempt Private Company.

Eighth Schedule.—Accounts.

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Tenth Schedule.—Orders in Course of Winding Up pronounced in Vacation in Scotland.

Eleventh Schedule.—Provisions of this Act which do not apply in the case of a Winding Up subject to Supervision of the Court.

Twelfth Schedule.—Fees to be paid to the Registrar of Companies.

Thirteenth Schedule.—Form of Statement to be published by Banking and Insurance Companies and Deposit, Provident or Benefit Societies.

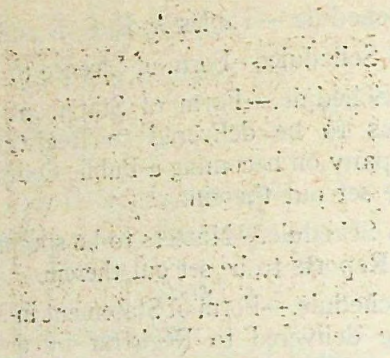
Fourteenth Schedule.—Provisions of this Act applied to Unregistered Companies.

Fifteenth Schedule.—Provisions referred to in section 438 of this Act.

Sixteenth Schedule.—Amendments of other Acts.

Seventeenth Schedule.—Enactments Repealed.

Eighteenth Schedule.—Enactments Saved.





CHAPTER 38.

An Act to consolidate the Companies Act, 1929, the Companies Act, 1947 (other than the provisions thereof relating to the registration of business names, bankruptcy and the prevention of fraud in connection with unit trusts), and certain other enactments amending the first-mentioned Act.

[30th June 1948.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.

INCORPORATION OF COMPANIES AND MATTERS INCIDENTAL THERETO.

Memorandum of Association.

Mode of forming incorporated company.

1.—(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 in respect of registration, form an incorporated company, with or without limited liability.

(2) Such a company may be either—

(*a*) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act 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

PART I. —*cont.*

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 with respect to memorandum.

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

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

(*b*) whether the registered office of the company is to be situate in England or in Scotland;

(*c*) 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.

Stamp and signature of memorandum.

3. The memorandum must bear the same stamp as if it were a deed, and must be signed by each subscriber in the presence of at least one witness who must attest the signature, and that attestation shall be sufficient in Scotland as well as in England.

Restriction on alteration of memorandum.

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

PART I. —*cont.*

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

5.—(1) A company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it—

(*a*) to carry on its business more economically or more efficiently; or

(*b*) to attain its main purpose by new or improved means; or

(*c*) to enlarge or change the local area of its operations; or

(*d*) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or

(*e*) to restrict or abandon any of the objects specified in the memorandum; or

(*f*) to sell or dispose of the whole or any part of the undertaking of the company; or

(*g*) to amalgamate with any other company or body of persons:

Provided that 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.

(2) An application under this section may be made—

(*a*) by the holders of not less in the aggregate than fifteen per cent. 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 fifteen per cent. of the company's members; or

(*b*) by the holders of not less than fifteen per cent. of the company's debentures entitling the holders to object to alterations of its objects:

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

(3) An application under this section must be made within twenty-one 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.

(4) On an application under this section the court may make an order 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

PART I. —*cont.*

such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement:

Provided that no part of the capital of the company shall be expended in any such purchase.

(5) 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 first day of December, nineteen hundred and forty-seven, 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.

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.

(6) In the case of a company which is, by virtue of a licence from the Board of Trade, exempt from the obligation to use the word " limited " as part of its name, a resolution altering the company's objects shall also require the same notice to the Board of Trade as to members of the company.

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

(*a*) if no application is made with respect thereto under this section, it shall within fifteen 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 fifteen 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 the delivery of documents to the registrar under paragraph (*b*) of this subsection for such period as the court may think proper.

(8) If a company makes default in giving notice or delivering any document to the registrar of companies as required by the last foregoing subsection, the company and every officer of the company who is in default shall be liable to a default fine of ten pounds.

* the B. of T. may revoke its licence or

PART I. —*cont.*

(9) The validity of an alteration of the provisions of a company's memorandum with respect to the objects of the company shall not be questioned on the ground that it was not authorised by subsection (1) of this section except in proceedings taken for the purpose (whether under this section or otherwise) before the expiration of twenty-one days after the date of the resolution in that behalf; and where any such proceedings are taken otherwise than under this section the two last foregoing subsections shall apply in relation thereto as if they had been taken under this section and as if an order declaring the alteration invalid were an order cancelling it and as if an order dismissing the proceedings were an order confirming the alteration.

(10) In relation to a resolution for altering the provisions of a company's memorandum with respect to the objects of the company passed before the first day of December, nineteen hundred and forty-seven, this section shall have effect as if, in lieu of the proviso to subsection (1) and subsections (2) to (9) thereof, there had been enacted therein the provisions of subsections (2) to (7) of section five of the Companies Act, 1929. 19 & 20 Geo. 5. c. 23.

Articles of Association.

Articles prescribing regulations for companies.

6. 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 case of unlimited company or company limited by guarantee.

7.—(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 fifteen days after the increase was resolved on or took place, give to the registrar of companies notice of the increase, and the registrar shall record the increase.

If default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

PART I. —*cont.*

Adoption and application of Table A.

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

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

Printing, stamp, and signature of articles.

9. 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 of association in the presence of at least one witness who must attest the signature, and that attestation shall be sufficient in Scotland as well as in England.

Alteration of articles by special resolution.

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

(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.

11. The form of—

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

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

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

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

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

Registration.

PART I. —*cont.*

Registration of memorandum and articles

12. The memorandum and the articles, if any, shall be delivered to the registrar of companies for England or the registrar of companies for Scotland according as the registered office of the company is stated by the memorandum to be situate in England or Scotland, and the registrar shall retain and register them.

Effect of registration.

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

(2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession 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.

Power of company to hold lands.

14.—(1) A company incorporated under this Act shall have power to hold lands, and as regards lands in any part of the United Kingdom without licence in mortmain:

Provided that a company formed for the purpose of promoting art, science, religion, charity or any other like object not involving the acquisition of gain by the company or by its individual members, shall not, without the licence of the Board of Trade, hold more than two acres of land, but the Board may by licence empower any such company to hold lands in such quantity, and subject to such conditions, as the Board think fit.

(2) A licence given by the Board of Trade under this section shall be in accordance with the form set out in the Second Schedule to this Act, or as near thereto as circumstances admit.

Conclusiveness of certificate of incorporation.

15.—(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 of the Supreme Court, and in Scotland by a solicitor, engaged in the formation of the company, or by a person named in the

PART I. —*cont.*

articles as a director or secretary of the company, of compliance with all or any of the said requirements shall be produced to the registrar, and the registrar may accept such a declaration as sufficient evidence of compliance.

Registration of unlimited company as limited.

16.—(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 VIII 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 shall 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 with respect to Names of Companies.

Prohibition of registration of companies by undesirable names.

17. No company shall be registered by a name which in the opinion of the Board of Trade is undesirable.

Change of name.

18.—(1) A company may by special resolution and with the approval of the Board of Trade 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 Board of Trade, is too like the name by which a company in existence is previously registered, the first-mentioned company may change its name with the sanction of the Board of Trade and, if they so direct within six months of its being registered by that name, shall change it within a period of six weeks from the date of the direction or such longer period as the Board 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 five pounds for every day during which the default continues.

(3) Where a company changes its name under this section, the registrar shall enter the new name on the register in place

of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case.

(4) 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 that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

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

19.—(1) Where it is proved to the satisfaction of the Board of Trade 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 Board may by licence direct that the association may be registered as a company with limited liability, without the addition of the word "limited" to its name, and the association may be registered accordingly 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 Board of Trade—

(*a*) that the objects of a company registered under this Act as a limited company are restricted to those specified in the foregoing subsection 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 Board 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", and subsections (3) and (4) of the last foregoing section 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 Board of Trade under this section may be granted on such conditions and subject to such regulations as the Board think fit, and those conditions and regulations shall be binding on the body to which the licence is granted, and (where the grant is under subsection (1) of this section) shall, if the Board so direct, be inserted in the memorandum and articles, or in one of those documents.

(4) A body to which a licence is granted under this section shall be excepted from the provisions of this Act relating to the use of the word "limited" as any part of its name, the

PART I. —*cont.*

publishing of its name and the sending of lists of members to the registrar of companies.

(5) A licence under this section may at any time be revoked by the Board of Trade, and upon revocation the registrar shall enter the word "limited" at the end of the name upon the register of the body to which it was granted, and the body shall cease to enjoy the exemptions and privileges or, as the case may be, the exemptions granted by this section:

Provided that, before a licence is so revoked, the Board shall give to the body notice in writing of their intention, and shall afford it an opportunity of being heard in opposition to the revocation.

(6) Where a body in respect of which a licence under this section is in force alters the provisions of its memorandum with respect to its objects, the Board of Trade may (unless they see fit to revoke the licence) vary the licence by making it subject to such conditions and regulations as the Board think fit, in lieu of or in addition to the conditions and regulations, if any, to which the licence was formerly subject.

(7) 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 six weeks from the date of revocation or such longer period as the Board of Trade 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 the proviso to subsection (5) of this section to that body shall include a statement of the effect of the foregoing provisions of this subsection; and

(*b*) subsections (3) and (4) of the last foregoing section 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 fifty pounds for every day during which the default continues.

General Provisions with respect to Memorandum and Articles.

Effect of memorandum and articles.

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

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

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

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

22. 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:

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

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

23.—(1) Subject to the provisions of the last foregoing section and of section two hundred and ten of this Act, any condition 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:

Provided that 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.

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

(3) Subsections (2), (3), (4), (7) and (8) of section five of this Act (except paragraph (*b*) of the said subsection (2)) 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.

PART I. —*cont.*

(4) This section shall apply to a company's memorandum whether registered before or after the commencement of this Act.

Copies of memorandum and articles to be given to members.

24.—(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 Parliament which alters the memorandum, subject to payment, in the case of a copy of the memorandum and of the articles, of one shilling or such less sum as the company may prescribe, and, in the case of a copy of an 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 one pound.

Issued copies of memorandum to embody alterations.

25.—(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 any copies of the memorandum which are not in accordance with the alteration, it shall be liable to a fine not exceeding one pound for each copy so issued, and every officer of the company who is in default shall be liable to the like penalty.

Membership of Company.

Definition of member.

26.—(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.

27.—(1) Except in the cases hereafter in this section mentioned, 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.

PART I. —*cont.*

(3) This section shall not prevent a subsidiary which is, at the commencement of this Act, a member of its holding company, from continuing to be a member but, subject to the last foregoing subsection, the subsidiary shall have no right to vote at meetings of the holding company or any class of members thereof.

(4) Subject to subsection (2) of this section, subsections (1) and (3) thereof shall apply in relation to a nominee for a body corporate which is a subsidiary, as if references in the said subsections (1) and (3) to such a body corporate included references to a nominee for it.

(5) 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 interest of its members as such, whatever the form of that interest.

Private Companies.

Meaning of "private company."

28.—(1) For the purposes of this Act, the expression "private company" means a company which by its articles—

(*a*) restricts the right to transfer its shares; and

(*b*) limits the number of its members to fifty, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company, were while in that employment, and have continued after the determination of that employment to be, members of the company; and

(*c*) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

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

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

29. Where the articles of a company include the provisions which, under the last foregoing section, 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 the provisions contained in section thirty-one, subsection (1) of section one hundred and twenty-nine, paragraph (*d*) of section two hundred and twenty-two and paragraph (i) of proviso (*a*) to subsection (1) of section two hundred and twenty-four of this Act, and thereupon the provisions contained in the first, third and fourth of those enactments shall apply to the company as if it were not a private company and the provisions contained

PART I. —*cont.*

in the second of those enactments shall cease to apply to the company:

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

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

30.—(1) If a company, being a private company, alters its articles in such manner that they no longer include the provisions which, under section twenty-eight of this Act, are required to be included in the articles of a company in order to constitute it a private company, the company shall, as on the date of the alteration, cease to be a private company and shall, within a period of fourteen days after 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 Third Schedule to this Act 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:

Provided that a statement in lieu of prospectus need not be delivered under this subsection if within the said period of fourteen days a prospectus relating to the company which complies, or is deemed by virtue of a certificate of exemption under section thirty-nine of this Act to comply, with the Fourth Schedule to this Act, is issued and is delivered to the registrar of companies as required by section forty-one of this Act.

(2) Every statement in lieu of prospectus delivered under the foregoing subsection 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 the said Third Schedule, have endorsed thereon or attached thereto a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(3) If default is made in complying with subsection (1) or (2) of this section, the company and every officer of the company who is in default shall be liable to a default fine of fifty pounds.

(4) Where a statement in lieu of prospectus delivered to the registrar of companies under subsection (1) of this section includes any untrue statement, any person who authorised the

delivery of the statement in lieu of prospectus for registration shall be liable— PART I. —*cont.*

(*a*) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine not exceeding five hundred pounds, or both; or

(*b*) on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding one hundred pounds, 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.

(5) 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.

31. 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 six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with fewer than 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, &c.

Form of contracts.

32.—(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 if made according to English law 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

PART I. —*cont.*

by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied;

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

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

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

(4) A deed to which a company is a party shall be held to be validly executed according to the law of Scotland on behalf of the company if it is executed in accordance with the provisions of this Act or is sealed with the common seal of the company and subscribed on behalf of the company by two of the directors or by a director and the secretary of the company, and such subscription on behalf of the company shall be binding whether attested by witnesses or not.

Bills of exchange and promissory notes.

33. 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 abroad.

34.—(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 not situate in the United Kingdom.

(2) A deed signed by such an 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 use abroad.

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

PART I. —*cont.*

(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 notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

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

Authentication of Documents.

Authentication of documents.

36. 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 II.

SHARE CAPITAL AND DEBENTURES.

Prospectus.

Dating of prospectus.

37. 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.

38.—(1) Subject to the provisions of the next following section, 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 Fourth Schedule to this Act 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.

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

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

(*a*) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or

(*b*) in relation to shares or debentures which were not offered to the public.

If any person acts in contravention of the provisions of this subsection, he shall be liable to a fine not exceeding five hundred pounds.

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

(*a*) as regards any matter not disclosed, he proves that he was not cognisant thereof; or

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

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

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 16 of the Fourth Schedule to this Act, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(5) This section shall not apply—

(*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 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

previously issued and for the time being dealt in or quoted on a prescribed 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.

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

Exclusion of foregoing section and relaxation of Fourth Schedule in case of certain prospectuses.

39.—(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 to say, issued to persons who are not existing members or debenture holders of the company); and

(*b*) application is made to a prescribed 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 to say, 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 Fourth Schedule to this Act 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 Fourth Schedule to this Act; and

(*b*) the last foregoing section shall not apply to any issue, after the permission applied for is granted, of a prospectus or form of application relating to the shares or debentures.

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

40.—(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

PART II. —*cont.*

written consent to the issue thereof with the statement included in the form and context in which it is included; and

(*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 five hundred pounds.

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

Registration of prospectus.

41.—(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 of companies 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 the last foregoing section 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 Fourth Schedule to this Act 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 thirty-nine of this Act 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 the 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 sub-paragraph (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 a copy embodying a translation in English 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; and

(*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 five pounds for every day from the date of the issue of the prospectus until a copy thereof is so delivered with the required documents endorsed thereon or attached thereto.

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

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

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

Civil liability for mis-statements in prospectus.

43.—(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, that is to say:—

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

PART II. —*cont.*

(*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; and

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

Provided that where, under section forty of this Act, 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 this subsection 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.

(2) No person shall be liable under subsection (1) of this section 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 forty of this Act 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:

Provided that this subsection 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 forty, 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.

(3) A person who, apart from this subsection would under subsection (1) of this section be liable, by reason of his having given a consent required of him by section forty of this Act, 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 forty 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.

(4) 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

PART II. —*cont.*

(*b*) the consent of a person is required under section forty of this Act 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:

Provided that a person shall not be deemed for the purposes of this subsection to have authorised the issue of a prospectus by reason only of his having given the consent required by section forty of this Act to the inclusion therein of a statement purporting to be made by him as an expert.

(5) For the purposes of this section—

(*a*) the expression "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*) the expression "expert" has the same meaning as in section forty of this Act.

Criminal liability for mis-statements in prospectus.

44.—(1) Where a prospectus issued after the commencement of this Act 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 two years, or a fine not exceeding five hundred pounds, or both; or

(*b*) on summary conviction, to imprisonment for a term not exceeding three months, or a fine not exceeding one hundred pounds, 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 forty of this Act 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 prospectus.

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

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

(3) Section thirty-eight of this Act 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 forty-one of this Act 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

PART II. —*cont.*

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.

46. For the purposes of the foregoing provisions of this Part of this Act—

(*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.

Prohibition of allotment unless minimum subscription received.

47.—(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 Fourth Schedule to this Act 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 five per cent. of the nominal amount of the share.

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

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

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(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.

48.—(1) A company having a share capital which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless at least three days before the first allotment of either shares or debentures there has been delivered to the registrar 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 Fifth Schedule to this Act 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 the foregoing subsection 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 the said Fifth 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 subsection (1) or (2) of this section, 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 one hundred pounds.

(5) Where a statement in lieu of prospectus delivered to the registrar of companies under subsection (1) of this section 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 two years or a fine not exceeding five hundred pounds, or both; or

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(*b*) on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding one hundred pounds, 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.

Effect of irregular allotment.

49.—(1) An allotment made by a company to an applicant in contravention of the provisions of the two last foregoing sections 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) If any director of a company knowingly contravenes, or permits or authorises the contravention of, any of the provisions of the said sections 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 the allottee may have sustained or incurred thereby:

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

Applications for, and allotment of, shares and debentures.

50.—(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 third 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 third 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 the foregoing subsection, 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:

Provided that, if it is not so issued as a newspaper advertisement before the third day after that on which it is first 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 the foregoing provisions of this section 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 five hundred pounds.

(4) In the application of this section to a prospectus offering shares or debentures for sale, the foregoing subsections 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 not be revocable until after the expiration of the third day after the time of the opening of the subscription lists, or the giving before the expiration of the said third day, by some person responsible under section forty-three of this Act 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 and the next succeeding section the third day after another day, any intervening day which is a Saturday or Sunday or which is a bank holiday in any part of Great Britain 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.

(7) This section shall not apply in relation to a prospectus to which paragraph (*a*) or (*b*) of subsection (2) of section thirty-nine of this Act applies.

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

51.—(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

PART II. —*cont.*

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 been refused before the expiration of three weeks from the date of the closing of the subscription lists or such longer period not exceeding six weeks as may, within the said three weeks, be notified to the applicant for permission by or on behalf of the stock exchange.

(2) Where the permission has not been applied for as aforesaid, or has been refused as aforesaid, 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 eight 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 five per cent. per annum from the expiration of the eighth day:

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

(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 the last foregoing subsection; 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 five hundred pounds.

(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) For the purposes of this section, permission shall not be deemed to be refused if it is intimated that the application for it, though not at present granted, will be given further consideration.

(6) 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 for sale with the following modifications, that is to say—

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

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(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.

Return as to allotments.

52.—(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 descriptions of the allottees, and the amount, if any, paid or due and payable on each share; and

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

(2) Where such a contract as above mentioned is not reduced to writing, the company shall within one month after the allotment deliver to the registrar 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 twelve of that Act.

54 & 55 Vict. c. 39.

(3) If default is made in complying with this section, every officer of the company who is in default shall be liable to a

PART II. —*cont.*

fine not exceeding fifty pounds for every day during which the default continues:

Provided that, 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, &c.

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

53.—(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 ten 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 or rate per cent. of the commission paid or agreed to be paid is—

(i) in the case of shares offered to the public for subscription, disclosed in the prospectus; or

(ii) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and delivered before the payment of the commission to the registrar 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 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 twenty-five pounds.

(6) Nothing in this section shall affect the operation of subsection (2) of section three of the Gas Undertakings Act, 1934 (which limits the rate at which commission may be paid by gas undertakers). 24 & 25 Geo. 5. c. 28.

Prohibition of provision of financial assistance by company for purchase of or subscription for its own, or its holding company's, shares.

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

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

(*a*) where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business;

(*b*) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of, or subscription for, fully-paid shares in the company or its holding company, being a purchase or subscription by trustees of or for shares to

PART II. —*cont.*

be held by or for the benefit of employees of the company, including any director holding a salaried employment or office in the company;

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

(2) If a company acts in contravention of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one hundred pounds.

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

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

55.—(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) The foregoing subsection 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.

56.—(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 the foregoing subsection, be applied by the company in paying up unissued shares of the company 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 commencement of this Act issued any shares at a premium, this section shall apply as if the shares had been issued after the commencement of this Act:

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

Power to issue shares at a discount.

57.—(1) Subject as provided in this section, it shall be lawful for a company to issue at a discount shares in the company of a class already issued:

Provided that—

(*a*) the issue of the shares at a discount must be authorised by resolution passed in general meeting 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*) not less than one year must at the date of the issue have elapsed since the date on which the company was entitled to commence business;

(*d*) the shares to be issued at a discount must be issued within one month after the date on which the issue is sanctioned by the 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

PART II. —*cont.*

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) 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.

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 default fine.

Power to issue redeemable preference shares.

58.—(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:

Provided 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.

PART II. —*cont.*

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

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

(5) The capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company in paying up unissued shares of the company to be 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.

59. 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 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.

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

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

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

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

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(*b*) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

(*c*) convert all or any of its paid-up shares into stock, and reconvert that stock into paid-up shares of any denomination;

(*d*) subdivide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the 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) The powers conferred by this section must be exercised by the company in general meeting.

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

Notice to registrar of consolidation of share capital, conversion of shares into stock, &c.

62.—(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*) re-converted stock into shares; or

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

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

(*f*) cancelled any shares, otherwise than in connection with a reduction of share capital under section sixty-six of this Act;

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, sub-divided, redeemed or cancelled, or the stock re-converted.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

Notice of increase of share capital.

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

PART II. —*cont.*

(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, and there shall be forwarded to the registrar of companies together with the notice a printed copy of the resolution authorising the increase.

(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 default fine.

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

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

(*a*) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up;

(*b*) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

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

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

Provided that—

(*a*) no such payment shall be made unless it is authorised by the articles or by special resolution;

(*b*) no such payment, whether authorised by the articles or by special resolution, shall be made without the previous sanction of the Board of Trade;

(*c*) before sanctioning any such payment the Board of Trade may, at the expense of the company, appoint a person to inquire and report to them as to the circumstances of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry;

PART II. —*cont.*

(*d*) the payment shall be made only for such period as may be determined by the Board of Trade, and that period shall in no case extend beyond the close of the half year next after the half year during which the works or buildings have been actually completed or the plant provided;

(*e*) the rate of interest shall in no case exceed four per cent. per annum or such other rate as may for the time being be prescribed by order of the Treasury;

(*f*) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid;

(*g*) nothing in this section shall affect any company to which the Indian Railways Act, 1894, as amended by any subsequent enactment, applies.

57 & 58 Vict. c. 12.

(2) The power conferred by this section on the Treasury shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Reduction of Share Capital.

Special resolution for reduction of share capital.

66.—(1) 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.

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

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

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

PART II. —*cont.*

(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 the next following subsection:—

(*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) of this section shall not apply as regards any class or any classes of creditors.

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

68.—(1) The court, if satisfied, with respect to every creditor of the company who under the last foregoing section is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been

PART II. —*cont.*

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 "; and

(*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 ", those words shall, until the expiration of the period specified in the order, be deemed to be part of the name of the company.

Registration of order and minute of reduction.

69.—(1) The registrar of companies, on production to him of an order of the court confirming the reduction of the share capital of a company, and the delivery to him of a copy of the order and of a minute approved by the 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 with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

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

PART II. —*cont.*

(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 twenty-five of this Act.

Liability of members in respect of reduced shares.

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

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

(*a*) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before the said date; and

(*b*) if the company is wound up, the court, on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

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

Penalty for concealing name of creditor, &c.

71. 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; or

(*c*) aids, abets or is privy to any such concealment or misrepresentation as aforesaid,

he shall be guilty of a misdemeanour.

PART II. —*cont.*

Variation of Shareholders' Rights.

Rights of holders of special classes of shares.

72.—(1) If, in the case of a company the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for 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 fifteen per cent. of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the court to have the variation cancelled, and, where any such application is made, the variation shall not have effect unless and until it is confirmed by the court.

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

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

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

(5) The company shall within fifteen days after the making of an order by the court on any such application forward a copy of the order to the registrar 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 default fine.

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

Transfer of Shares and Debentures, Evidence of Title, &c.

Nature of shares.

73. 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.

PART II. —*cont.*

Numbering of shares.

74. Each share in a company having a share capital shall be distinguished by its appropriate number:

Provided that, 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.

Transfer not to be registered except on production of instrument of transfer.

75. 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:

Provided that nothing in this section shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

Transfer by personal representative.

76. 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.

77. On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

Notice of refusal to register transfer.

78.—(1) If a company refuses to register a transfer of any shares or debentures, the company shall, within two months after the date on which the transfer was lodged with the company, send to the transferee notice of the refusal.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

Certification of transfers.

79.—(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.

PART II. —*cont.*

(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 handwritten 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 with respect to issue of certificates.

80.—(1) Every company shall, within two months after the allotment of any of its shares, debentures or debenture stock and within two months after the date on which a transfer of any such shares, debentures or debenture stock is lodged with the company, complete and have ready for delivery the certificates of all shares, the debentures and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

The expression " transfer " for the purpose of this subsection means a transfer duly stamped and otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

(3) If any company on whom a notice has been served requiring the company to make good any default in complying with the provisions of subsection (1) of this section fails

PART II. —*cont.*

to make good the default within ten days after the service of the notice, the court may, on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order, and any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company responsible for the default.

Certificate to be evidence of title

81. 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.

Evidence of grant of probate.

82. 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, or confirmation as executor, 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.

83.—(1) A company limited by shares, if so authorised by its articles, may, with respect 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 termed 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.

Penalty for personation of shareholder.

84. 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, as if the offender were the true and lawful owner, he shall be guilty of felony, and shall on conviction thereof be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years.

Offences in connection with share warrants in Scotland.

85.—(1) If in Scotland any person—

(*a*) with intent to defraud, forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any share warrant or coupon, or any document purporting to be a share warrant or coupon, issued in pursuance of this Act; or

PART II. —*cont.*

(*b*) by means of any such forged or altered share warrant, coupon, or document, purporting as aforesaid, demands or endeavours to obtain or receive any share or interest in any company under this Act, or to receive any dividend or money payable in respect thereof, knowing the warrant, coupon, or document to be forged or altered;

he shall on conviction thereof be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years.

(2) If in Scotland any person without lawful authority or excuse, proof whereof shall lie on him,—

(*a*) engraves or makes on any plate, wood, stone, or other material, any share warrant or coupon purporting to be—

(i) a share warrant or coupon issued or made by any particular company in pursuance of this Act; or

(ii) a blank share warrant or coupon so issued or made; or

(iii) a part of such a share warrant or coupon; or

(*b*) uses any such plate, wood, stone, or other material, for the making or printing of any such share warrant or coupon, or of any such blank share warrant or coupon, or any part thereof respectively; or

(*c*) knowingly has in his custody or possession any such plate, wood, stone, or other material;

he shall on conviction thereof be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years.

Special Provisions as to Debentures

Provisions as to registers of debenture holders

86.—(1) A company registered in England shall not keep in Scotland and a company registered in Scotland shall not keep in England any register of holders of debentures of the company or any duplicate of any such register or part of any such register which is kept outside Great Britain.

(2) Neither a register of holders of debentures of a company nor a duplicate of any such register or part of any such register which is kept outside Great Britain shall be kept in England, in the case of a company registered in England,

or in Scotland, in the case of a company registered in Scotland, elsewhere than 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 or duplicate 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, and where a company keeps in England or Scotland, as the case may be, both such a register and such a duplicate, it shall keep them at the same place.

(3) Every company which keeps any such register or duplicate in England or Scotland shall send notice to the registrar of companies of the place where the register or duplicate is kept and of any change in that place:

Provided that a company shall not be bound to send notice under this subsection where the register or duplicate has, at all times since it came into existence, or in the case of a company which came into existence after the commencement of this Act, at all times since then, been kept at the registered office of the company.

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

87.—(1) Every register of holders of debentures of a company shall, except when duly closed (but subject to such reasonable restrictions as the company may in general meeting impose, so that not less than two hours in each day shall be allowed for inspection), 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 hundred words required to be copied.

(3) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed of the sum of one shilling 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 hundred words required to be copied.

(4) If inspection is refused, or a copy is refused or not forwarded, the company and every officer of the company who is in default shall be liable to a fine not exceeding five pounds, and further shall be liable to a default fine of two pounds.

PART II. —*cont.*

(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 thirty days in any year, as may be therein specified.

Liability of trustees for debenture holders.

88.—(1) Subject to the following provisions of this section, 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) The foregoing subsection 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) of this section shall not operate—

(*a*) to invalidate any provision in force at the commencement of this Act so long as any person then entitled to the benefit of that provision or afterwards given the benefit thereof under the next following subsection 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.

PART II. —*cont.*

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

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

(*b*) to any named trustees 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.

89. A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the commencement of this Act, shall not be invalid by reason only that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.

Power to re-issue redeemed debentures in certain cases.

90.—(1) Where either before or after the commencement of this Act a company has redeemed any debentures previously issued, 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, manifested its intention that the debentures shall be cancelled;

the company shall have, and shall be deemed always to have had, power to re-issue the debentures, either by re-issuing the same debentures or by issuing other debentures in their place.

(2) Subject to the provisions of the next following section, 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 or after the commencement of this Act deposited any of its debentures to

PART II. —*cont.*

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) 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 or after the commencement of this Act, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued:

Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty.

Saving, in case of re-issued debentures, of rights of certain mortgagees. 8 Edw. 7. c. 69. 18 & 19 Geo. 5. c. 45.

91. Whereas by section one hundred and four of the Companies (Consolidation) Act, 1908, it was provided that, upon the re-issue of redeemed debentures, the person entitled to the debentures should have the same rights and priorities as if the debentures had not previously been issued:

And whereas section forty-five of the Companies Act, 1928, amended the said section one hundred and four so as to provide (amongst other things) that the said person should have the same priorities as if the debentures had never been redeemed, but saved, in the case of debentures redeemed before, but re-issued after, the date of the commencement of that Act (that is to say, the first day of November, nineteen hundred and twenty-nine), the rights and priorities of persons under mortgages and charges created before that date:

Now, therefore, where any debentures which were redeemed before the said first day of November have been re-issued after that day and before the commencement of this Act, or are re-issued after the commencement of this Act, 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 such mortgage or charge as aforesaid if the said section one hundred and four, as originally enacted, had been enacted in this Act instead of the last foregoing section.

Specific performance of contracts to subscribe for debentures.

92. 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.

Validity of debentures to bearer in Scotland.

93. It is hereby declared that, notwithstanding anything contained in the statute of the Scots Parliament of 1696, chapter twenty-five, debentures to bearer issued in Scotland are valid and binding according to their terms.

Payment of certain debts out of assets subject to floating charge in priority to claims under the charge.

94.—(1) Where, in the case of a company registered in England, either a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding up are under the provisions of Part V of this Act 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 three hundred and nineteen 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 V of this Act 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 the last foregoing subsection occurred before the commencement of this Act, subsections (1) and (3) of this section shall have effect with the substitution, for references to the said provisions of Part V of this Act, of references to the provisions which, by virtue of subsection (9) of the said section three hundred and nineteen are deemed to remain in force in the case therein mentioned, and subsection (2) shall not apply.

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

PART III.

REGISTRATION OF CHARGES.

Registration of Charges with Registrar of Companies.

Registration of charges created by companies registered in England.

95.—(1) Subject to the provisions of this Part of this Act, every charge created after the fixed date by a company registered in England and being a charge to which this section applies shall, so far as any security on the company's property or undertaking is conferred thereby, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge together with the instrument, if any, by which the charge is created or evidenced, are delivered to or received by the registrar of companies for registration in manner required by this Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a charge becomes void under this section the money secured thereby shall immediately become payable.

(2) This section applies to 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 trademark or on a copyright or a licence under a copyright.

(3) In the case of a charge created out of the United Kingdom comprising property situate outside the United Kingdom, the delivery to and the receipt by the registrar of a copy verified in the prescribed manner of the instrument by which the charge is created or evidenced shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself, and twenty-one days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in the United Kingdom shall be substituted for twenty-one days after the date of the creation of the charge as the time within which the particulars and instrument or copy are to be delivered to the registrar.

(4) Where a charge is created in the United Kingdom but comprises property outside the United Kingdom, the instrument creating or purporting to create the charge may be sent for registration under this section notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situate.

(5) Where a charge comprises property situate in Scotland or Northern Ireland 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, the delivery to and the receipt by the registrar of a copy verified in the prescribed manner of the instrument by which the charge is created or evidenced, together with a certificate in the prescribed form stating that the charge was presented for registration in Scotland or Northern Ireland, as the case may be, on the date on which it was so presented shall, for the purposes of this section, have the same effect as the delivery and receipt of the instrument itself.

(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 twenty-one days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars:—

(*a*) the total amount secured by the whole series; and

(*b*) the dates of the resolutions 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;

together with the deed containing the charge, or, if there is no such deed, one of the debentures of the series:

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the registrar for entry

PART III. —*cont.*

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

(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 or rate per cent. of the commission, discount or allowance so paid or made, but omission to do this shall not affect the validity of the debentures issued:

Provided that the deposit of any debentures as security for any debt of the company shall not, for the purposes of this subsection, be treated as the issue of the debentures at a discount.

(10) In this Part of this Act—

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

(*b*) the expression " the fixed date " means in relation to the charges specified in paragraphs (*a*) to (*f*), both inclusive, of subsection (2) of this section, the first day of July, nineteen hundred and eight, and in relation to the charges specified in paragraphs (*g*) to (*i*), both inclusive, of the said subsection, the first day of November, nineteen hundred and twenty-nine.

Duty of company to register charges created by company.

96.—(1) It shall be the duty of a company to send to the registrar of companies for registration the particulars of every charge created by the company and of the issues of debentures of a series requiring registration under the last foregoing 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 as aforesaid, then, unless the 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 default fine of fifty pounds.

Duty of company to register charges existing on property acquired.

97.—(1) Where a company registered in England acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Part of this Act, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the registrar of companies for registration in manner required by this Act within twenty-one days after the date on which the acquisition is completed:

Provided that, if the property is situate and the charge was created outside Great Britain, twenty-one days after the date on which the copy of the instrument could in due course of post, and if despatched with due diligence, have been received in the United Kingdom shall be substituted for twenty-one days after the completion of the acquisition as the time within which the particulars and the copy of the instrument are to be delivered to the registrar.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine of fifty pounds.

Register of charges to be kept by registrar of companies.

98.—(1) The registrar of companies shall keep, with respect to each company, a register in the prescribed form of all the charges requiring registration under this Part of this Act, and shall, on payment of such fee as may be specified by regulations made by the Board of Trade, enter in the register with respect 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 ninety-five of this Act;

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

(i) if the charge is a charge created by the company, the date of its creation, and if the charge was a charge existing on property acquired by the company, the date of the acquisition of the property; and

(ii) the amount secured by the charge; and

(iii) short particulars of the property charged; and

(iv) the persons entitled to the charge.

(2) The registrar shall give a certificate under his hand of the registration of any charge registered in pursuance of this Part of this Act, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this Part of this Act as to registration have been complied with.

PART III. —*cont.*

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of such fee, not exceeding one shilling for each inspection as may be specified by regulations made by the Board of Trade.

(4) The powers to make regulations conferred by this section on the Board of Trade shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Endorsement of certificate of registration on debentures.

99.—(1) The company shall cause a copy of every certificate of registration given under the last foregoing section to be endorsed on every debenture or certificate of debenture stock which is issued by the company and the payment of which is secured by the charge so registered:

Provided that nothing in this subsection shall be construed as requiring a company to cause a certificate of registration of any charge so given to be endorsed on any debenture or certificate of debenture stock issued by the company before the charge was created.

(2) If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock which under the provisions of this section is required to have endorsed on it a copy of a certificate of registration without the copy being so endorsed upon it, he shall, without prejudice to any other liability, be liable to a fine not exceeding one hundred pounds.

Entries of satisfaction and release of property from charge.

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

(*a*) that the debt for which the charge was given 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;

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.

Rectification of register of charges.

101. 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

PART III. —*cont.*

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.

Registration of enforcement of security.

102.—(1) If any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall, within seven days from the date of the order or of the appointment under the said powers, give notice of the fact to the registrar of companies, and the registrar shall, on payment of such fee as may be specified by regulations made by the Board of Trade, enter the fact in the register of charges.

(2) Where any person appointed receiver or manager of the property of a company under the powers contained in any instrument ceases to act as such receiver or manager, he shall, on so ceasing, give the registrar of companies notice to that effect, and the registrar shall enter the notice in the register of charges.

(3) If any person makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(4) The power conferred by this section on the Board of Trade shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Provisions as to Company's Register of Charges and as to Copies of Instruments creating Charges.

Copies of instruments creating charges to be kept by company.

103. Every company shall cause a copy of every instrument creating any charge requiring registration under this Part of this Act to be kept at the registered office of the company:

Provided that, in the case of a series of uniform debentures, a copy of one debenture of the series shall be sufficient.

Company's register of charges.

104.—(1) Every limited company shall keep at the registered office of the company a register of charges and enter therein all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company, giving in each case a short description of the property charged, the amount of the charge, and, except in the case of securities to bearer, the names of the persons entitled thereto.

(2) If any officer of the company knowingly and wilfully authorises or permits the omission of any entry required to be made in pursuance of this section, he shall be liable to a fine not exceeding fifty pounds.

PART III. —*cont.*

Right to inspect copies of instruments creating mortgages and charges and company's register of charges.

105.—(1) The copies of instruments creating any charge requiring registration under this Part of this Act with the registrar of companies, and the register of charges kept in pursuance of the last foregoing section, shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day shall be allowed for inspection) to the inspection of any creditor or member of the company without fee, and the register of charges shall also be open to the inspection of any other person on payment of such fee, not exceeding one shilling for each inspection, as the company may prescribe.

(2) If inspection of the said copies or register is refused, every officer of the company who is in default shall be liable to a fine not exceeding five pounds and a further fine not exceeding two pounds for every day during which the refusal continues.

(3) If any such refusal occurs in relation to a company registered in England, the court may by order compel an immediate inspection of the copies or register.

Application of Part III to Companies incorporated outside England.

Application of Part III to charges created, and property subject to charge acquired, by company incorporated outside England.

106. The provisions of this Part of this Act shall extend to charges on property in England which are created, and to charges on property in England which is acquired, by a company (whether a company within the meaning of this Act or not) incorporated outside England which has an established place of business in England.

PART IV.

MANAGEMENT AND ADMINISTRATION.

Registered Office and Name.

Registered office of company.

107.—(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 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 fourteen 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 default fine.

PART IV. —*cont.*

Publication of name by company.

108.—(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 bills of parcels, invoices, receipts and letters of credit of the company.

(2) If a company does not paint or affix its name in manner directed by this Act, the company and every officer of the company who is in default shall be liable to a fine not exceeding five pounds, 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 default fine.

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

(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 bill of parcels, 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 fifty pounds, 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.

PART IV. —*cont.*

Restrictions on Commencement of Business.

Restrictions on commencement of business.

109.—(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

PART IV. —*cont.*

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 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 fifty pounds for every day during which the contravention continues.

(7) Nothing in this section shall apply to—

(*a*) a private company; or

(*b*) a company registered before the first day of January, nineteen hundred and one; or

(*c*) a company registered before the first day of July, nineteen hundred and eight, which has not issued a prospectus inviting the public to subscribe for its shares.

Register of Members.

Register of members.

110.—(1) Every company shall keep a register of its members and enter therein the following particulars:—

(*a*) the names and addresses 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:

Provided that, 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 this subsection.

PART IV —*cont.*

(2) The register of members shall be kept at the registered office of the company:

Provided 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;

so, however, that it shall not be kept, in the case of a company registered in England, at a place outside England, and, in the case of a company registered in Scotland, at a place outside Scotland.

(3) 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:

Provided that a company shall not be bound to send notice under this subsection where the register has, at all times since it came into existence or, in the case of a register in existence at the commencement of this Act, at all times since then, been kept at the registered office of the company.

(4) Where a company makes default in complying with subsection (1) of this section or makes default for fourteen days in complying with the last foregoing subsection, the company and every officer of the company who is in default shall be liable to a default fine.

Index of members.

111.—(1) Every company having more than fifty members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index of the names of the members of the company and shall, within fourteen days after the date on which any alteration is made in the register of members, make any necessary alteration in the index.

(2) The index 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 default fine.

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

112.—(1) On the issue of a share warrant the company shall strike out of its register of members the name of the member then entered therein as holding the shares specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely:—

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

(*b*) a statement of the shares included in the warrant, distinguishing each share by its number 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) of this section shall be deemed to be the particulars required by this Act to be entered in the register of members, and, on the surrender, the date of the surrender must be entered.

(5) Subject to the provisions of this Act, the bearer of a share warrant may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Act, either to the full extent or for any purposes defined in the articles.

Inspection of register and index.

113.—(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 two hours in each day be allowed for inspection) be open to the inspection of any member without charge and of any other person on payment of 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 hundred words or fractional part thereof required to be copied.

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

PART IV. —*cont.*

(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 two pounds and further to a default fine of two pounds.

(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.

114. Where, by virtue of proviso (*b*) to subsection (2) of section one hundred and ten of this Act, 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 (3) of that section, subsection (3) of section one hundred and eleven of this Act, or the last foregoing section 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 was in default, and the power of the court under subsection (4) of the last foregoing section shall extend to the making of orders against that other person and his officers and servants.

Power to close register.

115. 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 thirty days in each year.

Power of court to rectify register.

116.—(1) If—

(*a*) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or

(*b*) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member;

the person aggrieved, or any member of the company, or the company, may apply to the court for rectification of the register.

(2) Where an application is made under this section, the court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.

(3) On an application under this section the court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted

from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand, and generally may decide any question necessary or expedient to be decided for rectification of the register.

(4) In the case of a company required by this Act to send a list of its members to the registrar 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.

Trusts not to be entered on register in England.

117. No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the registrar, in the case of companies registered in England.

Register to be evidence.

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

Dominion Register.

Power for company to keep dominion register.

119.—(1) A company having a share capital whose objects comprise the transaction of business in any part of His Majesty's dominions outside Great Britain, the Channel Islands or the Isle of Man may cause to be kept in any such part of His Majesty's dominions in which it transacts business a branch register of members resident in that part (in this Act called a "dominion register").

(2) The company shall give to the registrar of companies notice of the situation of the office where any dominion register is kept and of any change in its situation, and if it is discontinued of its discontinuance, and any such notice shall be given within fourteen days of the opening of the office or of the change or discontinuance, as the case may be.

(3) If default is made in complying with subsection (2) of this section, the company and every officer of the company who is in default shall be liable to a default fine.

(4) References to a colonial register occurring in any articles registered before the first day of November, nineteen hundred and twenty-nine, shall be construed as references to a dominion register.

Regulations as to dominion register.

120.—(1) A dominion register shall be deemed to be part of the company's register of members (in this section called "the principal register").

(2) It shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the

PART IV. —*cont.*

advertisement before closing the register shall be inserted in some newspaper circulating in the district where the dominion register is kept, and that any competent court in that part of His Majesty's dominions where the register is kept may exercise the same jurisdiction of rectifying the register as is under this Act exercisable by the court, and that the offences of refusing inspection or copies of a dominion register, and of authorising or permitting the refusal may be prosecuted summarily before any tribunal having summary criminal jurisdiction in that part of His Majesty's dominions.

(3) The company shall—

(*a*) transmit to its registered office a copy of every entry in its dominion register as soon as may be after the entry is made; and

(*b*) cause to be kept at the place where the company's principal register is kept a duplicate of its dominion register duly entered up from time to time.

Every such duplicate shall for all the purposes of this Act be deemed to be part of the principal register.

(4) Subject to the provisions of this section with respect to the duplicate register, the shares registered in a dominion register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a dominion register shall, during the continuance of that registration, be registered in any other register.

(5) A company may discontinue to keep a dominion register, and thereupon all entries in that register shall be transferred to some other dominion register kept by the company in the same part of His Majesty's dominions or to the principal register.

(6) Subject to the provisions of this Act, any company may, by its articles, make such provisions as it may think fit respecting the keeping of dominion registers.

(7) If default is made in complying with subsection (3) of this section, the company and every officer of the company who is in default shall be liable to a default fine; and where, by virtue of proviso (*b*) to subsection (2) of section one hundred and ten of this Act, the principal register 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 paragraph (*b*) of subsection (3) of this section, he shall be liable to the same penalty as if he were an officer of the company who was in default.

Stamp duties in case of shares registered in dominion registers.

121. An instrument of transfer of a share registered in a dominion register, other than such a register kept in Northern Ireland, shall be deemed to be a transfer of property situate out of the United Kingdom, and, unless executed in any part of the United Kingdom, shall be exempt from stamp duty chargeable in Great Britain.

Power to extend provisions as to dominion registers to other countries. 53 & 54 Vict. c. 37.

122.—(1) The Foreign Jurisdiction Act, 1890, shall have effect as if the last three foregoing sections were included among the enactments which by virtue of section five of that Act may be applied by Order in Council to foreign countries in which for the time being His Majesty has jurisdiction.

(2) His Majesty may by Order in Council direct that the said sections, including any enactments for the time being in force amending or substituted for those sections, shall extend, with or without any exceptions, adaptations or modifications specified in the Order, to any territories under His Majesty's protection to which those sections cannot be extended under the Foreign Jurisdiction Act, 1890, as amended by subsection (1) of this section.

His Majesty may by Order in Council revoke or vary any Order made under this subsection.

Provisions as to branch registers of dominion companies kept in the United Kingdom.

123.—(1) If by virtue of the law in force in any part of His Majesty's dominions outside Great Britain companies incorporated under that law have power to keep in Great Britain branch registers of their members resident in Great Britain, His Majesty may by Order in Council direct that subsection (2) of section one hundred and ten (except the proviso thereto) and sections one hundred and thirteen and one hundred and sixteen of this Act shall, subject to any modifications and adaptations specified in the Order, apply to and in relation to any such branch registers kept in Great Britain as they apply to and in relation to the registers of companies within the meaning of this Act.

(2) For the purposes of this section, the expression " His Majesty's dominions " includes any territory which is under His Majesty's protection or in respect of which a mandate under the League of Nations has been accepted by His Majesty.

11 & 12 Geo. 6. c. 8.

(3) For the purposes of the Mandated and Trust Territories Act, 1947 (which makes provision as to the application and modification of enactments in relation to such mandates as aforesaid and the trusteeship system of the United Nations), subsections (1) and (2) of this section shall be deemed to be contained in an Act of an earlier session than that Act.

PART IV. —*cont.*

Annual Return.

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

124.—(1) Every company having a share capital shall, once at least in every year, make a return containing with respect 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 Sixth Schedule to this Act, and the said return shall be in the form set out in Part II of that Schedule or as near thereto as circumstances admit:

Provided 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 one hundred and thirty-one of this Act to hold an annual general meeting during the following year, in that year;

(*b*) where the company has converted any of its shares into stock and given notice of the conversion to the registrar of companies, the list referred to in paragraph 5 of Part I of the said Sixth Schedule must state the amount of stock held by each of the existing members instead of the amount of shares and the particulars relating to shares required by that paragraph;

(*c*) the return may, in any year, if the return for either of the two 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 or to changes as compared with that date in the amount of stock held by a member; and

(*d*) the annual return of a company made next after the expiry of paragraph (1) of regulation three of the Defence (Companies) Regulations, 1940 (under which the annual return of a company having a share capital need not contain any list of members, except in the case of a company's first annual return or of a private company), need not, if that paragraph applied to the annual return last made by the company, give the particulars required by the said paragraph 5 as to past members of the company or as to shares transferred.

PART IV. —*cont.*

(2) In the case of a company keeping a dominion register—

(*a*) references in proviso (*c*) to the foregoing subsection to the particulars required by the said paragraph 5 shall be taken as not including any such particulars contained in the dominion register, in so far as copies of the entries containing those particulars are not received at the registered office of the company before the date when the return in question is made; and

(*b*) where an annual return is made between the date when any entries are made in the dominion register and the date when copies of those entries are received at the registered office of the company, the particulars contained in those entries, so far as relevant to an annual return, shall be included in the next or a subsequent annual return as may be appropriate having regard to the particulars included in that return with respect to the company's register of members.

(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 default fine.

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

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

125.—(1) Every company not having a share capital shall once at least in every calendar year make a return 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 or any duplicate of any such register or part of any such register is, under the provisions of this Act, kept, in England in the case of a company registered in England or in Scotland in the case of a company registered in Scotland, elsewhere than at the registered office of the company, the address of the place where it is kept;

(*d*) all such particulars with respect 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

PART IV. —*cont.*

be contained with respect to directors and the secretary respectively in the register of directors and secretaries of a company:

Provided that 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 one hundred and thirty-one of this Act to hold an annual general meeting during the following year, in that year.

(2) There shall be annexed to the return a statement containing particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges which are required (or, in the case of a company registered in Scotland, which, if the company had been registered in England, would be 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 first day of July, nineteen hundred and eight.

(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 default fine.

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

Time for completion of annual return.

126.—(1) The annual return must be completed within forty-two 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 default fine.

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

Documents to be annexed to annual return.

127.—(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 company in general meeting during the period to which the return relates (including every document required by law to be annexed to the balance sheet); and

PART IV. —*cont.*

(*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 where any such balance sheet or document required by law to be annexed thereto is in a foreign language, there shall be annexed to that balance sheet a translation in English 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 default fine.

For the purposes of this subsection, the expression "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 an assurance company which has complied with the provisions of subsection (4) of section seven of the Assurance Companies Act, 1909. 9 Edw. 7. c. 49.

Certificates to be sent by private company with annual return.

128. A private company shall send with the annual return required by section one hundred and twenty-four of this Act 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 twenty-eight of this Act are not to be included in reckoning the number of fifty.

Exemption, in certain cases, of private companies, from requirements of s. 127.

129.—(1) A private company shall be excepted from the requirements imposed by section one hundred and twenty-seven of this Act if, but only if,—

(*a*) the conditions mentioned in the next following subsection are satisfied at the date of the return and have been satisfied at all times since the commencement of this Act; and

PART IV. —*cont.*

(*b*) there is sent with the return a certificate, signed by the persons signing the certificates required to be so sent by the last foregoing section, that to the best of their knowledge and belief the said conditions are and have been satisfied as aforesaid:

Provided that if at any time it is shown that the said conditions are then satisfied in the case of any private company, the Board of Trade may on the application of the company's directors direct that, in relation to any subsequent annual returns of the company, it shall not be necessary for the said conditions to have been satisfied before that time, and the certificates sent with those returns shall in that event relate only to the period since that time.

(2) The said conditions are—

(*a*) that the conditions contained in the Seventh Schedule to this Act are satisfied as to the persons interested in the company's shares and debentures; and

(*b*) that the number of persons holding debentures of the company is not more than fifty (joint holders being treated as a single person); and

(*c*) that no body corporate is a director of the company and neither the company nor any of the directors is party or privy to any arrangement whereby the policy of the company is capable of being determined by persons other than the directors, members and debenture holders or trustees for debenture holders.

(3) A prosecution shall not be instituted in England in respect of any failure of a private company to comply with section one hundred and twenty-seven of this Act except by or with the consent of the Board of Trade.

(4) Any reference in this Act to an exempt private company shall be construed as referring to a company with respect to which the conditions mentioned in subsection (2) of this section are satisfied and have been satisfied at all times since the commencement of this Act or since the giving by the Board of Trade of a direction under the proviso to subsection (1) of this section.

(5) References in this section to the said conditions having been satisfied since the commencement of this Act shall, in relation to a company first registered after the commencement of this Act, be construed as referring to the conditions having been satisfied since the company's registration.

Meetings and Proceedings.

PART IV. —*cont.*

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 three months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called "the statutory meeting".

(2) The directors shall, at least fourteen 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:

Provided that if the statutory report is forwarded later than is required by this subsection, 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.

(3) 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;

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

(*c*) an abstract of the receipts of the company and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company;

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

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

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(4) The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors, if any, of the company.

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

(6) The directors shall cause a list showing the names, descriptions and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting and to remain open and accessible to any member of the company during the continuance of the meeting.

(7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(8) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(9) In the event of any default in complying with the provisions of this section, every director of the company who is 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 fifty pounds.

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

Annual general meeting.

131.—(1) 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 fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

Provided that, so long as a company holds its first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

(2) If default is made in holding a meeting of the company in accordance with the foregoing subsection, the Board of Trade 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 Board think 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 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.

(3) A general meeting held in pursuance of the last foregoing subsection shall, subject to any directions of the Board of Trade, 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.

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

(5) If default is made in holding a meeting of the company in accordance with subsection (1) of this section, or in complying with any directions of the Board of Trade under subsection (2) thereof, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds, and if default is made in complying with subsection (4) of this section, the company and every officer of the company who is in default shall be liable to a default fine of two pounds.

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.

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

(4) A meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(5) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

(6) For the purposes of this section the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required by section one hundred and forty-one of this Act.

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, twenty-one 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, fourteen days' notice in writing in the case of a company other than an unlimited company and seven days' notice in writing in the case of 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 the foregoing subsection) a meeting of the company (other than an adjourned meeting) may be called—

(*a*) in the case of the annual general meeting, by twenty-one 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 fourteen days' notice in writing in the case of a company other than an unlimited company and by seven days' notice in writing in the case of an unlimited company.

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(3) A meeting of a company shall, notwithstanding that it is called by shorter notice than that specified in the last foregoing subsection or in the company's articles, as the case may be, be deemed to have been duly called if it is so agreed—

(*a*) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and

(*b*) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than ninety-five per cent. in nominal value of the shares giving a right to attend and vote at the meeting, or, in the case of a company not having a share capital, together representing not less than ninety-five per cent. of the total voting rights at that meeting of all the members.

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 the expression "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 five per cent. in number of 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 ten pounds of stock held by him, and in any other case every member shall have one vote.

Power of court to order 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

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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 the foregoing subsection shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.

Proxies.

136.—(1) 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 appointed to attend and vote instead of a member of a private company shall also have the same right as the member to speak at the meeting:

Provided that, unless the articles otherwise provide,—

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

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

(*c*) a proxy shall not be entitled to vote except on a poll.

(2) 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 and vote instead of him, and that a proxy need not also be a member; and if default is made in complying with this subsection as respects any meeting, every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds.

(3) 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 forty-eight hours before a meeting or adjourned meeting in order that the appointment may be effective thereat.

(4) 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 one hundred pounds:

Provided that an officer shall not be liable under this subsection 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.

(5) 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 either—

(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 the foregoing subsection 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 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.

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Representation of corporations at meetings of companies and of creditors.

139.—(1) A corporation, whether a company within the meaning of this Act or not, may—

(*a*) if it is a member of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body 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;

(*b*) if it is a creditor (including a holder of debentures) of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body 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 corporation which he represents as that corporation could exercise if it were an individual shareholder, creditor or holder of debentures of that other company.

Circulation of members' resolutions, &c.

140.—(1) Subject to the following provisions of this section it shall be the duty of a company, on the requisition in writing of such number of members as is hereinafter specified and (unless the company otherwise resolves) at the expense of the requisitionists,—

(*a*) to give to members of the company entitled to receive notice of the next annual general meeting notice of any resolution which may properly be moved and is intended to be moved at that meeting;

(*b*) to circulate to members entitled to have notice of any general meeting sent to them any statement of not more than one thousand words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

(2) The number of members necessary for a requisition under the foregoing subsection shall be—

(*a*) any number of members representing not less than one twentieth of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or

(*b*) not less than one hundred members holding shares in the company on which there has been paid up an average sum, per member, of not less than one hundred pounds.

(3) Notice of any such resolution shall be given, and any such statement shall be circulated, to members of the company entitled to have notice of the meeting sent to them by serving a copy of the resolution or statement on each such member in any manner permitted for service of notice of the meeting, and notice of any such resolution shall be given to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving him notice of meetings of the company:

Provided that the copy shall be served, or notice of the effect of the resolution shall be given, as the case may be, in the same manner and, so far as practicable, at the same time as notice of the meeting and, where it is not practicable for it to be served or given at that time, it shall be served or given as soon as practicable thereafter.

(4) A company shall not be bound under this section to give notice of any resolution or to circulate any statement unless—

(*a*) a copy of the requisition signed by the requisitionists (or two or more copies which between them contain the signatures of all the requisitionists) is deposited at the registered office of the company—

(i) in the case of a requisition requiring notice of a resolution, not less than six weeks before the meeting; and

(ii) in the case of any other requisition, not less than one week before the meeting; and

(*b*) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect thereto:

Provided that if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date six weeks or less after the copy has been deposited, the copy though not deposited within the time required by this subsection shall be deemed to have been properly deposited for the purposes thereof.

(5) The company shall also not be bound under this section to circulate any statement 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

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application under this section to be paid in whole or in part by the requisitionists, notwithstanding that they are not parties to the application.

(6) Notwithstanding anything in the company's articles, the business which may be dealt with at an annual general meeting shall include any resolution of which notice is given in accordance with this section, and for the purposes of this subsection notice shall be deemed to have been so given notwithstanding the accidental omission, in giving it, of one or more members.

(7) In the event of any default in complying with the provisions of this section, every officer of the company who is in default shall be liable to a fine not exceeding five hundred pounds.

Extraordinary and special resolutions.

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

(2) A resolution shall be a special resolution when it has been passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than twenty-one days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given:

Provided that, if 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-five 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-five per cent. of the total voting rights at that meeting of all the members, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.

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

(4) In computing the majority on a poll demanded on the question that an extraordinary resolution or a special resolution be passed, reference shall be had to the number of votes cast for and against the resolution.

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(5) 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.

Resolutions requiring special notice.

142. Where by any provision hereafter contained in this Act special notice is required of a resolution, the resolution shall not be effective unless notice of the intention to move it has been given to the company not less than twenty-eight 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 newspaper having an appropriate circulation or in any other mode allowed by the articles, not less than twenty-one days before the meeting:

Provided that if, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date twenty-eight days or less after the notice has been given, the notice though not given within the time required by this subsection shall be deemed to have been properly given for the purposes thereof.

Registration and copies of certain resolutions and agreements.

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

Provided that an exempt private company need not forward a printed copy of any such resolution or agreement if instead it forwards to the registrar of companies a copy in some other form approved 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) Where articles have not been registered, a printed copy of every such resolution or agreement shall be forwarded to any member at his request on payment of one shilling or such less sum as the company may direct.

(4) This section shall apply to—

(*a*) special resolutions;

(*b*) extraordinary resolutions;

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

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(*d*) resolutions or agreements which have been agreed to by all the members of some class of shareholders but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members;

(*e*) resolutions requiring a company to be wound up voluntarily, passed under paragraph (*a*) of subsection (1) of section two hundred and seventy-eight of this Act.

(5) If a company fails to comply with subsection (1) of this section, the company and every officer of the company who is in default shall be liable to a default fine of two pounds.

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

(7) For the purposes of the two last foregoing subsections, a liquidator of the 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 of directors and managers.

145.—(1) Every company shall cause minutes of all proceedings of general meetings, all proceedings at meetings of its directors and, where there are managers, all proceedings at meetings of its managers to be entered in books kept for that purpose.

(2) Any such minute if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Where minutes have been made in accordance with the provisions of this section of the proceedings at any general meeting of the company or meeting of directors or managers,

then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors, managers or liquidators shall be deemed to be valid.

(4) If a company fails to comply with subsection (1) of this section, the company and every officer of the company who is in default shall be liable to a default fine.

Inspection of minute books.

146.—(1) The books containing the minutes of proceedings of any general meeting of a company held on or after the first day of November, nineteen hundred and twenty-nine, shall be kept at the registered office of the company, and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two 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 seven days after he has made a request in that behalf to the company with a copy of any such minutes as aforesaid at a charge not exceeding sixpence for every hundred words.

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

(4) In the case of any such refusal or default, the court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings or direct that the copies required shall be sent to the persons requiring them.

Accounts and Audit.

Keeping of books of account.

147.—(1) Every company shall cause to be kept proper books of account with respect to—

(*a*) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(*b*) all sales and purchases of goods by the company;

(*c*) the assets and liabilities of the company.

(2) For the purposes of the foregoing subsection, proper books of account shall not be deemed to be kept with respect 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.

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(3) The books of account shall be kept at the registered office of the company or at such other place as the directors think fit, and shall at all times be open to inspection by the directors:

Provided that if books of account are kept at a place outside Great Britain there shall be sent to, and kept at a place in, Great Britain and be at all times open to inspection by the directors such accounts and returns with respect 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 six 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.

(4) 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 six months or to a fine not exceeding two hundred pounds:

Provided 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 eighteen months after the incorporation of the company and subsequently once at least in every calendar year lay before the company in general meeting a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the period, in the case of the first account, since the incorporation of the company, and, in any other case, since the preceding account, made up to a date not earlier than the date of the meeting by more than nine months, or, in

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the case of a company carrying on business or having interests abroad, by more than twelve months:

Provided that the Board of Trade, if for any special reason they think fit so to do, may, in the case of any company, extend the period of eighteen months aforesaid, and in the case of any company and with respect to any year extend the periods of nine and twelve months aforesaid.

(2) The directors shall cause to be made out in every calendar year, and to be laid before the company in general meeting, a balance sheet as at the date to which the profit and loss account or the income and expenditure account, as the case may be, is made up.

(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 six months or to a fine not exceeding two hundred pounds:

Provided 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 sentenced to imprisonment for such an offence unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

General provisions as to contents and form of accounts.

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 Eighth Schedule to this Act, so far as applicable thereto.

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

(4) The Board of Trade may, on the application or with the consent of a company's directors, modify in relation to

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that company any of the requirements of this Act as to the matters to be stated in a company's balance sheet or profit and loss account (except the requirements of subsection (1) of this section) for the purpose of adapting them to the circumstances of the company.

(5) Subsections (1) and (2) of this section 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.

(6) If any person being a director of a company fails to take all reasonable steps to secure compliance as respects any accounts laid before the company in general meeting with the provisions of 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 six months or to a fine not exceeding two hundred pounds:

Provided 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.

(7) For the purposes of this section and the following provisions of this Act, except where the context otherwise requires,—

(*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

PART IV. —*cont.*

(*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 shall, subject to the next following subsection, be laid before the company in general meeting when the company's own balance sheet and profit and loss account are so laid.

(2) Notwithstanding anything in the foregoing subsection—

(*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 Great Britain; 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, or harmful to the business of the company or any of its subsidiaries; or

(iii) the business of the holding company and that of the subsidiary are so different that they cannot reasonably be treated as a single undertaking;

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

Provided that the approval of the Board of Trade shall be required for not dealing in group accounts with a subsidiary on the ground that the result would be harmful or on the ground of the difference between the business of the holding company and that of the subsidiary.

(3) If any person being a director of a company fails to take all reasonable steps to secure compliance as respects the company with the provisions of this section, he shall, in

PART IV. —*cont.*

respect of each offence, be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds:

Provided 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.

(4) 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 the next following subsection, the group accounts laid before 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 the foregoing subsection, 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.

PART IV. —*cont.*

Contents of group accounts.

152.—(1) The group accounts laid before 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, unless the Board of Trade on the application or with the consent of the holding company's directors otherwise direct, 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) of this section, the group accounts, if prepared as consolidated accounts, shall comply with the requirements of the Eighth Schedule to this Act, so far as applicable thereto, and if not so prepared shall give the same or equivalent information:

Provided that the Board of Trade may, on the application or with the consent of a company's directors, modify the said requirements in relation to that company for the purpose of adapting them to the circumstances of the company.

Financial year of holding company and subsidiary.

153.—(1) A holding company's directors shall secure that except where in their opinion 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 Board of Trade 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 a general meeting from one calendar year to the next, the Board 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 a 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.

Meaning of "holding company" and "subsidiary".

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

(*a*) that other either—

(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

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

PART IV. —*cont.*

(2) For the purposes of the foregoing subsection, 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 with respect to which any of the following conditions is satisfied, that is to say—

(*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; or

(*c*) that the directorship is held by that other company itself or by a subsidiary of it.

(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 the two following paragraphs, 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 the last foregoing paragraph) 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.

PART IV. —*cont.*

(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 the expression "company" includes any body corporate, and the expression "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.

155.—(1) Every balance sheet of a company shall be signed on behalf of the board by two of the directors of the company, or, if there is only one director, by that director.

(2) In the case of a banking company registered after the fifteenth day of August, eighteen hundred and seventy-nine, the balance sheet must be signed by the secretary or manager, if any, 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 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 fifty pounds.

Accounts and auditors' report to be annexed to balance sheet.

156.—(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 company in general meeting, shall be annexed to the balance sheet, and the auditors' report shall be attached thereto.

(2) Any accounts so annexed shall be approved by the board of directors before the balance sheet is signed on their behalf.

(3) If any copy of a balance sheet is issued, circulated or published without having annexed thereto a copy of the profit and loss account or any group accounts required by this section to be so annexed, or without having attached thereto a copy of the auditors' report, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds.

Directors' report to be attached to balance sheet.

157.—(1) There shall be attached to every balance sheet laid before a company in general meeting a report by the directors with respect to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend, and the amount, if any, which they propose to carry to reserves within the meaning of the Eighth Schedule to this Act.

(2) The said report shall deal, so far as is material for the appreciation of the state of the company's affairs by its

PART IV. —*cont.*

members and will not in the directors' opinion be harmful to the business of the company or of any of its subsidiaries, with any change during the financial year in the nature of the company's business, or in the company's subsidiaries, or in the classes of business in which the company has an interest, whether as member of another company or otherwise.

(3) If any person being a director of a company fails to take all reasonable steps to comply with the provisions of subsection (1) of this section, he shall, in respect of each offence, be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds:

Provided that,—

(*a*) in any proceedings against a person in respect of an offence under the said subsection (1), 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 that subsection 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.

Right to receive copies of balance sheets and auditors' report.

158.—(1) A copy of every balance sheet, including every document required by law to be annexed thereto, which is to be laid before a company in general meeting, together with a copy of the auditors' report, shall, not less than twenty-one 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, being persons so entitled:

Provided that—

(*a*) in the case of a company not having a share capital this subsection shall not require the sending of a copy of the documents aforesaid 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;

(*b*) this subsection shall not require a copy of those documents to be sent—

(i) to a member of the company or a holder of debentures of the company, being in either case a person who is not entitled to receive notices of general meetings of the company and of whose address the company is unaware;

(ii) to more than one of the joint holders of any shares or debentures none of whom are entitled to receive such notices; or

(iii) in the case of joint holders of any shares or debentures some of whom are and some of whom are not entitled to receive such notices, to those who are not so entitled; and

(*c*) if the copies of the documents aforesaid are sent less than twenty-one 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.

(2) 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 a copy of the auditors' report on the balance sheet.

(3) If default is made in complying with subsection (1) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding twenty pounds, and if, when any person makes a demand for any document with which he is by virtue of subsection (2) of this section entitled to be furnished, default is made in complying with the demand within seven days after the making thereof, the company and every officer of the company who is in default shall be liable to a default fine, unless it is proved that that person has already made a demand for and been furnished with a copy of the document.

(4) The foregoing provisions of this section shall not have effect in relation to a balance sheet of a private company laid before it before the commencement of this Act, 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 right shall be the same as they would have been if this Act had not passed.

Appointment and remuneration of auditors.

159.—(1) 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) At any annual general meeting a retiring auditor, however appointed, shall be reappointed without any resolution being passed unless—

(*a*) he is not qualified for reappointment; or

PART IV. —*cont.*

(*b*) a resolution has been passed at that meeting appointing somebody instead of him or providing expressly that he shall not be reappointed; or

(*c*) he has given the company notice in writing of his unwillingness to be reappointed:

Provided that where notice is given of an intended resolution to appoint some 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 reappointed by virtue of this subsection.

(3) Where at an annual general meeting no auditors are appointed or reappointed, the Board of Trade may appoint a person to fill the vacancy.

(4) The company shall, within one week of the Board's power under the last foregoing subsection becoming exercisable, give them 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 default fine.

(5) 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:

Provided 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 fourteen 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.

(6) 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.

(7) The remuneration of the auditors of a company—

(*a*) in the case of an auditor appointed by the directors or by the Board of Trade, may be fixed by the directors or by the Board, as the case may be;

PART IV. —*cont.*

(*b*) subject to the foregoing paragraph, shall be fixed by the company in general meeting or in such manner as the company in 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 expression " remuneration ".

Provisions as to resolutions relating to appointment and removal of auditors.

160.—(1) Special notice 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 reappointed.

(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) Where notice is given of such an intended resolution as aforesaid and the retiring auditor makes with respect 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:

Provided that copies of the representations need not be sent out and the representations need not be read out at the meeting 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.

(4) The last foregoing subsection shall apply to a resolution to remove the first auditors by virtue of subsection (5) of the last foregoing section as it applies in relation to a resolution that a retiring auditor shall not be reappointed.

PART IV. —*cont.* Disqualifications for appointment as auditor.

161.—(1) A person shall not be qualified for appointment as auditor of a company unless either—

(*a*) he is a member of a body of accountants established in the United Kingdom and for the time being recognised for the purposes of this provision by the Board of Trade; or

(*b*) he is for the time being authorised by the Board of Trade to be so appointed either as having similar qualifications obtained outside the United Kingdom or as having obtained adequate knowledge and experience in the course of his employment by a member of a body of accountants recognised for the purposes of the foregoing paragraph or as having before the sixth day of August, nineteen hundred and forty-seven, practised in Great Britain as an accountant:

Provided that this subsection shall not apply in the case of a private company which at the time of the auditor's appointment is an exempt private company.

(2) None of the following persons shall be qualified for appointment as auditor of a company—

(*a*) an officer or servant of the company;

(*b*) a person who is a partner of or in the employment of an officer or servant of the company;

(*c*) a body corporate:

Provided that paragraph (*b*) of this subsection shall not apply in the case of a private company which at the time of the auditor's appointment is an exempt private company.

References in this subsection to an officer or servant shall be construed as not including references to an auditor.

(3) A person shall also not be qualified for appointment as auditor of a company if he is, by virtue of the last foregoing subsection, 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.

(4) Notwithstanding anything in the foregoing provisions of this section, a Scottish firm shall be qualified for appointment as auditor of a company if, but only if, all the partners are qualified for appointment as auditor thereof.

(5) Any body corporate which acts as auditor of a company shall be liable to a fine not exceeding one hundred pounds.

PART IV. —*cont.*

Auditors' report and right of access to books and to attend and be heard at general meetings.

162.—(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 Ninth Schedule to this Act.

(2) The auditors' report shall be read before the company in general meeting and shall be open to inspection by any member.

(3) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the officers of the company such information and explanation 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.

163. 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:

Provided that 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.

164.—(1) The Board of Trade may appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as the Board direct—

(*a*) in the case of a company having a share capital, on the application either of not less than two hundred members or of members holding not less than one tenth of the shares issued;

PART IV. —*cont.*

(*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 Board of Trade may require for the purpose of showing that the applicants have good reason for requiring the investigation, and the Board may, before appointing an inspector, require the applicants to give security, to an amount not exceeding one hundred pounds, for payment of the costs of the investigation.

Investigation of company's affairs in other cases.

165. Without prejudice to their powers under the last foregoing section, the Board of Trade—

(*a*) shall appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as the Board direct, if—

(i) the company by special resolution; or

(ii) the court by order;

declares that its affairs ought to be investigated by an inspector appointed by the Board; and

(*b*) may do so if it appears to the Board that there are circumstances suggesting—

(i) that its business is being conducted with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose or in a manner oppressive of any part of its members or that it was formed for any fraudulent or unlawful purpose; or

(ii) that persons concerned 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 with respect to its affairs which they might reasonably expect.

Power of inspectors to carry investigation into affairs of related companies.

166. If an inspector appointed under either of the two last foregoing sections 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 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.

PART IV. —*cont.* Production of documents, and evidence, on investigation.

167.—(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 the last foregoing section 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 the court.

(4) 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 either personally or 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:

Provided that, notwithstanding anything in paragraph (*c*) of this subsection, the court may allow the person examined such costs as in its discretion it may think fit, and any costs

PART IV. —*cont.*

so allowed shall be paid as part of the expenses of the investigation.

(5) 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 the expression "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.

168.—(1) The inspectors may, and, if so directed by the Board of Trade, shall, make interim reports to the Board, and on the conclusion of the investigation shall make a final report to the Board.

Any such report shall be written or printed, as the Board direct.

(2) The Board of Trade shall—

(*a*) forward a copy of any report made by the inspectors to the registered office of the company;

(*b*) if the Board think 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 one hundred and sixty-six of this Act or whose interests as a creditor of the company or of any such other body corporate as aforesaid appear to the Board to be affected;

(*c*) where the inspectors are appointed under section one hundred and sixty-four of this Act, furnish, at the request of the applicants for the investigation, a copy to them; and

(*d*) where the inspectors are appointed under section one hundred and sixty-five of this Act 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.

Proceedings on inspectors' report.

169.—(1) If from any report made under the last foregoing section it appears to the Board of Trade that any person has, in relation to the company or to any other body corporate whose affairs have been investigated by virtue of section one hundred and sixty-six of this Act, been guilty of any offence for which he is criminally liable, the Board shall proceed as follows:—

(*a*) in the case of an offence in England, if it appears to the Board that the case is one in which the prosecution ought to be undertaken by the Director of Public Prosecutions, the Board shall refer the matter to him;

PART IV. —*cont.*

(*b*) in the case of an offence in Scotland, the Board shall refer the matter to the Lord Advocate.

(2) If, where any matter is referred to the Director of Public Prosecutions under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall institute proceedings accordingly, and 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 (5) of section one hundred and sixty-seven of this Act shall apply for the purposes of this subsection as it applies for the purposes of that section.

(3) If, in the case of any body corporate liable to be wound up under this Act, it appears to the Board of Trade, from any such report as aforesaid that it is expedient so to do by reason of any such circumstances as are referred to in sub-paragraph (i) or (ii) of paragraph (*b*) of section one hundred and sixty-five of this Act, the Board may, unless the body corporate is already being wound up by the court, present a petition for it to be so wound up if the court thinks it just and equitable that it should be wound up or a petition for an order under section two hundred and ten of this Act or both.

(4) If from any such report as aforesaid it appears to the Board of Trade 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, they may themselves bring proceedings for that purpose in the name of the body corporate.

(5) The Board of Trade shall indemnify the body corporate against any costs or expenses incurred by it in or in connection with any proceedings brought by virtue of the last foregoing subsection.

Expenses of investigation of company's affairs.

170.—(1) The expenses of and incidental to an investigation by an inspector appointed by the Board of Trade under the foregoing provisions of this Act shall be defrayed in the first instance by the Board of Trade, but the following persons shall, to the extent mentioned, be liable to repay the Board:—

(*a*) any person who is convicted on a prosecution instituted as a result of the investigation by the Director of Public Prosecutions or by or on behalf of the

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Lord Advocate, or who is ordered to pay damages or restore any property in proceedings brought by virtue of subsection (4) of the last foregoing section, may in the same proceedings be ordered to pay the said expenses to such extent as may be specified in the order;

(*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 Director of Public Prosecutions or by or on behalf of the Lord Advocate,—

(i) any body corporate dealt with by the report, where the inspector was appointed otherwise than of the Board's own motion, shall be liable, except so far as the Board otherwise direct; and

(ii) the applicants for the investigation, where the inspector was appointed under section one hundred and sixty-four of this Act, shall be liable to such extent (if any) as the Board may direct;

and any amount for which a body corporate is liable by virtue of paragraph (*b*) of this subsection shall be a first charge on the sums or property mentioned in that paragraph.

(2) The report of an inspector appointed otherwise than of the Board of Trade's own motion may, if he thinks fit, and shall, if the Board so direct, include a recommendation as to the directions (if any) which he thinks appropriate, in the light of his investigation, to be given under paragraph (*c*) of the foregoing subsection.

(3) For the purposes of this section, any costs or expenses incurred by the Board of Trade in or in connection with proceedings brought by virtue of subsection (4) of the last foregoing section (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 Board of Trade imposed by paragraphs (*a*) and (*b*) of subsection (1) of this section shall, subject to satisfaction of the Board'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 (*b*) or either sub-paragraph of the said paragraph (*c*) shall be entitled to contribution from any other

person liable under the same paragraph or sub-paragraph, as the case may be, according to the amount of their respective liabilities thereunder.

(5) The expenses to be defrayed by the Board of Trade under this section shall, so far as not recovered thereunder, be paid out of moneys provided by Parliament, but subsection (3) of section thirteen of the Economy (Miscellaneous Provisions) Act, 1926 (which provides for the issue out of the Bankruptcy and Companies Winding-up (Fees) Account of sums towards meeting the charges estimated by the Board of Trade in respect of salaries and expenses under this Act in relation to the winding up of companies in England) shall have effect as if the said expenses were expenses incurred by the Board under this Act in relation to the winding up of companies in England. 16 & 17 Geo. 5. c. 9.

Inspectors' report to be evidence.

171. A copy of any report of any inspectors appointed under the foregoing provisions of this Act, authenticated by the seal of the company whose affairs they have investigated, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

Appointment and powers of inspectors to investigate ownership of company.

172.—(1) Where it appears to the Board of Trade that there is good reason so to do, they may appoint one or more competent inspectors to investigate and report on the membership of any company and otherwise with respect to the company for the purpose of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the company or able to control or materially to influence the policy of the company.

(2) The appointment of an inspector under this section may define the scope of his investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular may limit the investigation to matters connected with particular shares or debentures.

(3) Where an application for an investigation under this section with respect to particular shares or debentures of a company is made to the Board of Trade by members of the company, and the number of applicants or the amount of the shares held by them is not less than that required for an application for the appointment of an inspector under section one hundred and sixty-four of this Act, the Board of Trade shall appoint an inspector to conduct the investigation unless they are satisfied that the application is vexatious, and the inspector's appointment shall not exclude from the scope of his investigation any matter which the application seeks to

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have included therein, except in so far as the Board of Trade are satisfied that it is unreasonable for that matter to be investigated.

(4) Subject to the terms of an inspector's appointment his powers shall extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of his investigation.

(5) For the purposes of any investigation under this section sections one hundred and sixty-six to one hundred and sixty-eight of this Act, shall apply with the necessary modifications of references to the affairs of the company or to those of any other body corporate, so, however, that—

(*a*) the said sections shall apply in relation to all persons who are or have been, or whom the inspector has reasonable cause to believe to be or have been, financially interested in the success or failure or the apparent success or failure of the company or any other body corporate whose membership is investigated with that of the company, or able to control or materially to influence the policy thereof, including persons concerned only on behalf of others, as they apply in relation to officers and agents of the company or of the other body corporate, as the case may be; and

(*b*) the Board of Trade shall not be bound to furnish the company or any other person with a copy of any report by an inspector appointed under this section or with a complete copy thereof if they are of opinion that there is good reason for not divulging the contents of the report or of parts thereof, but shall cause to be kept by the registrar a copy of any such report or, as the case may be, the parts of any such report, as respects which they are not of that opinion.

(6) The expenses of any investigation under this section shall be defrayed by the Board of Trade out of moneys provided by Parliament.

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

173.—(1) Where it appears to the Board of Trade that there is good reason to investigate the ownership of any shares in or debentures of a company and that it is unnecessary to appoint an inspector for the purpose, they may require any person whom they have reasonable cause to believe—

(*a*) to be or to have been interested in those shares or debentures; or

(*b*) to act or to have acted in relation to those shares or debentures as the solicitor or agent of someone interested therein;

to give them any information which he has or can reasonably be expected to obtain as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures.

(2) For the purposes of this section, a person shall be deemed to have an interest in a share or debenture if he has any right to acquire or dispose of the share or debenture or any interest therein or to vote in respect thereof, or if his consent is necessary for the exercise of any of the rights of other persons interested therein, or if other persons interested therein can be required or are accustomed to exercise their rights in accordance with his instructions.

(3) Any person who fails to give any information required of him under this section, or who in giving any such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred pounds or to both.

Power to impose restrictions on shares or debentures.

174.—(1) Where in connection with an investigation under either of the two last foregoing sections it appears to the Board of Trade that there is difficulty in finding out the relevant facts about any shares (whether issued or to be issued), and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned or any of them to assist the investigation as required by this Act, the Board may by order direct that the shares shall until further order be subject to the restrictions imposed by this section.

(2) So long as any shares are directed to be subject to the restrictions imposed by this section—

(*a*) any transfer of those shares, or in the case of unissued shares any transfer of the right to be issued therewith and any issue thereof, shall be void;

(*b*) no voting rights shall be exercisable in respect of those shares;

(*c*) no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder thereof;

(*d*) except in a liquidation, no payment shall be made of any sums due from the company on those shares, whether in respect of capital or otherwise.

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(3) Where the Board of Trade make an order directing that shares shall be subject to the said restrictions, or refuse to make an order directing that shares shall cease to be subject thereto, any person aggrieved thereby may apply to the court, and the court may, if it sees fit, direct that the shares shall cease to be subject to the said restrictions.

(4) Any order (whether of the Board of Trade or of the court) directing that shares shall cease to be subject to the said restrictions which is expressed to be made with a view to permitting a transfer of those shares may continue the restrictions mentioned in paragraphs (*c*) and (*d*) of subsection (2) of this section, either in whole or in part, so far as they relate to any right acquired or offer made before the transfer.

(5) Any person who—

(*a*) exercises or purports to exercise any right to dispose of any shares which, to his knowledge, are for the time being subject to the said restrictions or of any right to be issued with any such shares; or

(*b*) votes in respect of any such shares, whether as holder or proxy, or appoints a proxy to vote in respect thereof; or

(*c*) being the holder of any such shares, fails to notify of their being subject to the said restrictions any person whom he does not know to be aware of that fact but does know to be entitled, apart from the said restrictions, to vote in respect of those shares whether as holder or proxy;

shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred pounds or to both.

(6) Where shares in any company are issued in contravention of the said restrictions, the company and every officer of the company who is in default shall be liable to a fine not exceeding five hundred pounds.

(7) A prosecution shall not be instituted in England under this section except by or with the consent of the Board of Trade.

(8) This section shall apply in relation to debentures as it applies in relation to shares.

Saving for solicitors and bankers.

175. Nothing in the foregoing provisions of this Part of this Act shall require disclosure to the Board of Trade or to an inspector appointed by them—

(*a*) by a solicitor of any privileged communication made to him in that capacity, except as respects the name and address of his client; or

(*b*) by a company's bankers as such of any information as to the affairs of any of their customers other than the company. PART IV. —*cont.*

Directors and other Officers.

176. Every company registered on or after the first day of November, nineteen hundred and twenty-nine (other than a private company) shall have at least two directors, and every company registered before that date (other than a private company), and every private company, shall have a director. Directors.

177.—(1) Every company shall have a secretary and a sole director shall not also be secretary. Secretary.

(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.

178. No company shall— Prohibition of certain persons being sole director or secretary

(*a*) have as secretary to the company a corporation the sole director of which is a sole director of the company; or

(*b*) have as sole director of the company a corporation the sole director of which is secretary to the company.

179. 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. Avoidance of acts done by person in dual capacity as director and secretary.

180. The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification. Validity of acts of directors.

181.—(1) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in a prospectus issued by or on behalf of the company, or as proposed director of an intended company in a prospectus issued in relation to that intended company, or in a statement in lieu of prospectus delivered to the registrar by or on behalf of a company, unless, before the registration of the articles Restrictions on appointment or advertisement of director.

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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 the 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 fifty pounds.

(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.

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Share qualifications of directors.

182.—(1) Without prejudice to the restrictions imposed by the last foregoing section, it shall be the duty of every director who is by the articles of the company required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the articles.

(2) For the purpose of any provision in the articles requiring a director or manager to hold a specified share qualification, the bearer of a share warrant shall not be deemed to be the holder of the shares specified in the warrant.

(3) The office of director of a company shall be vacated if the director does not within two months from the date of his appointment, or within such shorter time as may be fixed by the articles, obtain his qualification, or if after the expiration of the said period or shorter time he ceases at any time to hold his qualification.

(4) A person vacating office under this section shall be incapable of being reappointed 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 five pounds for every day between the expiration of the said period or shorter time or the day on which he ceased to be qualified, as the case may be, and the last day on which it is proved that he acted as a director.

Appointment of directors to be voted on individually.

183.—(1) At a general meeting of a company other than a private 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) A resolution moved in contravention of this section shall be void, whether or not its being so moved was objected to at the time:

Provided that—

(*a*) this subsection shall not be taken as excluding the operation of section one hundred and eighty of this Act; and

(*b*) where a resolution so moved is passed, no provision for the automatic reappointment of retiring directors in default of another appointment shall apply.

(3) 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.

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(4) Nothing in this section shall apply to a resolution altering the company's articles.

Removal of directors.

184.—(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:

Provided that this subsection shall not, in the case of a private company, authorise the removal of a director holding office for life on the eighteenth day of July, nineteen hundred and forty-five, whether or not subject to retirement under an age limit by virtue of the articles or otherwise.

(2) Special notice shall be required of any resolution to remove a director under this section or to appoint somebody instead of a 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) Where notice is given of an intended resolution to remove a director under this section and the director concerned makes with respect thereto 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 director may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting:

Provided that copies of the representations need not be sent out and the representations need not be read out at the meeting 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, notwithstanding that he is not a party to the application.

(4) A vacancy created by the removal of a director under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.

(5) 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 a director.

(6) Nothing in this section shall be taken as depriving a person removed thereunder of compensation or damages payable to him in respect of the termination of his appointment as director or 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.

Retirement of directors under age limit.

185.—(1) Subject to the provisions of this section, no person shall be capable of being appointed a director of a company which is subject to this section if at the time of his appointment he has attained the age of seventy.

(2) Subject as aforesaid, a director of a company which is subject to this section shall vacate his office at the conclusion of the annual general meeting commencing next after he attains the age of seventy:

Provided that acts done by a person as director shall be valid notwithstanding that it is afterwards discovered that his appointment had terminated by virtue of this subsection.

(3) Where a person retires by virtue of the last foregoing subsection, no provision for the automatic reappointment of retiring directors in default of another appointment shall apply; and if at the meeting at which he retires the vacancy is not filled it may be filled as a casual vacancy.

(4) Subsection (2) of this section shall not apply to a director who is in office at the commencement of this Act so as to terminate his then appointment before the conclusion of the third annual general meeting commencing after the commencement of this Act, but shall apply so as to terminate it at the conclusion of that meeting if he has attained the age of seventy before the commencement of the meeting.

(5) Nothing in the foregoing provisions of this section shall prevent the appointment of a director at any age, or require a director to retire at any time, if his appointment is or was made or approved by the company in general meeting, but special notice shall be required of any resolution appointing or approving the appointment of a director for it to have

PART IV. —*cont.*

effect for the purposes of this subsection and the notice thereof given to the company and by the company to its members must state or must have stated the age of the person to whom it relates.

(6) A person reappointed director on retiring by virtue of subsection (2) of this section, or appointed in place of a director so retiring, 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 retiring director was last appointed before his retirement; but, except as provided by this subsection, the retirement of a director out of turn by virtue of the said subsection (2) shall be disregarded in determining when any other directors are to retire.

(7) In the case of a company first registered after the beginning of the year nineteen hundred and forty-seven, this section shall have effect subject to the provisions of the company's articles; and in the case of a company first registered before the beginning of that year—

(*a*) this section shall have effect subject to any alterations of the company's articles made after the beginning thereof; and

(*b*) if at the beginning thereof the company's articles contained provision for retirement of directors under an age limit or for preventing or restricting appointments of directors over a given age this section shall not apply to directors to whom that provision applies.

(8) A company shall be subject to this section if it is not a private company or if, being a private company, it is the subsidiary of a body corporate incorporated in the United Kingdom which is neither a private company nor a company registered under the law relating to companies for the time being in force in Northern Ireland and having provisions in its constitution which would, if it had been registered in Great Britain, entitle it to rank as a private company; and for the purposes of any other section of this Act which refers to a company subject to this section, a company shall be deemed to be subject to this section notwithstanding that all or any of the provisions thereof are excluded or modified by the company's articles.

Duty of directors to disclose age to company.

186.—(1) Any person who is appointed or to his knowledge proposed to be appointed director of a company subject to the last foregoing section at a time when he has attained any retiring age applicable to him as director either under this Act

or under the company's articles shall give notice of his age to the company:

Provided that this subsection shall not apply in relation to a person's reappointment on the termination of a previous appointment as director of the company.

(2) Any person who—

(*a*) fails to give notice of his age as required by this section; or

(*b*) acts as director under any appointment which is invalid or has terminated by reason of his age;

shall be liable to a fine not exceeding five pounds for every day during which the failure continues or during which he continues to act as aforesaid.

(3) For the purposes of the last foregoing subsection, a person who has acted as director under an appointment which is invalid or has terminated shall be deemed to have continued so to act throughout the period from the invalid appointment or the date on which the appointment terminated, as the case may be, until the last day on which he is shown to have acted thereunder.

Provisions as to undischarged bankrupts acting as directors.

187.—(1) 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 by which he was adjudged bankrupt, he shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred pounds or to both such imprisonment and fine:

Provided that 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 third day of August, nineteen hundred and twenty-eight, 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.

(2) In England the leave of the court for the purposes of this section shall not be given unless notice of intention to apply therefor has been served on the official receiver, and it shall be the duty of the official receiver, if he is of opinion that it is contrary to the public interest that any such application should be granted, to attend on the hearing of and oppose the granting of the application.

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(3) In this section the expression " company " includes an unregistered company and a company incorporated outside Great Britain which has an established place of business within Great Britain, and the expression " official receiver " means the official receiver in bankruptcy.

(4) Subsection (1) of this section in its application to Scotland shall have effect as if the words " sequestration of his estates was awarded " were substituted for the words " he was adjudged bankrupt ".

Power to restrain fraudulent persons from managing companies.

188.—(1) Where—

(*a*) a person is convicted on indictment of any offence in connection with the promotion, formation or management of a company; or

(*b*) in the course of winding up a company it appears that a person—

(i) has been guilty of any offence for which he is liable (whether he has been convicted or not) under section three hundred and thirty-two of this Act; or

(ii) 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 a company for such period not exceeding five years as may be specified in the order.

(2) In the foregoing subsection the expression " the court ", in relation to the making of an order against any person by virtue of paragraph (*a*) thereof, includes the court before which he is convicted, as well as any court having jurisdiction to wind up the company, and in relation to the granting of leave means any court having jurisdiction to wind up the company as respects which leave is sought.

(3) A person intending to apply for the making of an order under this section by the court having jurisdiction to wind up a company shall give not less than ten days' notice of his intention to the person against whom the order is sought, and on the hearing of the application the last-mentioned person may appear and himself give evidence or call witnesses.

(4) An application for the making of an order under this section by the court having jurisdiction to wind up a company may be made by the official receiver, or by the liquidator of the company or by any person who is or has been a

PART IV. —*cont.*

member or creditor of the company; and on the hearing of any application for an order under this section by the official receiver or 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 official receiver or the liquidator, the official receiver or 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.

(5) An order may be made by virtue of sub-paragraph (ii) of paragraph (*b*) of subsection (1) of this section 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 sub-paragraph (ii) the expression " officer " shall include any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

(6) 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 two years, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred pounds or to both.

Prohibition of tax-free payments to directors.

189.—(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 other than surtax, or otherwise calculated by reference to or varying with the amount of his income tax or his income tax other than surtax, or to or with the rate or standard rate of income tax, except under a contract which was in force on the eighteenth day of July, nineteen hundred and forty-five, 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 surtax, of the net sum for which it actually provides.

(3) This section shall not apply to remuneration due before the commencement of this Act or in respect of a period before the commencement of this Act.

Prohibition of loans to directors.

190.—(1) It shall not be lawful for a company to make a loan to any person who is its director or a director of its holding company, or to enter into any guarantee or provide any

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security in connection with a loan made to such a person as aforesaid by any other person:

Provided that nothing in this section shall apply either—

(*a*) to anything done by a company which is for the time being an exempt private company; or

(*b*) to anything done by a subsidiary, where the director is its holding company; or

(*c*) subject to the next following subsection, to anything done to provide any such person as aforesaid with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company; or

(*d*) in the case of a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, to anything done by the company in the ordinary course of that business.

(2) Proviso (*c*) to the foregoing subsection shall not authorise the making of any loan, or the entering into any guarantee, or the provision of any security, except either—

(*a*) with the prior approval of the company given at a general meeting at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed; or

(*b*) on condition that, if the approval of the company is not given as aforesaid at or before the next following annual general meeting, the loan shall be repaid or the liability under the guarantee or security shall be discharged, as the case may be, within six months from the conclusion of that meeting.

(3) Where the approval of the company is not given as required by any such condition, the directors authorising the making of the loan, or the entering into the guarantee, or the provision of the security, shall be jointly and severally liable to indemnify the company against any loss arising therefrom.

Approval of company requisite for payment by it to director for loss of office, &c.

191. 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 with respect to the proposed payment (including the amount thereof) being disclosed to members of the company and the proposal being approved by the company.

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Approval of company requisite for any payment, in connection with transfer of its property, to director for loss of office, &c.

192.—(1) It is hereby declared that it is not lawful in connection with the transfer of the whole or any part of the undertaking or property of a company for any payment to be made to any director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, unless particulars with respect to the proposed payment (including the amount thereof) have been disclosed to the members of the company and the proposal approved by the company.

(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 payment for loss of office, &c., made in connection with transfer of shares in company.

193.—(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—

(*a*) an offer made to the general body of shareholders;

(*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;

(*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 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 with respect to the proposed payment (including the amount thereof) shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(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 twenty-five pounds.

(3) If—

(*a*) the requirements of subsection (1) of this section are not complied with in relation to any such payment as is therein mentioned; or

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(*b*) the making of the proposed payment is not, 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 the last foregoing subsection 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 Board of Trade 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) of this section 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 three foregoing sections.

194.—(1) Where in proceedings for the recovery of any payment as having, by virtue of subsections (1) and (2) of the last but one foregoing section or subsections (1) and (3) of the last foregoing section, been received by any person in trust, it is shown that—

(*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 two 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 either of the two last foregoing sections—

(*a*) the price to be paid to a director of the company whose office is to be abolished or who is to retire from

office for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares; or

(*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 the three last foregoing sections to payments made 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, 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 the expression "pension" includes any superannuation allowance, superannuation gratuity or similar payment.

(4) Nothing in the two last foregoing sections 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.

Register of directors' shareholdings, &c.

195.—(1) Every company shall keep a register showing as respects each director of the company (not being its holding 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 of which he has any right to become the holder (whether on payment or not):

Provided 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) Where any shares or debentures fall to be or cease to be recorded in the said register in relation to any director by reason of a transaction entered into after the commencement of this Act and while he is a director, the register shall also show the date of, and price or other consideration for, the transaction:

Provided that where there is an interval between the agreement for any such transaction and the completion thereof, the date shall be that of the agreement.

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(3) The nature and extent of a director's interest or right in or over any shares or debentures recorded in relation to him in the said register shall, if he so requires, be indicated in the register.

(4) 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.

(5) The said register shall, subject to the provisions of this section, be kept at the company's registered office 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 two hours in each day be allowed for inspection) as follows:—

(*a*) during the period beginning fourteen days before the date of the company's annual general meeting and ending three days after the date of its conclusion, it shall be open to the inspection of any member or holder of debentures of the company; and

(*b*) during that or any other period, it shall be open to the inspection of any person acting on behalf of the Board of Trade.

In computing the fourteen days and the three days mentioned in this subsection, any day which is a Saturday or Sunday or a bank holiday shall be disregarded.

(6) Without prejudice to the rights conferred by the last foregoing subsection, the Board of Trade may at any time require a copy of the said register, or any part thereof.

(7) The said register shall also be produced at the commencement of the company's annual general meeting and remain open and accessible during the continuance of the meeting to any person attending the meeting.

(8) If default is made in complying with the last foregoing subsection the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds; and if default is made in complying with subsection (1) or (2) of this section, or if any inspection required under this section is refused or any copy required thereunder is not sent within a reasonable time, the company and every officer of the company who is in default shall be liable to a fine not exceeding five hundred pounds and further to a default fine of two pounds.

(9) In the case of any such refusal, the court may by order compel an immediate inspection of the register.

(10) 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 director of a company shall be deemed to hold, or to have any 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.

Particulars in accounts of directors' salaries, pensions, &c.

196.—(1) In any accounts of a company laid before it in 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) of this section—

(*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 its subsidiary, and other emoluments;

and for the purposes of this section the expression "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 United Kingdom 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.

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(3) The amount to be shown under paragraph (*b*) of the said 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 the last foregoing subsection, 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 the expression " pension " includes any superannuation allowance, superannuation gratuity or similar payment, and the expression " 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 the expression " 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 the said subsection (1)—

(*a*) shall include any sums paid to or receivable by a director or past director by way of compensation for the 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 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 the said 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 one hundred and ninety-three of this Act, 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 the said 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 the last foregoing subsection, but the liability is thereafter wholly or partly released or is not enforced within a period of two years; or

(*b*) any sums paid by way of expenses allowance are charged to United Kingdom 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 their report thereon, so far as they are reasonably able to do so, a statement giving the required particulars.

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(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 in accounts of loans to officers, &c.

197.—(1) The accounts which, in pursuance of this Act, are to be laid before every company in general meeting shall, subject to the provisions of this section, contain particulars showing—

(*a*) the amount of any loans made during the company's financial year to—

(i) any officer of the company; or

(ii) any person who, after the making of the loan, became during that year an officer of the company;

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 officer or person as aforesaid at any time before the company's financial year and outstanding at the expiration thereof.

(2) The foregoing subsection 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 two thousand pounds and is certified by the directors of the company or subsidiary, as the case may be, to

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have been made in accordance with any practice adopted or about to be adopted by the company or subsidiary with respect 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 purposes of three foregoing sections.

198.—(1) It shall be the duty of any director of a company to give notice to the company of such matters relating to himself as may be necessary for the purposes of sections one hundred and ninety-five and one hundred and ninety-six of this Act and of the last foregoing section except so far as it 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 an officer thereof.

(2) Any such notice given for the purposes of the said section one hundred and ninety-five shall be in writing and, if it is not given at a meeting of the directors, the director giving it shall take reasonable steps to secure that it is brought up and read at the next meeting of directors after it is given.

(3) Subsection (1) of this section shall apply—

(*a*) for the purposes of the last foregoing section, in relation to officers other than directors; and

(*b*) for the purposes of the said section one hundred and ninety-six and the last foregoing section, in relation to persons who are or have at any time during the preceding five years been officers;

as it applies in relation to directors.

(4) Any person who makes default in complying with the foregoing provisions of this section shall be liable to a fine not exceeding fifty pounds.

Disclosure by directors of interests in contracts.

199.—(1) Subject to the provisions of this section, it shall be the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company to declare the nature of his interest at a meeting of the directors of the company.

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(2) In the case of a proposed contract the declaration required by this section to be made by a director shall be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration, or if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he became so interested, and in a case where the director becomes interested in a contract after it is made, the said declaration shall be made at the first meeting of the directors held after the director becomes so interested.

(3) For the purpose of this section, a general notice given to the directors of a company by a director to the effect that he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm, shall be deemed to be a sufficient declaration of interest in relation to any contract so made:

Provided that no such notice 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.

(4) Any director who fails to comply with the provisions of this section shall be liable to a fine not exceeding one hundred pounds.

(5) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting directors of a company from having any interest in contracts with the company.

Register of directors and secretaries.

200.—(1) Every company shall keep at its registered office a register of its directors and secretaries.

(2) The said register shall contain the following particulars with respect to each director, that is to say,—

(*a*) in the case of an individual, his present Christian name and surname, any former Christian name or surname, his usual residential address, his nationality, his business occupation, if any, particulars of any other directorships held by him and, in the case of a company subject to section one hundred and eighty-five of this Act, the date of his birth; and

(*b*) in the case of a corporation, its corporate name and registered or principal office:

Provided that it shall not be necessary for the register to contain particulars of directorships held by a director in companies of which the company is the wholly-owned subsidiary, or which are the wholly-owned subsidiaries either of the company or of another company of which the company is

the wholly-owned subsidiary, and for the purposes of this proviso—

(i) the expression " company " shall include any body corporate incorporated in Great Britain; and

(ii) 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.

(3) The said register shall contain the following particulars with respect to the secretary or, where there are joint secretaries, with respect to each of them, that is to say,—

(*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 corporation or a Scottish firm, its corporate or firm name and registered or principal office:

Provided that, 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.

(4) The company shall, within the periods respectively mentioned in the next following subsection, 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.

(5) The periods referred to in the last foregoing subsection are the following, namely,—

(*a*) the period within which the said return is to be sent shall be a period of fourteen 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 fourteen days from the happening thereof:

Provided that, in the case of a return containing particulars with respect to any person who is the company's secretary at the commencement of this Act, the period shall be fourteen days from the commencement of this Act.

(6) The register to be kept under this section shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member of the company without charge and of any other person on payment of one shilling, or such less sum as the company may prescribe, for each inspection.

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(7) If any inspection required under this section is refused or if default is made in complying with subsection (1), (2), (3) or (4) of this section, the company and every officer of the company who is in default shall be liable to a default fine.

(8) In the case of any such refusal, the court may by order compel an immediate inspection of the register.

(9) 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*) the expression "Christian name" includes a forename;

(*c*) in the case of a peer or 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 peer or a person usually known by a British title different from his surname, the name by which he was known previous to the adoption of or succession to the title; or

(ii) in the case of 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 eighteen years or has been changed or disused for a period of not less than twenty years; or

(iii) in the case of a married woman, the name or surname by which she was known previous to the marriage.

Particulars with respect to directors in trade catalogues, circulars, &c.

201.—(1) Every company to which this section applies shall, in all trade catalogues, trade circulars, showcards and business letters on or in which the company's name appears and which are issued or sent by the company to any person in any part of His Majesty's dominions, state in legible characters with respect to every director being a corporation, the corporate name, and with respect to every director being an individual, the following particulars—

(*a*) his present Christian name, or the initials thereof, and present surname;

(*b*) any former Christian names and surnames;

(*c*) his nationality, if not British:

Provided that, if special circumstances exist which render it in the opinion of the Board of Trade expedient that such an exemption should be granted, the Board may by order grant,

subject to such conditions as may be specified in the order, exemption from the obligations imposed by this subsection.

(2) This section shall apply to—

(*a*) every company registered under this Act or under the Companies Act, 1929, or the Acts repealed thereby unless it was registered before the twenty-third day of November, nineteen hundred and sixteen; and

(*b*) every company incorporated outside Great Britain which has an established place of business within Great Britain, unless it had established such a place of business before the said date; and

(*c*) every company licensed under the Moneylenders Act, 1927, whenever it was registered or whenever it established a place of business. 17 & 18 Geo. 5. c. 21.

(3) 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 five pounds, and for the purposes of this subsection, where a corporation is an officer of the company, any officer of the corporation shall be deemed to be an officer of the company:

Provided that in England no proceedings shall be instituted under this section except by, or with the consent of, the Board of Trade.

(4) For the purposes of this section—

(*a*) the expression " director " includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act and the expression " officer " shall be construed accordingly;

(*b*) the expression " initials " includes a recognised abbreviation of a Christian name; and

(*c*) the expression " showcards " means cards containing or exhibiting articles dealt with, or samples or representations thereof;

and paragraphs (*b*), (*c*) and (*d*) of subsection (9) of the last foregoing section shall apply as they apply for the purposes of that section.

Limited company may have directors with unlimited liability.

202.—(1) In a limited company the liability of the directors or managers, or of the managing director, may, if so provided by the memorandum, be unlimited.

(2) In a limited company in which the liability of a director or manager is unlimited, the directors and any managers of the company and the member who proposes a person for election or appointment to the office of director or manager, shall add to that proposal a statement that the liability of the person holding that office will be unlimited, and before

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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, any managers of the company and the secretary of the company.

(3) If any director, manager or proposer makes default in adding such a statement, or if any promoter, director, manager or secretary makes default in giving such a notice, he shall be liable to a fine not exceeding one hundred pounds, 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.

Special resolution of limited company making liability of directors unlimited.

203.—(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 managers, or of any managing director.

(2) Upon the passing of any such special resolution the provisions thereof shall be as valid as if they had been originally contained in the memorandum.

Provisions as to assignment of office by directors.

204. If in the case of any company provision is made by the articles or by any agreement entered into between any person and the company for empowering a director or manager of the company to assign his office as such to another person, any assignment of office made in pursuance of the 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.

Provisions as to liability of officers and auditors.

205. 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 (whether an officer of the company or not) employed by the company as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void:

Provided that—

(*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

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(*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 any proceedings, whether civil or criminal in which judgment is given in his favour or in which he is acquitted or in connection with any application under section four hundred and forty-eight of this Act in which relief is granted to him by the court.

Arrangements and Reconstructions.

Power to compromise with creditors and members.

206.—(1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them or between the company and its members or any class of them, the court may, on the application in a summary way of the company or of any creditor or member of the company, or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the court directs.

(2) If a majority in number representing three fourths in value of the creditors or class of creditors or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) An order made under subsection (2) of this section 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.

(4) If a company makes default in complying with subsection (3) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one pound for each copy in respect of which default is made.

(5) An order under subsection (1) of this section pronounced in Scotland by the judge acting as vacation judge in pursuance of section four of the Administration of Justice (Scotland) Act, 1933, shall not be subject to review, reduction, suspension or stay of execution. 23 & 24 Geo. 5. c. 41.

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(6) In this and the next following section the expression " company " means any company liable to be wound up under this Act, and the expression " 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 creditors and members.

207.—(1) Where a meeting of creditors or any class of creditors or of members or any class of members is summoned under the last foregoing section 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 the company, the said statement shall give the like explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company's directors.

(3) Where a notice given by advertisement includes a notification that copies of a statement explaining the effect of the 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) Where a company makes default in complying 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 five hundred pounds, 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:

Provided that a person shall not be liable under this subsection 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.

(5) 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 fifty pounds.

Provisions for facilitating reconstruction and amalgamation of companies.

208.—(1) Where an application is made to the court under section two hundred and six of this Act 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

PART IV. —*cont.*

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 seven days after the making of the order, and if default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

(4) In this section the expression "property" includes property, rights and powers of every description, and the expression "liabilities" includes duties.

(5) Notwithstanding the provisions of subsection (6) of section two hundred and six of this Act, the expression "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 approved by majority.

209.—(1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as "the transferor company") to another company, whether a company within the meaning of this Act or not (in this section referred to as "the transferee company"), has, within four months after the making of the offer in that behalf by the transferee company been approved by the holders of not less than nine tenths in value of the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary), the transferee company may, at any time within two months after the expiration of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and when such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company:

Provided that where shares in the transferor company of the same class or classes as the shares whose transfer is involved are already held as aforesaid to a value greater than one tenth of the aggregate of their value and that of the shares (other than those already held as aforesaid) whose transfer is involved, the foregoing provisions of this subsection shall not apply unless—

(*a*) the transferee company offers the same terms to all holders of the shares (other than those already held

as aforesaid) whose transfer is involved, or, where those shares include shares of different classes, of each class of them; and

(*b*) the holders who approve the scheme or contract, besides holding not less than nine tenths in value of the shares (other than those already held as aforesaid) whose transfer is involved, are not less than three fourths in number of the holders of those shares.

(2) Where, in pursuance of any such scheme or contract as aforesaid, shares in a company are transferred to another company or its nominee, and those shares together with any other shares in the first-mentioned company held by, or by a nominee for, the transferee company or its subsidiary at the date of the transfer comprise or include nine tenths in value of the shares in the first-mentioned company or of any class of those shares, then—

(*a*) the transferee company shall within one month from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement) give notice of that fact in the prescribed manner to the holders of the remaining shares or of the remaining shares of that class, as the case may be, who have not assented to the scheme or contract; and

(*b*) any such holder may within three months from the giving of the notice to him require the transferee company to acquire the shares in question;

and where a shareholder gives notice under paragraph (*b*) of this subsection with respect to any shares, the transferee company shall be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to it, or on such other terms as may be agreed or as the court on the application of either the transferee company or the shareholder thinks fit to order.

(3) Where a notice has been given by the transferee company under subsection (1) of this section and the court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given, or, if an application to the court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company, and pay or transfer to the transferor

PART IV. —*cont.*

company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares:

Provided that an instrument of transfer shall not be required for any share for which a share warrant is for the time being outstanding.

(4) 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.

(5) In this section the expression " dissenting shareholder " includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

(6) In relation to an offer made by the transferee company to shareholders of the transferor company before the commencement of this Act, this section shall have effect—

(*a*) with the substitution, in subsection (1), for the words " the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary) ", of the words " the shares affected " and with the omission of the proviso to that subsection;

(*b*) with the omission of subsection (2); and

(*c*) with the omission, in subsection (3), of the words " together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company " and of the proviso to that subsection.

Minorities.

Alternative remedy to winding up in cases of oppression.

210.—(1) Any member of a company who complains that the affairs of the company are being conducted in a manner oppressive to some part of the members (including himself) or, in a case falling within subsection (3) of section one hundred and sixty-nine of this Act, the Board of Trade, may make an application to the court by petition for an order under this section.

(2) If on any such petition the court is of opinion—

(*a*) that the company's affairs are being conducted as aforesaid; and

(*b*) that to wind up the company would unfairly prejudice that part of the members, but otherwise the

facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up;

the court may, with a view to bringing to an end the matters complained of, make such order as it thinks fit, whether 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.

(3) 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.

(4) 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 fourteen days after the making thereof, be delivered by the company to the registrar of companies for registration; and if a company makes default in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

(5) In relation to a petition under this section, section three hundred and sixty-five of this Act shall apply as it applies in relation to a winding-up petition, and proceedings under this section shall, for the purposes of Part V of the Economy (Miscellaneous Provisions) Act, 1926, be deemed to be proceedings under this Act in relation to the winding up of companies.

PART V.

WINDING UP.

(i) PRELIMINARY.

Modes of Winding Up.

Modes of winding up.

211.—(1) The winding up of a company may be either—

(*a*) by the court; or

(*b*) voluntary; or

(*c*) subject to the supervision of the court.

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(2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.

Contributories.

Liability as contributories of present and past members.

212.—(1) In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities, and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to the provisions of subsection (2) of this section and the following qualifications:—

(*a*) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up;

(*b*) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;

(*c*) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;

(*d*) in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;

(*e*) in the case of a company limited by guarantee, no contribution shall, subject to the provisions of subsection (3) of this section, be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;

(*f*) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;

(*g*) a sum due to any member of a company, in his character of a member, by way of dividends, profits or otherwise shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

PART V. —*cont.*

(2) In the winding up of a limited company, any director or manager, whether past or present, whose liability is, under the provisions of this Act, unlimited, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company:

Provided that—

(*a*) a past director or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up;

(*b*) a past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;

(*c*) subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company and the costs, charges and expenses of the winding up.

(3) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

Definition of "contributory".

213. The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

Nature of liability of contributory.

214. The liability of a contributory shall create a debt (in England of the nature of a specialty) accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

Contributories in case of death of member.

215.—(1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives, and the heirs and legatees of heritage of his heritable estate in Scotland, shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

PART V. —*cont.*

(2) Where the personal representatives are placed on the list of contributories, the heirs or legatees of heritage need not be added, but they may be added as and when the court thinks fit.

(3) If in England the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory and for compelling payment thereout of the money due.

Contributories in case of bankruptcy of member.

216. If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories,—

(*a*) his trustee in bankruptcy shall represent him for all the purposes of the winding up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the assets of the company; and

(*b*) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

Provision as to married women. 45 & 46 Vict. c. 75. 44 & 45 Vict. c. 21.

217.—(1) The husband of a female contributory married before the date of the commencement of the Married Women's Property Act, 1882, or the Married Women's Property (Scotland) Act, 1881, as the case may be, shall, during the continuance of the marriage, be liable, as respects any liability attaching to any shares acquired by her before that date, to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be a contributory accordingly.

(2) Subject as aforesaid, nothing in this Act shall affect the provisions of the Married Women's Property Act, 1882, or the Married Women's Property (Scotland) Act, 1881.

(ii) WINDING UP BY THE COURT.

Jurisdiction.

Jurisdiction to wind up companies registered in England.

218.—(1) The High Court shall have jurisdiction to wind up any company registered in England.

(2) In the case of a company whose registered office is situate within the jurisdiction of the Chancery Court of the County Palatine of Lancaster or the Chancery Court of the County Palatine of Durham, the palatine court shall have concurrent jurisdiction with the High Court to wind up the company.

(3) Where the amount of the share capital of a company paid up or credited as paid up does not exceed ten thousand

PART V. —*cont.*

pounds, the county court of the district in which the registered office of the company is situate shall, subject to the provisions of this section, have concurrent jurisdiction with the High Court to wind up the company.

(4) Where a company is formed for working mines within the stannaries and is not shown to be working mines beyond the limits of the stannaries or to be engaged in any other undertaking beyond those limits, or to have entered into a contract for such working or undertaking, the court exercising the stannaries jurisdiction shall, whatever may be the amount of the capital of the company and wherever the registered office of the company is situate, have concurrent jurisdiction with the High Court to wind up the company.

(5) The Lord Chancellor may by order made by statutory instrument exclude a county court from having jurisdiction under this Act, and for the purposes of that jurisdiction may attach its district, or any part thereof, to any other county court, and may by statutory instrument revoke or vary any such order.

In exercising his powers under this section, the Lord Chancellor shall provide that a county court shall not have jurisdiction under this Act unless it has for the time being jurisdiction in bankruptcy.

An order made under this provision shall not affect any jurisdiction or powers vested in any county court under or by virtue of the Stannaries Court (Abolition) Act, 1896. 59 & 60 Vict. c. 45.

(6) Every court in England having jurisdiction under this Act to wind up a company shall for the purposes of that jurisdiction have all the powers of the High Court, and every prescribed officer of the court shall perform any duties which an officer of the High Court may discharge by order of the judge thereof or otherwise in relation to the winding up of a company.

(7) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong court.

(8) For the purposes of this section, the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

Transfer of proceedings from one court to another and statement of case by county court.

219.—(1) The winding up of a company by the court in England or any proceedings in the winding up may at any time and at any stage, and either with or without application from any of the parties thereto, be transferred from one court to another court, or may be retained in the court in which the proceedings were commenced although it may not be the court in which they ought to have been commenced.

PART V. —*cont.*

(2) The powers of transfer given by the foregoing provisions of this section may, subject to and in accordance with general rules, be exercised by the Lord Chancellor or by any judge of the High Court having jurisdiction under this Act, or, as regards any case within the jurisdiction of any other court, by the judge of that court.

(3) If any question arises in any winding up proceeding in a county court which all the parties to the proceeding, or which one of them and the judge of the court, desire to have determined in the first instance in the High Court, the judge shall state the facts in the form of a special case for the opinion of the High Court, and thereupon the special case and the proceedings, or such of them as may be required, shall be transmitted to the High Court for the purposes of the determination.

Jurisdiction to wind up companies registered in Scotland.

220.—(1) The Court of Session shall have jurisdiction to wind up any company registered in Scotland.

(2) When the Court of Session is in vacation, the jurisdiction conferred on that court by this section may, subject to the provisions of this Act, be exercised by the judge acting as vacation judge in pursuance of section four of the Administration of Justice (Scotland) Act, 1933.

(3) Where the amount of the share capital of a company paid up or credited as paid up does not exceed ten thousand pounds, the sheriff court of the sheriffdom in which the registered office of the company is situate shall have concurrent jurisdiction with the Court of Session to wind up the company:

Provided that—

(*a*) it shall be lawful for the Court of Session, if it appears to the Court having regard to the amount of the assets of the company expedient to do so, to remit to any sheriff court any petition presented to the Court of Session for winding up any such company or to require any such petition presented to a sheriff court to be remitted to the Court of Session; and

(*b*) it shall be lawful for the Court of Session to require that any such petition as aforesaid presented to one sheriff court be remitted to another sheriff court; and

(*c*) in a winding up in the sheriff court it shall be lawful for the sheriff court to submit a stated case for the opinion of the Court of Session on any question of law arising in that winding up.

PART V. —*cont.*

(4) For the purposes of this section, the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

Power in Scotland to remit winding up to Lord Ordinary.

221. The Court of Session may, by Act of Sederunt, make provision for the taking of proceedings in a winding up before one of the Lords Ordinary, and where provision is so made, the Lord Ordinary shall, for the purposes of a winding up, have all the powers and jurisdiction of the court:

Provided that the Lord Ordinary may report to the Inner House any matter which may arise in the course of a winding up.

Cases in which Company may be wound up by Court.

Circumstances in which company may be wound up by court.

222. 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.

Definition of inability to pay debts.

223. 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 fifty pounds then due has served on the company, by leaving it at the registered office of the company, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor; or

(*b*) if, in England or Northern Ireland, 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

PART V. —*cont.*

(*c*) if, in Scotland, the inducia of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest have expired without payment being made; or

(*d*) if it is proved to the satisfaction of the court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.

Petition for Winding Up and Effects thereof.

Provisions as to applications for winding up.

224.—(1) An application to the court for the winding up of a company shall be by petition presented, subject to the provisions of this section, either by the company or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately:

Provided that—

(*a*) a contributory shall not be entitled to present a winding-up petition unless—

(i) either the number of members is reduced, in the case of a private company, below 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 six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder; and

(*b*) a winding-up petition shall not, if the ground of the petition is default in delivering the statutory report to the registrar or in holding the statutory meeting, be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held; and

(*c*) the court shall not give a hearing to a winding-up petition presented by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable and until a prima facie case for winding up has been established to the satisfaction of the court; and

(*d*) in a case falling within subsection (3) of section one hundred and sixty-nine of this Act, a winding-up petition may be presented by the Board of Trade.

(2) Where a company is being wound up voluntarily or subject to supervision in England, a winding-up petition may

be presented by the official receiver attached to the court as well as by any other person authorised in that behalf under the other provisions of this section, but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

(3) Where, under the provisions of this Part of this Act, any person as being the husband of a female contributory is himself a contributory and a share has, during the whole or any part of the six months mentioned in paragraph (ii) of proviso (*a*) to subsection (1) of this section, been held by or registered in the name of the wife or by or in the name of a trustee for the wife or for the husband, the share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the husband.

Powers of court on hearing petition.

225.—(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 by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the court, if it is of opinion,—

(*a*) that the petitioners are entitled to relief either by winding up the company or by some other means; and

(*b*) that in the absence of any other remedy it would be just and equitable that the company should be wound up;

shall make a winding-up order, unless it is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

(3) 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.

PART V. —*cont.*

Power to stay or restrain proceedings against company.

226. 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 Court of Appeal in England or Northern Ireland, 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 court having jurisdiction to wind up the company 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 as it thinks fit.

Avoidance of dispositions of property, &c. after commencement of winding up.

227. In a winding up by the court, any disposition of the property of the company, including things in action, and any transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding up, shall, unless the court otherwise orders, be void.

Avoidance of attachments, &c. in case of English company and in case of effects in England of Scottish company.

228.—(1) Where any company registered in England is being wound up by the court, any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.

(2) The provisions of this section shall, so far as relates to any estate or effects of the company situate in England, apply in the case of a company registered in Scotland as it applies in the case of a company registered in England.

Commencement of Winding Up.

Commencement of winding up by the court.

229.—(1) Where, before the presentation of a petition for the winding up of a company by the court, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the court, on proof of fraud or mistake, thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(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.

PART V. —*cont.*

Copy of order to be forwarded to registrar.

230. On the making of a winding-up order, a copy of the order must forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who shall make a minute thereof in his books relating to the company.

Actions stayed on winding-up order.

231. 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.

232. 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.

Official Receiver in English Winding Up.

Official receiver in bankruptcy to be official receiver for winding-up purposes.

233.—(1) For the purposes of this Act so far as it relates to the winding up of companies by the court in England, the term " official receiver " means the official receiver, if any, attached to the court for bankruptcy purposes, or, if there is more than one such official receiver, then such one of them as the Board of Trade may appoint, or, if there is no such official receiver, then an officer appointed for the purpose by the Board.

(2) Any such officer shall, for the purpose of his duties under this Act, be styled " the official receiver ".

Appointment of official receiver by court in certain cases.

234. If, in the case of the winding up of any company by the court in England, it appears to the court desirable, with a view to securing the more convenient and economical conduct of the winding up, that some officer other than the person who would by virtue of the last foregoing section be the official receiver should be the official receiver for the purposes of that winding up, the court may appoint that other officer to act as official receiver in that winding up, and the person so appointed shall be deemed to be the official receiver in that winding up for all the purposes of this Act.

Statement of company's affairs to be submitted to official receiver.

235.—(1) Where the court in England has made a winding-up order or appointed a provisional liquidator, there shall, unless the court thinks fit to order otherwise and so orders, be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts and liabilities, the names, residences and occupations

PART V. —*cont.*

of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the secretary of the company, or by such of the persons hereinafter in this subsection mentioned as the official receiver, subject to the direction of the court, may require to submit and verify the statement, that is to say, persons—

(*a*) who are or have been officers of the company;

(*b*) who have taken part in the formation of the company at any time within one year before the relevant date;

(*c*) who are in the employment of the company, or have been in the employment of the company within the said year, and are in the opinion of the official receiver capable of giving the information required;

(*d*) who are or have been within the said year officers of or in the employment of a company which is, or within the said year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within fourteen days from the relevant date or within such extended time as the official receiver or the court may for special reasons appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official receiver or provisional liquidator, as the case may be, out of the assets of the company such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official receiver may consider reasonable, subject to an appeal to the court.

(5) 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 ten pounds for every day during which the default continues.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.

(7) 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 or of the official receiver, be punishable accordingly.

(8) In this section the expression "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. PART V. —*cont.*

Report by official receiver.

236.—(1) In a case where a winding-up order is made, the official receiver shall, as soon as practicable after receipt of the statement to be submitted under the last foregoing section, or, in a case where the court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the court—

(*a*) as to the amount of capital issued, subscribed and paid up, and the estimated amount of assets and liabilities; and

(*b*) if the company has failed, as to the causes of the failure; and

(*c*) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company or the conduct of the business thereof.

(2) The official receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation or by any officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.

(3) If the official receiver states in any such further report as aforesaid that in his opinion a fraud has been committed as aforesaid, the court shall have the further powers provided in section two hundred and seventy of this Act.

Liquidators.

Power of court to appoint liquidators.

237. 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.

238.—(1) Subject to the provisions of this section, the court may appoint a liquidator provisionally at any time after the presentation of a winding-up petition.

(2) Where the proceedings are in England, the appointment of a provisional liquidator may be made at any time before the making of a winding-up order, and either the official receiver or any other fit person may be appointed.

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(3) Where the proceedings are in Scotland, the appointment of a provisional liquidator may be made at any time before the first appointment of liquidators.

(4) Where a liquidator is provisionally appointed by the court, the court may limit and restrict his powers by the order appointing him.

Appointment, style, &c., of liquidators in England.

239. The following provisions with respect to liquidators shall have effect on a winding-up order being made in England:—

(*a*) the official receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such;

(*b*) the official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the court for appointing a liquidator in the place of the official receiver;

(*c*) the court may make any appointment and order required to give effect to any such determination and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matter aforesaid, the court shall decide the difference and make such order thereon as the court may think fit;

(*d*) in a case where a liquidator is not appointed by the court, the official receiver shall be the liquidator of the company;

(*e*) the official receiver shall by virtue of his office be the liquidator during any vacancy;

(*f*) a liquidator shall be described, where a person other than the official receiver is liquidator, by the style of "the liquidator", and, where the official receiver is liquidator, by the style of "the official receiver and liquidator", of the particular company in respect of which he is appointed and not by his individual name.

Provisions where person other than official receiver is appointed liquidator.

240. Where, in the winding up of a company by the court in England, a person other than the official receiver is appointed liquidator, that person—

(*a*) shall not be capable of acting as liquidator until he has notified his appointment to the registrar of companies and given security in the prescribed manner to the satisfaction of the Board of Trade;

(*b*) shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company and generally such aid as may be requisite for enabling that officer to perform his duties under this Act.

Provisions as to liquidators in Scotland.

241. The following provisions with respect to the liquidators shall have effect in a winding up by the court in Scotland:—

(*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*) where an order has been made for winding up a company subject to supervision and an order is afterwards made for winding up by the court, the court may by the last-mentioned or by any subsequent order appoint any person who is then liquidator, either provisionally or permanently, and either with or without any other person, to be liquidator in the winding up by the court.

General provisions as to liquidators.

242.—(1) A liquidator appointed by the court may resign or, on cause shown, be removed by the court.

(2) Where a person other than the official receiver is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the court may direct, and, if more such persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportions as the court directs.

(3) A vacancy in the office of a liquidator appointed by the court shall be filled by the court.

(4) If more than one liquidator is appointed by the court, the court shall declare whether any act by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(5) Subject to the provisions of section three hundred and thirty-five of this Act, 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.

243.—(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

PART V. —*cont.*

and things in action to which the company is or appears to be entitled.

(2) In a winding up by the court in Scotland, 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.

244. 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.

245.—(1) The liquidator in a winding up by the court shall have power, with the sanction either of the court or of the committee of inspection,—

(*a*) to bring or defend any action or other legal proceeding in the name and on behalf of the company;

(*b*) to carry on the business of the company so far as may be necessary for the beneficial winding up thereof;

(*c*) to appoint a solicitor to assist him in the performance of his duties;

(*d*) to pay any classes of creditors in full;

(*e*) to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;

(*f*) to compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect thereof.

(2) The liquidator in a winding up by the court shall have power—

(*a*) to sell the real and personal property and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company or to sell the same in parcels;

(*b*) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the company's seal;

(*c*) to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors;

(*d*) to draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business;

(*e*) to raise on the security of the assets of the company any money requisite;

(*f*) to take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself;

(*g*) to appoint an agent to do any business which the liquidator is unable to do himself;

(*h*) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(3) The exercise by the liquidator in a winding up by the court of the powers conferred by this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

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(4) In the case of a winding up in Scotland, 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) of this section without the sanction or intervention of the court.

(5) In a winding up by the court in Scotland, the liquidator shall, subject to general rules, have the same powers as a trustee on a bankrupt estate.

Exercise and control of liquidator's powers in England.

246.—(1) Subject to the provisions of this Act, the liquidator of a company which is being wound up by the court in England shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one tenth in value of the creditors or contributories as the case may be.

(3) The liquidator may apply to the court in manner prescribed for directions in relation to any particular matter arising under the winding up.

(4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court, and the court may confirm, reverse or modify the act or decision complained of, and make such order in the premises as it thinks just.

Books to be kept by liquidator in England.

247. Every liquidator of a company which is being wound up by the court in England shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the court, personally or by his agent inspect any such books.

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Payments of liquidator in England into bank.

248.—(1) Every liquidator of a company which is being wound up by the court in England shall, in such manner and at such times as the Board of Trade, with the concurrence of the Treasury, direct, pay the money received by him to the Companies Liquidation Account at the Bank of England, and the Board shall furnish him with a certificate of receipt of the money so paid:

Provided that, if the committee of inspection satisfy the Board of Trade that for the purpose of carrying on the business of the company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the Board shall, on the application of the committee of inspection, authorise the liquidator to make his payments into and out of such other bank as the committee may select, and thereupon those payments shall be made in the prescribed manner.

(2) If any such liquidator at any time retains for more than ten days a sum exceeding fifty pounds or such other amount as the Board of Trade in any particular case authorise him to retain, then, unless he explains the retention to the satisfaction of the Board, he shall pay interest on the amount so retained in excess at the rate of twenty per cent. per annum, and shall be liable to disallowance of all or such part of his remuneration as the Board may think just, and to be removed from his office by the Board, and shall be liable to pay any expenses occasioned by reason of his default.

(3) A liquidator of a company which is being wound up by the court in England shall not pay any sums received by him as liquidator into his private banking account.

Audit of liquidator's accounts in England.

249.—(1) Every liquidator of a company which is being wound up by the court in England shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the Board of Trade, or as they direct, an account of his receipts and payments as liquidator.

(2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.

(3) The Board shall cause the account to be audited, and for the purpose of the audit the liquidator shall furnish the Board with such vouchers and information as the Board may require, and the Board may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4) When the account has been audited, one copy thereof shall be filed and kept by the Board, and the other copy shall

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be delivered to the court for filing, and each copy shall be open to the inspection of any person on payment of the prescribed fee.

(5) The liquidator shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and contributory:

Provided that the Board may in any case dispense with compliance with this subsection.

Control of Board of Trade over liquidators in England.

250.—(1) The Board of Trade shall take cognizance of the conduct of liquidators of companies which are being wound up by the court in England, and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules or otherwise with respect to the performance of his duties or if any complaint is made to the Board by any creditor or contributory in regard thereto, the Board shall inquire into the matter, and take such action thereon as they may think expedient.

(2) The Board may at any time require any liquidator of a company which is being wound up by the court in England to answer any inquiry in relation to any winding up in which he is engaged, and may, if the Board think fit, apply to the court to examine him or any other person on oath concerning the winding up.

(3) The Board may also direct a local investigation to be made of the books and vouchers of the liquidator.

Release of liquidators in England.

251.—(1) When the liquidator of a company which is being wound up by the court in England has realised all the property of the company, or so much thereof as can, in his opinion, be realised without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Board of Trade shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Board, shall take into consideration the report and any objection which may be urged by any creditor or contributory or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the High Court.

(2) Where the release of a liquidator is withheld, the court may, on the application of any creditor or contributory or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

PART V. —*cont.*

(3) An order of the Board of Trade releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

Committees of Inspection.

Meetings of creditors and contributories to determine whether committee of inspection shall be appointed

252.—(1) When a winding-up order has been made by the court in England, it shall be the business of the separate meetings of creditors and contributories summoned for the purpose of determining whether or not an application should be made to the court for appointing a liquidator in place of the official receiver, to determine further whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator and who are to be members of the committee if appointed.

(2) When a winding-up order has been made by the court in Scotland, the liquidator shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator and who are to be the members of the committee if appointed:

Provided that, where the winding-up order has been made on the ground that the company is unable to pay its debts, it shall not be necessary for the liquidator to summon a meeting of the contributories.

(3) 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.

253.—(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:

Provided that, where in Scotland a winding-up order has been made on the ground that a company is unable to pay its

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debts, the committee shall consist of creditors or persons holding general powers of attorney from creditors.

(2) The committee shall meet at such times as they from time to time appoint, and, failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(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 five 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 seven days' notice has been given, stating the object of the meeting.

(7) 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 creditor or contributory to fill the vacancy:

Provided that if the liquidator, having regard to the position in the winding up, is of the opinion that it is unnecessary for the vacancy 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.

(8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

Powers of Board of Trade in England where no committee of inspection

254. Where in the case of a winding up in England there is no committee of inspection, the Board of Trade may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Act authorised or required to be done or given by the committee.

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Additional powers of committee of inspection in Scotland.

255. In the case of a winding up in Scotland, the committee of inspection shall, in addition to the powers and duties conferred and imposed on it by this Act, have such of the powers and duties of commissioners on a bankrupt estate as may be conferred and imposed on committees of inspection by general rules.

General Powers of Court in case of Winding up by Court.

Power to stay winding up.

256.—(1) The court may at any time after an order for winding up, on the application either of the liquidator or the official receiver or any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

(2) On any application under this section the court may, before making an order, require the official receiver to furnish to the court a report with respect to any facts or matters which are in his opinion relevant to the application.

(3) A copy of every order made under this section shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who shall make a minute of the order in his books relating to the company.

Settlement of list of contributories and application of assets.

257.—(1) As soon as may be after making a winding-up order, the court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities:

Provided that, where it appears to the court that it will not be necessary to make calls on or adjust the rights of contributories, the court may dispense with the settlement of a list of contributories.

(2) In settling the list of contributories, the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

Delivery of property to liquidator.

258. 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

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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 company and extent to which set-off allowed.

259.—(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 or manager whose liability is unlimited or to his estate the like allowance.

(3) In the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

Power of court to make calls.

260.—(1) The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.

(2) In making a call the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

Payment into Bank of moneys due to company.

261.—(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 the Bank of England or any branch thereof to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) All moneys and securities paid or delivered into the Bank of England or any branch thereof in the event of a winding up by the court shall be subject in all respects to the orders of the court.

Order on contributory conclusive evidence.

262.—(1) An order made by the court on a contributory shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings except proceedings in Scotland against the heritable estate of a deceased contributory, in which case the order shall be only prima facie evidence for the purpose of charging his heritable estate, unless his heirs or legatees of heritage were on the list of contributories at the time of the order being made.

Appointment in England of special manager.

263.—(1) Where in proceedings in England the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court, and the court may on such application appoint a special manager of the said estate or business to act during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court.

(2) The special manager shall give such security and account in such manner as the Board of Trade direct.

(3) The special manager shall receive such remuneration as may be fixed by the court.

Power to exclude creditors not proving in time.

264. 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.

265. The court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto.

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Inspection of books by creditors and contributories.

266.—(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 government department or person acting under the authority of a government department.

Power to order costs of winding up to be paid out of assets.

267. 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 to summon persons suspected of having property of company, &c.

268.—(1) The court may, at any time after the appointment of a provisional liquidator or the making of a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company.

(2) The court may examine him on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The court may require him to produce any books and papers in his custody or power relating to the company, but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having a lawful impediment (made known to the court at the time of its sitting and allowed by it), the court may cause him to be apprehended and brought before the court for examination.

Attendance of officers of company at meetings of creditors, &c., in Scotland.

269. In the winding up by the court of a company registered in Scotland, 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 in England to order public examination of promoters and officers.

270.—(1) Where an order has been made in England for winding up a company by the court, and the official receiver has made a further report under this Act stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since its formation, the court may, after consideration of the report, direct that that person or officer shall attend before the court on a day appointed by the court for that purpose and be publicly examined as to the promotion or formation or the conduct of the business of the company or as to his conduct and dealings as officer thereof.

(2) The official receiver shall take part in the examination, and for that purpose may, if specially authorised by the Board of Trade in that behalf, employ a solicitor with or without counsel.

(3) The liquidator, where the official receiver is not the liquidator, and any creditor or contributory may also take part in the examination either personally or by solicitor or counsel.

(4) The court may put such questions to the person examined as the court thinks fit.

(5) The person examined shall be examined on oath and shall answer all such questions as the court may put or allow to be put to him.

(6) A person ordered to be examined under this section shall at his own cost, before his examination, be furnished with a copy of the official receiver's report, and may at his own cost employ a solicitor with or without counsel, who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him:

Provided that, if any such person applies to the court to be exculpated from any charges made or suggested against him, it shall be the duty of the official receiver to appear on the hearing of the application and call the attention of the court to any matters which appear to the official receiver to be relevant, and if the court, after hearing any evidence given or witnesses called by the official receiver, grants the application, the court may allow the applicant such costs as in its discretion it may think fit.

(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

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(8) The court may, if it thinks fit, adjourn the examination from time to time.

(9) An examination under this section may, if the court so directs, and subject to general rules, be held before any judge of county courts, or before any officer of the Supreme Court being an official referee, master or registrar in bankruptcy, or before any district registrar of the High Court named for the purpose by the Lord Chancellor, or, in the case of companies being wound up by a Palatine Court, before a registrar of that court, and the powers of the court under this section may be exercised by the person before whom the examination is held.

Power to arrest absconding contributory.

271. 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 United Kingdom or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested and his books and papers and movable personal property to be seized and him and them to be safely kept until such time as the court may order.

Powers of court cumulative.

272. 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.

Delegation to liquidator of certain powers of court in England.

273. Provision may be made by general rules for enabling or requiring all or any of the powers and duties conferred and imposed on the court in England by this Act in respect of the following matters—

(*a*) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;

(*b*) the settling of lists of contributories and the rectifying of the register of members where required, and the collecting and applying of the assets;

(*c*) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;

(*d*) the making of calls;

(*e*) the fixing of a time within which debts and claims must be proved;

to be exercised or performed by the liquidator as an officer of the court, and subject to the control of the court:

Provided that the liquidator shall not, without the special leave of the court, rectify the register of members, and shall not make any call without either the special leave of the court or the sanction of the committee of inspection.

Dissolution of company.

274.—(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) A copy of the order shall within fourteen days from the date thereof be forwarded by the liquidator to the registrar of companies who shall make in his books a minute of the dissolution of the company.

(3) If the liquidator makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding five pounds for every day during which he is in default.

Enforcement of and Appeal from Orders.

Order for calls on contributories in Scotland.

275.—(1) Where an order, interlocutor or decree has been made in Scotland for winding up a company by the court, it shall be competent to the court, on production by the liquidators of a list certified by them of the names of the contributories liable in payment of any calls, and of the amount due by each contributory, and of the date when the said amount became due, to pronounce forthwith a decree against those contributories for payment of the sums so certified to be due, with interest from the said date till payment, at the rate of five per cent. per annum in the same way and to the same effect as if they had severally consented to registration for execution, on a charge of six days, of a legal obligation to pay those calls and interest.

(2) Any such decree may be extracted immediately, and no suspension thereof shall be competent, except on caution or consignation, unless with special leave of the court.

Enforcement throughout United Kingdom of orders made in winding up.

276.—(1) Any order made by the court in England for or in the course of winding up a company shall be enforced in Scotland and Northern Ireland in the courts that would respectively have jurisdiction in respect of that company if registered in Scotland or Northern Ireland and in the same manner in all respects as if the order had been made by those courts.

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(2) In like manner orders, interlocutors and decrees made by the court in Scotland for or in the course of winding up a company shall be enforced in England and Northern Ireland by the courts which would respectively have jurisdiction in respect of that company if registered in that part of the United Kingdom where the order is required to be enforced, and in the same manner in all respects as if the order had been made by those courts.

(3) Where any order, interlocutor or decree made by one court is required to be enforced by another court, an office copy of the order, interlocutor or decree shall be produced to the proper officer of the court required to enforce the same, and the production of an office copy shall be sufficient evidence of the order, interlocutor or decree, and thereupon the last-mentioned court shall take the requisite steps in the matter for enforcing the order, interlocutor or decree, in the same manner as if it had been made by that court.

Appeals from orders in Scotland.

277.—(1) Subject to the provisions of this section and to rules of court, an appeal from any order or decision made or given in the winding up of a company by the court in Scotland under this Act shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the court in cases within its ordinary jurisdiction.

(2) In regard to orders or judgments pronounced by the judge acting as vacation judge in pursuance of section four of the Administration of Justice (Scotland) Act, 1933,—

(*a*) none of the orders specified in Part I of the Tenth Schedule to this Act shall be subject to review, reduction, suspension or stay of execution; and

(*b*) every other order or judgment (except as hereinafter mentioned) may be submitted to review by the Inner House by reclaiming motion enrolled within fourteen days from the date of the order or judgment:

Provided that an order being one of the orders specified in Part II of the Tenth Schedule to this Act shall, from the date of such order and notwithstanding that it has been submitted to review as aforesaid, be carried out and receive effect until the Inner House have disposed of the matter.

(3) In regard to orders or judgments pronounced in Scotland by a Lord Ordinary before whom proceedings in a winding up are being taken, any such order or judgment may be submitted to review by the Inner House by reclaiming motion enrolled within fourteen days from the date of the order or judgment, but should such order or judgment not be so submitted to review during session, the provisions of this section

in regard to orders or judgments pronounced by the judge acting as vacation judge shall apply to the order or judgment. PART V. —*cont.*

(4) Nothing in this section shall affect the provisions of this Act in reference to decrees in Scotland for payment of calls in the winding up of companies, whether voluntary or by, or subject to the supervision of, the court.

(iii) VOLUNTARY WINDING UP.

Resolutions for, and Commencement of, Voluntary Winding Up.

Circumstances in which company may be wound up voluntarily.

278.—(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 requiring the company to be wound up voluntarily;

(*b*) if the company resolves by special resolution that the company be wound up voluntarily;

(*c*) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

(2) In this Act the expression "a resolution for voluntary winding up" means a resolution passed under any of the provisions of subsection (1) of this section.

Notice of resolution to wind up voluntarily.

279.—(1) When a company has passed a resolution for voluntary winding up, it shall, within fourteen days after the passing of the resolution, give notice of the resolution by advertisement in the Gazette.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine, 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.

280. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up.

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Consequences of Voluntary Winding Up.

Effect of voluntary winding up on business and status of company.

281. In case of a voluntary winding up, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof:

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

Avoidance of transfers, &c., after commencement of voluntary winding up.

282. 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.

283.—(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 so done, they have formed the opinion that the company will be able to pay its debts in full within such period not exceeding twelve 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 five weeks 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) 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 six months or to a fine not exceeding five hundred pounds or to both; and if the company is wound up in pursuance of a resolution passed within the period of five weeks after the making of the declaration, but its debts are not paid or provided for in full within

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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.

(4) A winding up in the case of which a declaration has been made and delivered in accordance with this section or section two hundred and thirty of the Companies Act, 1929, is in this Act referred to as " a members' voluntary winding up ", and a winding up in the case of which a declaration has not been made and delivered as aforesaid is in this Act referred to as " a creditors' voluntary winding up ".

(5) Subsections (1) to (3) of this section shall not apply to a winding up commenced before the commencement of this Act.

Provisions applicable to a Members' Voluntary Winding Up.

Provisions applicable to a members' winding up.

284. The provisions contained in the seven sections of this Act next following shall, subject to the provisions of the last of them, apply in relation to a members' voluntary winding up.

Power of company to appoint and fix remuneration of liquidators.

285.—(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.

286.—(1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner provided by this Act or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

Power of liquidator to accept shares, &c., as consideration for sale of property of company.

287.—(1) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Act or not (in this section called " the transferee company "), the liquidator of the first-mentioned company (in this section called " the transferor company ") may, with the sanction of a special resolution

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of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive, in compensation or part compensation for the transfer or sale, shares, policies or other like interests in the transferee company for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by this section.

(4) If the liquidator elects to purchase the member's interest, the purchase money must be paid before the company is dissolved and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but, if an order is made within a year for winding up the company by or subject to the supervision of the court, the special resolution shall not be valid unless sanctioned by the court.

8 & 9 Vict. c. 16. 8 & 9 Vict. c. 17.

(6) For the purposes of an arbitration under this section, the provisions of the Companies Clauses Consolidation Act, 1845, or, in the case of a winding up in Scotland, the Companies Clauses Consolidation (Scotland) Act, 1845, with respect 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 in case of insolvency.

288.—(1) If, in the case of a winding up commenced after the commencement of this Act, 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 two hundred and eighty-three of this Act 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 fifty pounds.

Duty of liquidator to call general meeting at end of each year.

289.—(1) Subject to the provisions of section two hundred and ninety-one of this Act, 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 three months from the end of the year or such longer period as the Board of Trade may allow, 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.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding ten pounds.

Final meeting and dissolution.

290.—(1) Subject to the provisions of the next following section, 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 the Gazette, specifying the time, place and object thereof, and published one month at least before the meeting.

(3) Within one week after the meeting, the liquidator shall send to the registrar 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 five pounds for every day during which the default continues:

Provided that, if a quorum is not present at the meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned

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and that no quorum was present thereat, and upon such a return being made the provisions of this subsection as to the making of the return shall be deemed to have been complied with.

(4) The registrar on receiving the account and either of the returns hereinbefore mentioned shall forthwith register them, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved:

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to deliver to the registrar an office copy of the order for registration, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(6) 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 fifty pounds.

Alternative provisions as to annual and final meetings in case of insolvency.

291. Where section two hundred and eighty-eight of this Act has effect, sections two hundred and ninety-nine and three hundred thereof shall apply to the winding up to the exclusion of the two last foregoing sections, as if the winding up were a creditors' voluntary winding up and not a members' voluntary winding up:

Provided that the liquidator shall not be required to summon a meeting of creditors under the said section two hundred and ninety-nine at the end of the first year from the commencement of the winding up, unless the meeting held under the said section two hundred and eighty-eight is held more than three months before the end of that year.

Provisions applicable to a Creditors' Voluntary Winding Up.

Provisions applicable to a creditors' winding up.

292. The provisions contained in the eight sections of this Act next following shall apply in relation to a creditors' voluntary winding up.

Meeting of creditors.

293.—(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 simultaneously with the sending of the notices of the said meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised once in the Gazette and once at least in two local 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) of this section 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) of this section;

(*b*) by the directors of the company in complying with subsection (3) of this section;

(*c*) by any director of the company in complying with subsection (4) of this section;

the company, directors or director, as the case may be, shall be liable to a fine not exceeding one hundred pounds, and, in the 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

294. The creditors and the company at their respective meetings mentioned in the last foregoing section 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,

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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:

Provided that in the case of different persons being nominated, any director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors or appointing some other person to be liquidator instead of the person appointed by the creditors.

Appointment of committee of inspection.

295.—(1) The creditors at the meeting to be held in pursuance of section two hundred and ninety-three of this Act or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number:

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection, and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the court otherwise directs, be qualified to act as members of the committee, and on any application to the court under this provision the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(2) Subject to the provisions of this section and to general rules, the provisions of sections two hundred and fifty-three (except subsection (1)) and two hundred and fifty-five of this Act shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the court.

Fixing of liquidators' remuneration and cesser of directors' powers.

296.—(1) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

(2) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction the continuance thereof.

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Power to fill vacancy in office of liquidator.

297. 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 s. 287 to a creditors' voluntary winding up.

298. The provisions of section two hundred and eighty-seven of this Act 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 the said 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.

299.—(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 three months from the end of the year or such longer period as the Board of Trade may allow, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding ten pounds.

Final meeting and dissolution.

300.—(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 the Gazette specifying the time, place and object thereof, and published one month at least before the meeting.

(3) Within one week after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the registrar 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 five pounds for every day during which the default continues:

Provided that, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return hereinbefore

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mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat and upon such a return being made the provisions of this subsection as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.

(4) The registrar on receiving the account and, in respect of each such meeting, either of the returns hereinbefore mentioned, shall forthwith register them, and on the expiration of three months from the registration thereof the company shall be deemed to be dissolved:

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to deliver to the registrar an office copy of the order for registration, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(6) 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 fifty pounds.

Provisions applicable to every Voluntary Winding Up.

Provisions applicable to every voluntary winding up.

301. The provisions contained in the nine sections of this Act next following shall apply to every voluntary winding up whether a members' or a creditors' winding up.

Distribution of property of company.

302. 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.

303.—(1) The liquidator may—

(*a*) in the case of a members' voluntary winding up, with the sanction of an extraordinary resolution of the company, and, in the case of a creditors' voluntary winding up, with the sanction of 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 sub-

section (1) of section two hundred and forty-five of this Act to a liquidator in a winding up by the court;

(*b*) without sanction, exercise any of the other powers by this Act given to the liquidator in a winding up by the court;

(*c*) exercise the power of the court under this Act of settling a list of contributories, and the list of contributories shall be prima facie evidence of the liability of the persons named therein to be contributories:

(*d*) exercise the power of the court of making calls;

(*e*) summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution or for any other purpose he may think fit.

(2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(3) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two.

Power of court to appoint and remove liquidator in voluntary winding up.

304.—(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 his appointment.

305.—(1) The liquidator shall, within fourteen days after his appointment, publish in the Gazette and deliver to the registrar of companies for registration a notice of his appointment in the form prescribed by statutory instrument made by the Board of Trade.

(2) If the liquidator fails to comply with the requirements of this section he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Arrangement when binding on creditors.

306.—(1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution and on the creditors if acceded to by three fourths in number and value of the creditors.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the court

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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.

307.—(1) The liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls or any other matter, all or 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) A copy of an order made by virtue of this section staying the proceedings in the winding up shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who shall make a minute of the order in his books relating to the company.

Power of court in Scotland to stay proceedings against company.

308.—(1) If the court, on the application of the liquidator in the winding up of a company registered in Scotland, so directs, 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.

(2) Nothing in this section shall be taken to affect the practice or powers of the court as existing immediately before the first day of November, nineteen hundred and twenty-nine, with respect to the staying of proceedings against a company registered in England and in course of being wound up.

Costs of voluntary winding up.

309. 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.

310. 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) WINDING UP SUBJECT TO SUPERVISION OF COURT.

Power to order winding up subject to supervision.

311. When a company has passed a resolution for voluntary winding up, the court may make an order that the voluntary winding up shall continue but subject to such supervision of the court, and with such liberty for creditors, contributories, or others to apply to the court, and generally on such terms and conditions, as the court thinks just.

Effect of petition for winding up subject to supervision.

312. A petition for the continuance of a voluntary winding up subject to the supervision of the court shall, for the purpose of giving jurisdiction to the court over actions, be deemed to be a petition for winding up by the court.

Application of ss. 227 and 228 to winding up subject to supervision.

313. A winding up subject to the supervision of the court shall, for the purposes of sections two hundred and twenty-seven and two hundred and twenty-eight of this Act be deemed to be a winding up by the court.

Power of court to appoint or remove liquidators.

314.—(1) Where an order is made for a winding up subject to supervision, the court may by that or any subsequent order appoint an additional liquidator.

(2) A liquidator appointed by the court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position, as if he had been duly appointed in accordance with the provisions of this Act with respect to the appointment of liquidators in a voluntary winding up.

(3) The court may remove any liquidator so appointed by the court or any liquidator continued under the supervision order and fill any vacancy occasioned by the removal, or by death or resignation.

Effect of supervision order.

315.—(1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the court, exercise all his powers, without the sanction or intervention of the court, in the same manner as if the company were being wound up altogether voluntarily:

Provided that the powers specified in paragraphs (*d*), (*e*) and (*f*) of subsection (1) of section two hundred and forty-five of this Act shall not be exercised by the liquidator except with the sanction of the court or, in a case where before the order the winding up was a creditors' voluntary winding up, with the sanction of the court or the committee of inspection, or (if there is no such committee) a meeting of the creditors.

(2) A winding up subject to the supervision of the court is not a winding up by the court for the purpose of the provisions of this Act specified in the Eleventh Schedule to this Act, but, subject as aforesaid, an order for a winding up subject to supervision shall for all purposes be deemed to be an order for winding up by the court:

Provided that where the order for winding up subject to supervision was made in relation to a creditors' voluntary winding up in which a committee of inspection had been appointed, the order shall be deemed to be an order for winding up by the court for the purpose of section

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two hundred and fifty-three (except subsection (1) thereof) and section two hundred and fifty-five of this Act except in so far as the operation of those sections is excluded in a voluntary winding up by general rules.

(v) PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP.

Proof and Ranking of Claims.

Debts of all descriptions may be proved.

316. In every winding up (subject, in the case of insolvent companies, to the application in accordance with the provisions of this Act of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

Application of bankruptcy rules in winding up of insolvent English companies.

317. In the winding up of an insolvent company registered in England the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy in England with respect to the estates of persons adjudged bankrupt, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up and make such claims against the company as they respectively are entitled to by virtue of this section.

Ranking of claims in Scotland. 3 & 4 Geo. 5. c. 20.

318. In the winding up of a company registered in Scotland, the following provisions of the Bankruptcy (Scotland) Act, 1913, that is to say,—

(*a*) the provisions of sections forty-five to sixty-two regarding voting and ranking for payment of dividends;

(*b*) sections ninety-six and one hundred and five, which respectively relate to the reckoning of majorities and to the interruption of prescription;

shall so far as is consistent with this Act apply in like manner as they apply in the sequestration of a bankrupt's estate, with the substitution of references to winding up for references to sequestration, of references to the court for references to the sheriff, of references to the liquidator for references to the trustee, and of references to the company for references to the bankrupt, and with any other necessary modifications.

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Preferential payments.

319.—(1) 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 twelve months next before that date;

(ii) all land tax, income tax, profits tax, excess profits tax or other assessed taxes assessed on the company up to the fifth day of April next before that date, and not exceeding in the whole one year's assessment;

(iii) the amount of any purchase tax due from the company at the relevant date, and having become due within twelve months next before that date;

(*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 four months next before the relevant date and all wages (whether payable for time or for piece work) of any workman or labourer in respect of services so rendered;

(*c*) any sum ordered under the Reinstatement in Civil Employment Act, 1944, to be paid by way of compensation where the default by reason of which the order for compensation was made occurred before the relevant date, whether or not the order was made before that date; 7 & 8 Geo. 6. c. 15.

(*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 twelve months next before the relevant date by the company as the employer of any persons under the Unemployment Insurance Act, 1935, the National Health Insurance Act, 1936, the Widows', Orphans' and Old Age Contributory Pensions Act, 1936, the National Insurance (Industrial Injuries) Act, 1946, or the National Insurance Act, 1946; 25 & 26 Geo. 5. c. 8. 26 Geo. 5. & 1 Edw. 8. c. 32. 26 Geo. 5. & 1 Edw. 8. c. 33. 9 & 10 Geo. 6. c. 62.

(*f*) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the 9 & 10 Geo. 6. c. 67.

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company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section seven of the Workmen's Compensation Act, 1925, rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act, being amounts which have accrued before the relevant date in satisfaction of a right which arises or has arisen in respect of employment before the fifth day of July, nineteen hundred and forty-eight (that is to say, the day appointed for the purposes of the National Insurance (Industrial Injuries) Act 1946);

15 & 16 Geo. 5. c. 84.

(*g*) the amount of any debt which, by virtue of subsection (5) of section three of the Workmen's Compensation (Coal Mines) Act, 1934, is due from the company to an insurer in respect of a liability in respect of the satisfaction of a right falling within the last foregoing paragraph.

24 & 25 Geo. 5. c. 23.

(2) Notwithstanding anything in paragraphs (*b*) and (*c*) of the foregoing subsection, the sum to which priority is to be given under those paragraphs respectively shall not, in the case of any one claimant, exceed two hundred pounds:

Provided that where a claimant under the said paragraph (*b*) is a labourer in husbandry who has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the court may decide to be due under the contract, proportionate to the time of service up to the relevant date.

(3) Where any compensation under the Workmen's Compensation Act, 1925, is a weekly payment, the amount due in respect thereof shall, for the purposes of paragraph (*f*) of subsection (1) of this section, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the said Act.

(4) 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.

(5) 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*) in the case of a company registered in England, 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.

(6) 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 the debts to which priority is given by paragraph (*e*) of subsection (1) of this section formal proof thereof shall not be required except in so far as is otherwise provided by general rules.

(7) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof:

Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(8) For the purposes of this section—

(*a*) any remuneration in respect of a period of holiday or of 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;

(*b*) the expression "accrued holiday remuneration" includes, in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment (including any order made or direction given under any Act), are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday had his employment with the company continued until he became entitled to be allowed the holiday;

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(*c*) references to remuneration in respect of a period of holiday include any sums which, if they had been paid, would have been treated for the purposes of the National Insurance Act, 1946, or any enactment repealed by that Act as remuneration in respect of that period; and

(*d*) the expression " the relevant date " means—

(i) in the case of a company 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) in any case where the foregoing sub-paragraph does not apply, means the date of the passing of the resolution for the winding up of the company.

(9) This section shall not apply in the case of a winding up where the relevant date as defined in subsection (7) of section two hundred and sixty-four of the Companies Act, 1929, as originally enacted, occurred before the commencement of this Act, and in such a case the provisions relating to preferential payments which would have applied if this Act had not passed shall be deemed to remain in full force.

Effect of Winding Up on antecedent and other Transactions.

Fraudulent preference.

320.—(1) Any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company within six months before the commencement of its winding up which, had it been made or done by or against an individual within six months before the presentation of a bankruptcy petition on which he is adjudged 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:

Provided that, in relation to things made or done before the commencement of this Act, this subsection shall have effect with the substitution, for references to six months, of references to three months.

(2) 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.

(3) In the application to Scotland of this section, the expression " fraudulent preference " includes any alienation

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or preference which is voidable by statute or at common law on the ground of insolvency or notour bankruptcy, the expression "bankruptcy petition" means petition for sequestration and for the words "three months" there shall be substituted the words "sixty days".

Liabilities and rights of certain fraudulently preferred persons.

321.—(1) Where, in the case of a company wound up in England, anything made or done after the commencement of this Act is void under the last foregoing section 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 provision) 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 incumbrances other than those to which the charge for the company's debt was then subject.

(3) On any application made to the court with respect 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 with respect 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.

This subsection shall apply, with the necessary modifications, in relation to transactions other than the payment of money as it applies in relation to payments.

Effect of floating charge.

322.—(1) Where a company is being wound up, a floating charge on the undertaking or property of the company created within twelve months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent. per annum or such other rate as may for the time being be prescribed by order of the Treasury:

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Provided that, in relation to a charge created more than six months before the commencement of this Act, this section shall have effect with the substitution, for the words " twelve months ", of the words " six months ".

(2) The power conferred by this section on the Treasury shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Disclaimer of onerous property in case of company wound up in England.

323.—(1) Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto, may, with the leave of the court and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the court, disclaim the property:

Provided that, where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power under this section of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the court.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the court thinks just.

(4) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any persons interested in the property requiring him to decide whether he will or will not disclaim and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such further period as may be allowed by the court, given notice to the applicant that he intends to apply to the court for

leave to disclaim, and, in the case of a contract, if the liquidator, after such an application as aforesaid, does not within the said period or further period disclaim the contract, the company shall be deemed to have adopted it.

(5) The court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the court thinks just, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) The court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any persons entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the court thinks just, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose:

Provided that, where the property disclaimed is of a leasehold nature, the court shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee by demise, including a chargee by way of legal mortgage, except upon the terms of making that person—

(*a*) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or

(*b*) if the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date;

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the court shall have power to vest the estate and interest of the company in the property in any person liable either personally or in a representative character, and either alone or jointly with the company, to

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perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company.

(7) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.

(8) This section shall not apply in the case of a winding up in Scotland.

Liability for rentcharge on company's land after disclaimer.

324.—(1) Where on a disclaimer under the last preceding section land in England vests subject to a rentcharge in the Crown or any other person that shall not, subject to the next following subsection, impose on the Crown or the said other person or its or his successors in title any personal liability in respect of the rentcharge.

(2) This section shall not affect any liability in respect of sums accruing due after the Crown or the said other person, or some person claiming through or under the Crown or the said other person, has taken possession or control of the land or has entered into occupation thereof.

(3) This section shall apply to land vesting and sums accruing due before, as well as after, the commencement of this Act.

Restriction of rights of creditor as to execution or attachment in case of company being wound up in England.

325.—(1) Where a creditor has issued execution against the goods or lands of a company or has attached any debt due to the company, and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the company unless he has completed the execution or attachment before the commencement of the winding up:

Provided that—

(*a*) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice shall, for the purposes of the foregoing provision, be substituted for the date of the commencement of the winding up;

(*b*) 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; and

(*c*) the rights conferred by this subsection 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 may think fit.

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(2) 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.

(3) In this section the expression "goods" includes all chattels personal, and the expression "sheriff" includes any officer charged with the execution of a writ or other process.

(4) This section shall not apply in the case of a winding up in Scotland.

Duties of sheriff as to goods taken in execution.

326.—(1) Subject to the provisions of subsection (3) of this section, 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 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 the provisions of subsection (3) of this section, where under an execution in respect of a judgment for a sum exceeding twenty pounds 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 fourteen days, and if within that time notice is served on him of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up of the company and an order is made or a resolution is passed, as the case may be, for the winding up of the company, the 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.

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(4) In this section the expression "goods" includes all chattels personal, and the expression "sheriff" includes any officer charged with the execution of a writ or other process.

(5) This section shall not apply in the case of a winding up in Scotland.

Effect of diligence within 60 days of winding up in case of Scottish company, and in case of effects in Scotland of English company.

327.—(1) In the winding up of a company registered in Scotland, the following provisions shall have effect:—

(*a*) the winding up shall, as at the date of the commencement thereof, be equivalent to an arrestment in execution and decree of furthcoming, and to an executed or completed poinding, and no arrestment or poinding of the funds or effects of the company executed on or after the sixtieth day prior to that date shall be effectual, and those funds or effects or the proceeds of those effects if sold shall be made forthcoming to the liquidator:

Provided that any arrester or poinder before that date who is thus deprived of the benefit of his diligence shall have preference out of those funds or effects for the expense bona fide incurred by him in such diligence;

(*b*) the winding up shall, as at the date aforesaid, be equivalent to a decree of adjudication of the heritable estates of the company for payment of the whole debts of the company, principal and interest, accumulated at the said date, subject to such preferable heritable rights and securities as existed at the said date and are valid and unchallengeable, and the right to poind the ground hereinafter provided;

(*c*) the provisions of sections one hundred and eight to one hundred and thirteen and of section one hundred and sixteen of the Bankruptcy (Scotland) Act, 1913, shall, so far as is consistent with this Act, apply to the realisation of heritable estates affected by such heritable rights and securities as aforesaid, and for the purposes of this Act the words "sequestration" and "trustee" occurring in those sections shall mean respectively "winding up" and "liquidator," and the expression "the Lord Ordinary or the court" shall mean "the court" as defined by this Act with respect to Scotland;

(*d*) no poinding of the ground which has not been carried into execution by sale of the effects sixty days before the date aforesaid shall, except to the

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extent hereinafter provided, be available in any question with the liquidator:

Provided that no creditor who holds a security over the heritable estate preferable to the right of the liquidator shall be prevented from executing a poinding of the ground after the date aforesaid, but that poinding shall in competition with the liquidator be available only for the interest on the debt for the current half-yearly term, and for the arrears of interest for one year immediately before the commencement of that term.

(2) The provisions of this section shall, so far as relates to any estate or effects of the company situate in Scotland, apply in the case of a company registered in England as it applies in the case of a company registered in Scotland.

Offences antecedent to or in course of Winding Up.

Offences by officers of companies in liquidation.

328.—(1) 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 or under the supervision of the court or voluntarily, or is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up—

(*a*) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company; or

(*b*) does not deliver up to the liquidator, or as he directs, all such part of the real and personal property of the company as is in his custody or under his control, and which he is required by law to deliver up; or

(*c*) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up; or

(*d*) within twelve months next before the commencement of the winding up or at any time thereafter conceals any part of the property of the company to the value of ten pounds or upwards, or conceals any debt due to or from the company; or

(*e*) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently removes any part of the property of

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the company to the value of ten pounds or upwards; or

(*f*) makes any material omission in any statement relating to the affairs of the company; or

(*g*) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of a month to inform the liquidator thereof; or

(*h*) after the commencement of the winding up prevents the production of any book or paper affecting or relating to the property or affairs of the company; or

(*i*) within twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the company; or

(*j*) within twelve months next before the commencement of the winding up or at any time thereafter makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company; or

(*k*) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company; or

(*l*) after the commencement of the winding up or at any meeting of the creditors of the company within twelve months next before the commencement of the winding up attempts to account for any part of the property of the company by fictitious losses or expenses; or

(*m*) has within twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for; or

(*n*) within twelve months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for; or

(*o*) within twelve months next before the commencement of the winding up or at any time thereafter pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging, or disposing is in the ordinary way of the business of the company; or

(*p*) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up;

he shall be guilty of a misdemeanour and shall, in the case of the offences mentioned respectively in paragraphs (*m*), (*n*) and (*o*) of this subsection, be liable on conviction on indictment to penal servitude for a term not exceeding five years, or on summary conviction to imprisonment for a term not exceeding twelve months, and in the case of any other offence shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding twelve months:

Provided that it shall be a good defence to a charge under any of paragraphs (*a*), (*b*), (*c*), (*d*), (*f*), (*n*) and (*o*), if the accused proves that he had no intent to defraud, and to a charge under any of paragraphs (*h*), (*i*) and (*j*), if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to a misdemeanour under paragraph (*o*) of subsection (1) of this section, 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 be guilty of a misdemeanour, and on conviction thereof liable—

(*a*) in England to be punished in the same way as if he had received the property knowing it to have been obtained in circumstances amounting to a misdemeanour;

(*b*) in Scotland on conviction on indictment to penal servitude for a period not exceeding seven years, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds, or to both such imprisonment and fine.

(3) For the purposes of this section, the expression "officer" shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

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Penalty for falsification of books.

329. 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 any false or fraudulent entry in any register, book of account or document belonging to the company with intent to defraud or deceive any person, he shall be guilty of a misdemeanour, and be liable to imprisonment for any term not exceeding two years, with or without hard labour.

Frauds by officers of companies which have gone into liquidation.

330. 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 two months before, the date of any unsatisfied judgment or order for payment of money obtained against the company;

he shall be guilty of a misdemeanour and shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding twelve months.

Liability where proper accounts not kept.

331.—(1) If where a company is wound up it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, 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 one year, or on summary conviction to imprisonment for a term not exceeding six months.

(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 for fraudulent trading of persons concerned.

332.—(1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the court, on the application of the official receiver, or the liquidator or any creditor or contributory of the company, may, if it thinks proper so to do, declare that any 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 official receiver or the liquidator, as the case may be, 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, the expression "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

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(1) of this section, 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 two years or to a fine not exceeding five hundred pounds or to both.

(4) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made, and where the declaration under subsection (1) of this section is made in the case of a winding up in England, the declaration shall be deemed to be a final judgment within the meaning of paragraph (*g*) of subsection (1) of section one of the Bankruptcy Act, 1914.

4 & 5 Geo. 5. c. 59.

Power of court to assess damages against delinquent directors, &c.

333.—(1) If in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager or liquidator, or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of the official receiver, or of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the court thinks just.

(2) The provisions of this section shall have effect notwithstanding that the offence is one for which the offender may be criminally liable.

(3) Where in the case of a winding up in England an order for payment of money is made under this section, the order shall be deemed to be a final judgment within the meaning of paragraph (*g*) of subsection (1) of section one of the Bankruptcy Act, 1914.

Prosecution of delinquent officers and members of company.

334.—(1) If it appears to the court in the course of a winding up by, or subject to the supervision of, the court that any past or present 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, in the case of a winding up in England, to the Director of Public Prosecutions, and, in the case of a winding up in Scotland, to the Lord Advocate.

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(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, in the case of a winding up in England, to the Director of Public Prosecutions, and, in the case of a winding up in Scotland, to the Lord Advocate, and shall furnish to the Director or Lord Advocate, as the case may be, 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 they respectively may require.

(3) Where any report is made under the last foregoing subsection to the Director of Public Prosecutions or Lord Advocate, he may, if he thinks fit, refer the matter to the Board of Trade for further enquiry, and the Board shall thereupon investigate the matter and may if they think it expedient, apply to the court for an order conferring on the Board or any person designated by the Board for the purpose with respect to the company concerned all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the court.

(4) 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 with respect to the matter has been made by the liquidator to the Director of Public Prosecutions or the Lord Advocate under subsection (2) of this section, the court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of subsection (2) of this section.

(5) If, where any matter is reported or referred to the Director of Public Prosecutions or Lord Advocate under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall institute proceedings accordingly, and it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give him all assistance in connection with the prosecution which he is reasonably able to give.

For the purposes of this subsection, the expression "agent" in relation to a company shall be deemed to include

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any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(6) If any person fails or neglects to give assistance in manner required by the last foregoing subsection, the court may, on the application of the Director of Public Prosecutions or Lord Advocate, as the case may be, direct that person to comply with the requirements of the said subsection, and where any such application is made with respect to a liquidator the court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in 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.

335. A body corporate shall not be qualified for appointment as liquidator of a company, whether in a winding up by or under the supervision of the court or in a voluntary winding up, and—

(*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 one hundred pounds.

Corrupt inducement affecting appointment as liquidator.

336. 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 one hundred pounds.

Enforcement of duty of liquidator to make returns, &c.

337.—(1) If any liquidator who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the court may, on an application made to the court by any contributory or creditor of the company or by the registrar 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.

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Notification that a company is in liquidation.

338.—(1) Where a company is being wound up, whether by or under the supervision of the court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

(2) If default is made in complying with this section, the company and 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 or manager, shall be liable to a fine of twenty pounds.

Exemption of certain documents from stamp duty on winding up of companies.

339.—(1) In the case of a winding up by the court of a company registered in England, or of a creditors' voluntary winding up of such a company,—

(*a*) every assurance relating solely to freehold or leasehold property, or to any mortgage, charge or other encumbrance on, or any estate, right or interest in, any real or personal property, which forms part of the assets of the company and which, after the execution of the assurance, either at law or in equity, is or remains part of the assets of the company; and

(*b*) every power of attorney, proxy paper, writ, order, certificate, affidavit, bond or other instrument or writing relating solely to the property of any company which is being so wound up, or to any proceeding under any such winding up,

shall be exempt from duties chargeable under the enactments relating to stamp duties.

(2) In the case of such a winding up as aforesaid of a company registered in Scotland—

(*a*) every conveyance relating solely to property which forms part of the assets of the company and which, after the execution of the conveyance, is or remains the property of the company for the benefit of its creditors; and

(*b*) every power of attorney, commission, factory, oath, affidavit, articles of roup or sale, submission, decree arbitral, and every other instrument and writing whatsoever relating solely to the property of the company; and

(*c*) every deed or writing forming a part of the proceedings in the winding up,

shall be exempt from duties chargeable under the enactments relating to stamp duties.

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(3) In subsection (1) of this section the expression "assurance" includes deed, conveyance, assignment and surrender, and in subsection (2) of this section the expression "conveyance" includes assignation, instrument, discharge, writing and deed.

Books of company to be evidence.

340. Where a company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be prima facie evidence of the truth of all matters purporting to be therein recorded.

Disposal of books and papers of company

341.—(1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows, that is to say:—

(*a*) in the case of a winding up by or subject to the supervision of the court, in such way as the court directs;

(*b*) in the case of a members' voluntary winding up, in such way as the company by extraordinary resolution directs, and, in the case of a creditors' voluntary winding up, in such way as the committee of inspection or, if there is no such committee, as the creditors of the company, may direct.

(2) After five years from the dissolution of the company no responsibility shall rest on the company, the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

(3) Provision may be made by general rules for enabling the Board of Trade to prevent, for such period (not exceeding five years from the dissolution of the company) as the Board think proper, the destruction of the books and papers of a company which has been wound up, and for enabling any creditor or contributory of the company to make representations to the Board and to appeal to the court from any direction which may be given by the Board in the matter.

(4) If any person acts in contravention of any general rules made for the purposes of this section or of any direction of the Board thereunder, he shall be liable to a fine not exceeding one hundred pounds.

Information as to pending liquidations.

342.—(1) If where a company is being wound up the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the

registrar of companies a statement in the prescribed form and containing the prescribed particulars with respect to 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 fifty pounds for each day during which the default continues.

Unclaimed assets in England to be paid to Companies Liquidation Account

343.—(1) If, where a company is being wound up in England, it appears either from any statement sent to the registrar under the last foregoing section or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt or any money held by the company in trust in respect of dividends or other sums due to any person as a member of the company, the liquidator shall forthwith pay the said money to the Companies Liquidation Account at the Bank of England, and shall be entitled to the prescribed certificate of receipt for the money so paid, and that certificate shall be an effectual discharge to him in respect thereof.

(2) For the purpose of ascertaining and getting in any money payable into the Bank of England in pursuance of this section, the like powers may be exercised, and by the like authority, as are exercisable under section one hundred and fifty-three of the Bankruptcy Act, 1914, for the purpose of ascertaining and getting in the sums, funds and dividends referred to in that section.

(3) Any person claiming to be entitled to any money paid into the Bank of England in pursuance of this section may apply to the Board of Trade for payment thereof, and the Board may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due.

(4) Any person dissatisfied with the decision of the Board of Trade in respect of a claim made in pursuance of this section may appeal to the High Court.

Unclaimed dividends, &c., in Scotland to be lodged in bank.

344. When a company registered in Scotland has been wound up, and is about to be dissolved, the liquidator shall lodge in a joint stock bank of issue in Scotland (not being a bank in or of which the liquidator is acting partner, manager, agent or cashier) in the name of the Accountant of Court the whole unclaimed dividends and unapplied or undistributable balances, and the deposit receipts therefor shall be transmitted to the Accountant of Court, and the provisions of section one hundred and fifty-three of the Bankruptcy (Scotland) Act, 1913, so far as consistent with

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this Act, shall, with any necessary modifications, apply to sums lodged in a bank in pursuance of this section in like manner as they apply to sums deposited in pursuance of that enactment.

Resolutions passed at adjourned meetings of creditors and contributories.

345. Where a resolution is passed at an adjourned meeting of any creditors or contributories of a company, the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

Supplementary Powers of Court.

Meetings to ascertain wishes of creditors or contributories.

346.—(1) The court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any sufficient evidence, and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or the articles.

Judicial notice of signature of officers.

347. In all proceedings under this Part of this Act, all courts, judges and persons judicially acting, and all officers, judicial or ministerial, of any court, or employed in enforcing the process of any court, shall take judicial notice of the signature of any officer of the High Court or of a county court in England, or of the Court of Session or of a sheriff court in Scotland, or of the High Court in Northern Ireland, and also of the official seal or stamp of the several offices of the High Court in England or Northern Ireland, or of the Court of Session, appended to or impressed on any document made, issued or signed under the provisions of this Part of this Act, or any official copy thereof.

Special commission for receiving evidence.

348.—(1) The judges of the county courts in England who sit at places more than twenty miles from the General Post Office, and in Northern Ireland the judge exercising the bankruptcy jurisdiction of the High Court and county court judges and recorders, and the sheriffs of counties in Scotland, shall be commissioners for the purpose of taking evidence under this Act, where a company is wound up in England or Scotland, and the court may refer the whole or any part

of the examination of any witnesses under this Act to any person hereby appointed commissioner although he is out of the jurisdiction of the court that made the winding up order.

(2) Every commissioner shall, in addition to any powers which he might lawfully exercise as a judge of county courts, judge exercising the said bankruptcy jurisdiction, county court judge, recorder or sheriff, have in the matter so referred to him all the same powers of summoning and examining witnesses, of requiring the production or delivery of documents, of punishing defaults by witnesses, and of allowing costs and expenses to witnesses, as the court which made the winding-up order.

(3) The examination so taken shall be returned or reported to the court which made the order in such manner as that court directs.

Court may order examination of persons in Scotland.

349.—(1) The court may direct the examination in Scotland of any person for the time being in Scotland, whether a contributory of the company or not, in regard to the trade, dealings, affairs or property of any company in course of being wound up, or of any person being a contributory of the company, so far as the company may be interested therein by reason of his being a contributory.

(2) The order or commission to take the examination aforesaid shall be directed to the sheriff of the county in which the person to be examined is residing or happens to be for the time, and the sheriff shall summon that person to appear before him at a time and place to be specified in the summons for examination on oath as a witness or as a haver, and to produce any books or papers called for which are in his possession or power.

(3) The sheriff may take the examination either orally or on written interrogatories, and shall report the same in writing in the usual form to the court, and shall transmit with the report the books and papers produced, if the originals thereof are required and specified by the order or commission, or otherwise copies thereof or extracts therefrom authenticated by the sheriff.

(4) If any person so summoned fails to appear at the time and place specified, or refuses to be examined or to make the production required, the sheriff shall proceed against him as a witness or haver duly cited and failing to appear or refusing to give evidence or make production may be proceeded against by the law of Scotland.

(5) The sheriff shall be entitled to such fees, and the witness shall be entitled to such allowances, as sheriffs when acting as commissioners under appointment from the Court of

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Session and as witnesses and havers are entitled to in the like cases according to the law and practice of Scotland.

(6) If any objection is stated to the sheriff by the witness, either on the ground of his incompetency as a witness, or as to the production required, or on any other ground, the sheriff may, if he thinks fit, report the objection to the court, and suspend the examination of the witness until it has been disposed of by the court.

Costs of application for leave to proceed against company being wound up in Scotland.

350.—(1) Where any petition or application for leave to proceed with an action or proceeding against a company which is being wound up in Scotland is unopposed and is granted by the court, the costs of such petition or application shall, unless the court otherwise directs, be added to the amount of the claim of the petitioner or applicant against the company.

(2) Nothing in this section shall be taken to affect the practice or powers of the court as existing immediately before the first day of November, nineteen hundred and twenty-nine, with respect to the costs of an application for leave to proceed with an action or proceeding against a company which is being wound up in England.

Affidavits, &c., in United Kingdom and dominions.

351.—(1) Any affidavit required to be sworn under the provisions or for the purposes of this Part of this Act may be sworn in the United Kingdom, or elsewhere within the dominions of His Majesty, before any court, judge or person lawfully authorised to take and receive affidavits or before any of His Majesty's consuls or vice-consuls in any place outside His Majesty's dominions.

(2) All courts, judges, justices, commissioners and persons acting judicially shall take judicial notice of the seal or stamp or signature, as the case may be, of any such court, judge, person, consul or vice-consul attached, appended or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part of this Act.

6 & 7 Geo. 6. c. 35.

(3) Subsection (2) of section six of the Foreign Service Act, 1943 (which empowers His Majesty by Order in Council to make such amendments of any enactment as appear to him to be consequential on the establishment or reorganisation of His foreign service, including, in particular, such amendments of any reference to an office, rank or grade as appear to Him to be consequential on the abolition or alteration of the description thereof or on the creation of any new office, rank or grade corresponding thereto) shall have effect as if the reference to any enactment included a reference to this section.

Provisions as to Dissolution.

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Power of court to declare dissolution of company void.

352.—(1) Where a company has been dissolved, the court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the 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 seven 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 so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Registrar may strike defunct company off register.

353.—(1) Where the registrar of companies has reasonable cause to believe that a company is not carrying on business or in operation, he may send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen 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 the Gazette 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 in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Gazette, and send to the company by post, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months, the registrar shall publish in the Gazette and send

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to the company or the liquidator, if any, a like notice as is provided in the last foregoing subsection.

(5) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Gazette, and on the publication in the Gazette of this notice the company shall be dissolved:

Provided that—

(*a*) the liability, if any, of every director, managing officer and member of the company shall continue and may be enforced as if the company had not been dissolved; and

(*b*) nothing in this subsection shall affect the power of the court to wind up a company the name of which has been struck off the register.

(6) 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 by the company or member or creditor before the expiration of twenty years from the publication in the Gazette of the notice aforesaid may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and upon an office copy of the order being delivered to the registrar for registration the company shall be deemed to have continued in existence as if its name had not been struck off; and the 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.

(7) 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.

Property of dissolved company to be bona vacantia.

354. Where a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (including leasehold property but not including property held by the company on trust for any

other person) shall, subject and without prejudice to any order which may at any time be made by the court under the two last foregoing sections, be deemed to be bona vacantia and shall accordingly belong to the Crown, or to the Duchy of Lancaster or to the Duke of Cornwall for the time being, as the case may be, and shall vest and may be dealt with in the same manner as other bona vacantia accruing to the Crown, to the Duchy of Lancaster or to the Duke of Cornwall.

Power of Crown to disclaim title to property vesting under foregoing section.

355.—(1) Where any property vests in the Crown under the last preceding section, the Crown's title thereto under that section may be disclaimed by a notice signed by the Treasury Solicitor.

(2) Where a notice of disclaimer under this section is executed as respects any property, that property shall be deemed not to have vested in the Crown under the last preceding section, and subsections (2) and (6) of section three hundred and twenty-three of this Act and section three hundred and twenty-four thereof shall apply in relation to the property as if it had been disclaimed under subsection (1) of the said section three hundred and twenty-three immediately before the dissolution of the company.

(3) The right to execute a notice of disclaimer under this section may be waived by or on behalf of the Crown either expressly or by taking possession or other act evincing that intention.

(4) A notice of disclaimer under this section shall be of no effect unless it is executed within twelve months of the date on which the vesting of the property as aforesaid came to the notice of the Treasury Solicitor, or, if an application in writing is made to the Treasury Solicitor by any person interested in the property requiring him to decide whether he will or will not disclaim, within a period of three months after the receipt of the application or such further period as may be allowed by the court which would have had jurisdiction to wind up the company if it had not been dissolved.

(5) A statement in a notice of disclaimer of any property under this section that the vesting of the property came to the notice of the Treasury Solicitor on a specified date or that no such application as aforesaid was received by him with respect to the property before a specified date shall, until the contrary is proved, be sufficient evidence of the fact stated.

(6) A notice of disclaimer under this section shall be delivered to the registrar of companies and retained and registered by him, and copies thereof shall be published in the Gazette and sent to any persons who have given the Treasury

PART V. —*cont.*

Solicitor notice that they claim to be interested in the property.

(7) This section shall apply to property vested in the Crown as aforesaid at the commencement of this Act, and where the vesting came to the notice of the Treasury Solicitor more than six months before the commencement of this Act notice of disclaimer under this section may (except where an application is made to him under subsection (4) of this section) be executed at any time within six months thereafter.

(8) This section shall apply to property vested in the Duchy of Lancaster or the Duke of Cornwall under the last preceding section as if for references to the Crown and to the Treasury Solicitor there were respectively substituted references to the Duchy of Lancaster and to the Solicitor to the Duchy of Lancaster or to the Duke of Cornwall and to the Solicitor to the Duchy of Cornwall, as the case may be.

(9) This section shall apply to property in Scotland as if for references to the Treasury Solicitor there were substituted references to the King's and Lord Treasurer's Remembrancer, and as if section three hundred and twenty-three of this Act applied in the case of a winding up in Scotland, with the substitution, however, for references to property of a leasehold nature, to an under-lessee, and to a mortgagee by demise or a chargee by way of legal mortgage, of references respectively to property held under a lease, to a sub-lessee, and to the creditor in a security constituted by the assignation of a lease recorded under the Registration of Leases (Scotland) Act, 1857.

20 & 21 Vict. c. 26.

Liability for rentcharge on company's land after dissolution.

356.—(1) Section three hundred and twenty-four of this Act shall apply to land in England which by operation of law vests subject to a rentcharge in the Crown or any other person on the dissolution of a company as it applies to land so vesting on a disclaimer under section three hundred and twenty-three of this Act.

(2) In this section the expression "company" includes any body corporate.

Special Provisions as to Stannaries.

Attachment of debt due to contributory on winding up in stannaries court.

357. When several companies are in course of liquidation by or under the supervision of the court exercising the stannaries jurisdiction and acting under that jurisdiction, if it appears to the judge that a person who is a contributory of one of the companies is also a creditor claiming a debt against one of the other companies, the judge may (if after inquiry he thinks fit) direct that the debt, when allowed, shall be attached, and payment thereof to the creditor suspended for a time certain as a security for payment of any calls that

are or may in course of liquidation become due from him to the company of which he is a contributory; and the amount thereof shall be applied to such payment in due course:

Provided that such an order of attachment shall not prejudice any claim which the company so indebted to the creditor may have against him by way of set-off, counterclaim or otherwise, or any lawful claim of lien or specific charge on the debt in favour of any third person.

Preferential payments in stannaries cases.

358.—(1) In the application to companies within the stannaries of the provisions of this Act with respect to preferential payments, the following modifications shall be made:—

(*a*) in the case of a clerk or servant of such a company, the priority with respect to wages and salary given by this Act shall not extend to the principal agent, manager, purser or secretary;

(*b*) all wages in relation to the mine of a miner, artizan, or labourer employed in or about the mine, including all earnings by a miner arising from any description of piece or other work, or as a tributer or otherwise, but not exceeding an amount equal to four months wages, shall be included amongst the payments which are, under this Act, to be made in priority to other debts;

(*c*) the following debts, that is to say:—

(i) wages of any miner, artizan or labourer and accrued holiday remuneration becoming payable to or in right of any miner, artizan or labourer as mentioned in paragraph (*d*) of subsection (1) of section three hundred and nineteen of this Act, being wages or remuneration unpaid at the commencement of the winding up;

(ii) all such amounts due in respect of contributions payable in respect of a miner under the enactments mentioned in paragraph (*e*) of the said subsection (1) as are given priority by that paragraph; and

(iii) all such amounts due in respect of any compensation or liability for compensation under the Workmen's Compensation Act, 1925, payable to a miner or the dependants of a miner as are given priority by paragraph (*f*) of the said subsection (1);

shall be paid by the liquidator forthwith in priority to all costs, except (in the case of a winding up by the court) such costs of and incidental to the making of the winding up order as in the opinion of the

PART V. —*cont.*

court have been properly incurred, and to all claims by mortgagees, execution creditors, or any other persons, except the claims of clerks and servants in respect of their wages or salary or accrued holiday remuneration due to them;

(*d*) subject as aforesaid, the court may, by order, charge the whole or any part of the assets of the company, in priority to all claims and to all existing mortgages or charges thereon, with the payment of a sum sufficient to discharge the debts to be paid in priority under the last foregoing paragraph, together with interest thereon at a rate not exceeding five per cent. per annum, and this charge may be made in favour of any person who is willing to advance the requisite amount or any part thereof, and as soon as the said sum has been so advanced, the said debts shall be paid without delay so far as the amount advanced extends, and in such order of payment as the court directs;

(*e*) the provision giving a right of priority to a person who has advanced money for the making of payments on account of wages, salary or accrued holiday remuneration shall have effect subject to the modifications contained in this section.

(2) References in the foregoing subsection to wages shall be construed as including references to such remuneration in respect of a period of holiday or absence from work as is deemed for the purposes of section three hundred and nineteen of this Act to be wages, and for the purposes of that subsection the expression "accrued holiday remuneration" has the same meaning as it has for the purposes of that section.

(3) The foregoing provisions of this section shall not apply in the case of such a winding up as is mentioned in subsection (9) of the said section three hundred and nineteen, and in such a case the provisions which, by virtue of that subsection, are deemed to remain in force shall have effect in their application to companies within the stannaries subject to the modifications subject to which they would have had effect if this Act had not passed.

Provisions as to mine club funds.

359.—(1) On the winding up of a company within the stannaries, contributions of the miners, artizans or labourers for the purpose of a mine club, or accident, or sick, or benefit fund shall not be deemed to be, or be applied as part of the assets of the company in liquidation of the debts of the company or otherwise, but shall be accounted for by the purser or any other person in possession of the fund to the liquidator,

and shall be recoverable by him, and be applied in accordance with the rules of the club. PART V. —*cont.*

(2) Where the winding up is a voluntary winding up, any person claiming to be entitled to any such contributions or fund shall have the same right as the liquidator of applying to the court for directions, or to determine any question arising in the matter.

Central Accounts.

Companies Liquidation Account.

360.—(1) An account, to be called the Companies Liquidation Account, shall be kept by the Board of Trade with the Bank of England, and all moneys received by the Board in respect of proceedings under this Act in connexion with the winding up of companies in England shall be paid to that account.

(2) All payments out of money standing to the credit of the Board of Trade in the Companies Liquidation Account shall be made by the Bank of England in the prescribed manner.

Investment of surplus funds on general account.

361.—(1) Whenever the cash balance standing to the credit of the Companies Liquidation Account is in excess of the amount which in the opinion of the Board of Trade is required for the time being to answer demands in respect of companies' estates, the Board shall notify the excess to the Treasury and shall pay over the whole or any part of that excess, as the Treasury may require, to the Treasury, to such account as the Treasury may direct, and the Treasury may invest the sums paid over, or any part thereof, in Government securities to be placed to the credit of the said account.

(2) When any part of the money so invested is, in the opinion of the Board of Trade, required to answer any demands in respect of companies' estates, the Board shall notify to the Treasury the amount so required, and the Treasury shall thereupon repay to the Board such sum as may be required to the credit of the Companies Liquidation Account, and for that purpose may direct the sale of such part of the said securities as may be necessary.

(3) The dividends on investments under this section shall be paid into the Bankruptcy and Companies Winding-up (Fees) Account established under the Economy (Miscellaneous Provisions) Act, 1926.

Separate accounts of particular estates.

362.—(1) An account shall be kept by the Board of Trade of the receipts and payments in the winding up of each company in England, and, when the cash balance standing to the credit of the account of any company is in excess of the amount

PART V. —*cont.*

which, in the opinion of the committee of inspection, is required for the time being to answer demands in respect of that company's estate, the Board shall on the request of the committee, invest the amount not so required in Government securities, to be placed to the credit of the said account for the benefit of the company.

(2) When any part of the money so invested is, in the opinion of the committee of inspection, required to answer any demands in respect of the estate of the company, the Board of Trade shall, on the request of the committee, raise such sum as may be required by the sale of such part of the said securities as may be necessary.

(3) The dividends on investments under this section shall be paid to the credit of the company.

(4) When the balance at the credit of any company's account in the hands of the Board of Trade exceeds two thousand pounds, and the liquidator gives notice to the Board that the excess is not required for the purposes of the liquidation, the company shall be entitled to interest on the excess at the rate of two per cent. per annum or such other rate as may for the time being be prescribed by order of the Treasury.

(5) The power conferred by this section on the Treasury shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Officers.

Officers and remuneration.

363.—(1) The Board of Trade may, with the approval of the Treasury, appoint such additional officers as may be required by the Board for the execution as respects England of this Part of this Act, and may remove any person so appointed.

(2) The Board of Trade, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any officer of, or person attached to, the Board performing any duties under this Part of this Act in relation to the winding up of companies in England, and may vary, increase or diminish that remuneration as they think fit.

Returns by officers in English winding up.

364. The officers of the courts acting in the winding up of companies in England shall make to the Board of Trade such returns of the business of their respective courts and offices, at such times, and in such manner and form, as may be prescribed, and from those returns the Board shall cause books to be prepared which shall, under the regulations of the Board, be open for public information and searches.

Rules and Fees.

General rules and fees for winding up.

365.—(1) The Lord Chancellor may, with the concurrence of the President of the Board of Trade, make general rules for carrying into effect the objects of this Act so far as relates

to the winding up of companies in England, and the Court of Session may by Act of Sederunt make general rules for carrying into effect the objects of this Act so far as relates to the winding up of companies in Scotland.

(2) All rules made under this section shall be judicially noticed and shall have effect as if enacted by this Act.

(3) There shall be paid in respect of proceedings under this Act in relation to the winding up of companies in England such fees as the Lord Chancellor may, with the sanction of the Treasury, direct, and the Treasury may direct by whom and in what manner the same are to be collected and accounted for:

Provided that in fixing the fees aforesaid regard shall be had to the provisions of section fourteen of the Economy (Miscellaneous Provisions) Act, 1926.

(4) All rules made and directions given by the Lord Chancellor under this section shall be adopted by the authority for the time being empowered to make rules for regulating the practice or procedure in the Chancery Court of the County Palatine of Lancaster, but as so adopted shall have effect with the substitution of the words " vice-chancellor " for the word " judge," and of the word " registrar " for the word " master," and of the words " chambers of the registrar " for the words " chambers of the judge " and " judge's chambers ", and any directions as to the remuneration to be allowed to officers of that court in respect of proceedings under this Act shall be subject to the sanction of the Chancellor of the Duchy and County Palatine of Lancaster.

(5) The powers conferred by this section on the Lord Chancellor, the Court of Session and the Treasury shall be exercisable by statutory instrument, and—

(*a*) a statutory instrument containing general rules shall be laid before Parliament after being made;

(*b*) the Statutory Instruments Act, 1946, shall apply to a statutory instrument containing general rules made by the Court of Session in like manner as if the rules had been made by a Minister of the Crown. 9 & 10 Geo. 6. c. 36.

PART VI.

RECEIVERS AND MANAGERS.

Disqualification of body corporate for appointment as receiver.

366. 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 one hundred pounds.

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Disqualification of undischarged bankrupt from acting as receiver or manager.

367.—(1) If any person being an undischarged bankrupt acts as receiver or manager of the property of a company on behalf of debenture holders, he shall, subject to the following subsection, be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred pounds or to both.

(2) The foregoing subsection shall not apply to a receiver or manager where—

(*a*) the appointment under which he acts and the bankruptcy were both before the commencement of this Act; or

(*b*) he acts under an appointment made by order of a court.

Power in England to appoint official receiver as receiver for debenture holders or creditors.

368. Where an application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the court in England, the official receiver may be so appointed.

Receivers and managers appointed out of court.

369.—(1) A receiver or manager 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 may make such order declaring the rights of persons before the court or otherwise, as the court thinks just.

(2) A receiver or manager of the property of a company appointed as aforesaid shall, to the same extent as if he had been appointed by order of a court, be personally liable on any contract entered into by him in the performance of his functions, except in so far as the contract otherwise provides, and 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) This section shall apply whether the receiver or manager was appointed before or after the commencement of this Act but subsection (2) thereof shall not apply to contracts entered into before the commencement of this Act.

Notification that receiver or manager appointed.

370.—(1) Where a receiver or manager of the property of a company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company or the receiver or manager or the liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver or manager has been appointed.

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(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 or manager, shall be liable to a fine of twenty pounds.

Power of court to fix remuneration on application of liquidator.

371.—(1) The court may, on an application made to the court by the liquidator of a company, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the company.

(2) The power of the court under the foregoing subsection shall, where no previous order has been made with respect 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 or manager has died or ceased to act before the making of the order or the application therefor; and

(*c*) where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that so fixed 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:

Provided that the power conferred by paragraph (*c*) of this subsection shall not be exercised as respects 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.

(3) The court may from time to time on an application made either by the liquidator or by the receiver or manager, vary or amend an order made under subsection (1) of this section.

(4) This section shall apply whether the receiver or manager was appointed before or after the commencement of this Act, and to periods before, as well as to periods after, the commencement of this Act.

Provisions as to information where receiver or manager appointed.

372.—(1) Where, in the case of a company registered in England, a receiver or manager of the whole or substantially the whole of the property of the company (hereafter in this section and in the next following section referred to as "the receiver") is appointed on behalf of the holders of any debentures of the company secured by a floating charge, then

PART VI. —*cont.*

subject to the provisions of this and the next following section—

(*a*) the receiver shall forthwith send notice to the company of his appointment; and

(*b*) there shall, within fourteen 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 the next following section a statement in the prescribed form as to the affairs of the company; and

(*c*) the receiver shall within two months after receipt of the said statement send—

(i) to the registrar of companies and to the court, a copy of the statement and of any comments he sees fit to make thereon and in the case of the registrar of companies also a summary of the statement and of his comments (if any) thereon; and

(ii) to the company, a copy of any such comments as aforesaid or, if he does not see fit to make any comment, a notice to that effect; and

(iii) 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 said summary.

(2) The receiver shall within two months, or such longer period as the court may allow after the expiration of the period of twelve months from the date of his appointment and of every subsequent period of twelve months, and within two months or such longer period as the court may allow after he ceases to act as receiver or manager of the property of the company, send to the registrar of companies, to any trustees for the debenture holders of the company on whose behalf he was appointed, to the company and (so far as he is aware of their addresses) to all such debenture holders an abstract in the prescribed form showing his receipts and payments during that period of twelve 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 the receiver is appointed under the powers contained in any instrument, this section shall have effect—

(*a*) with the omission of the references to the court in subsection (1); and

(*b*) with the substitution for the references to the court in subsection (2) of references to the Board of Trade;

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) of this section shall not apply in relation to the appointment of a receiver or manager to act with an existing receiver or manager or in place of a receiver or manager dying or ceasing to act, except that, where that subsection applies to a receiver or manager 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 the next following subsection) include references to his successor and to any continuing receiver or manager.

Nothing in this subsection shall be taken as limiting the meaning of the expression " the receiver " where used in, or in relation to, subsection (2) of this section.

(5) This and the next following section, where the company is being wound up, shall apply notwithstanding that the receiver or manager and the liquidator are the same person, but with any necessary modifications arising from that fact.

(6) Nothing in subsection (2) of this section 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 five pounds for every day during which the default continues.

Special provisions as to statement submitted to receiver.

373.—(1) The statement as to the affairs of a company required by the last foregoing section to be submitted to the receiver (or his successor) shall show as at the date of the receiver's appointment the particulars of the company's 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.

(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), subject to the direc-

PART VI. —*cont.*

tion of the court, may require to submit and verify the statement, that is to say, 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 the court of references to the Board of Trade and for references to an affidavit of references to a statutory declaration; and in any other case references to the court shall be taken as referring 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 ten pounds for every day during which the default continues.

(6) References in this section to the receiver's successor shall include a continuing receiver or manager.

Delivery to registrar of accounts of receivers and managers.

374.—(1) Except where subsection (2) of section three hundred and seventy-two of this Act applies, every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument shall, within one month, or such longer period as the registrar of companies may allow, after the expiration of the period of six months from the date of his appointment and of every subsequent period of six months, and within one month after he ceases to act as receiver or manager, deliver to the registrar of companies for registration an abstract in the prescribed form showing his receipts and his payments during that

period of six 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 amount of his receipts and of his payments during all preceding periods since his appointment.

(2) Every receiver or manager who makes default in complying with the provisions of this section shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Enforcement of duty of receivers and managers to make returns, &c.

375.—(1) If any receiver or manager 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 or manager is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so; or

(*b*) having been appointed under the powers contained in any instrument, has, after being required at any time by the liquidator of the company so to do, failed to render proper accounts of his receipts and payments and to 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 or manager, as the case may be, to make good the default within such time as may be specified in the order.

(2) In the case of any such default as is mentioned in paragraph (*a*) of the foregoing subsection, 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 or manager, as the case may be.

(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) of this section.

Construction of references to receivers and managers.

376. It is hereby declared that, except where the context otherwise requires,—

(*a*) any reference in this Act to a receiver or manager of the property of a company, or to a receiver thereof, includes a reference to a receiver or manager,

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or (as the case may be) to a receiver, 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 or manager 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 VII.

APPLICATION OF ACT TO COMPANIES FORMED OR REGISTERED UNDER FORMER ACTS.

Application of Act to companies formed and registered under former Companies Acts.

377. 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:

Provided that 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, the Companies (Consolidation) Act, 1908, or the Companies Act, 1929, as the case may be.

25 & 26 Vict. c. 89.

Application of Act to companies registered but not formed under former Companies Acts.

378. This Act shall apply to every company registered but not formed under the Joint Stock Companies Acts, the Companies Act, 1862, the Companies (Consolidation) Act, 1908, or the Companies Act, 1929, in the same manner as it is in Part VIII of this Act declared to apply to companies registered but not formed under this Act:

Provided that 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, the Companies (Consolidation) Act, 1908, or the Companies Act, 1929, as the case may be.

Application of Act to unlimited companies re-registered under former Companies Acts.

379. This Act shall apply to every unlimited company registered as a limited company in pursuance of the Companies Act, 1879, section fifty-seven of the Companies (Consolidation) Act, 1908, or section sixteen of the Companies Act, 1929, in the same manner as it applies to an unlimited company registered in pursuance of this Act as a limited company:

Provided that 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, the said section fifty-seven or the said section sixteen, as the case may be.

Provisions as to companies registered under the Joint Stock Companies Acts.

380.—(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 ten of this Act 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.

Exclusion of companies registered in Northern Ireland or Eire.

381. Nothing in this Part of this Act shall apply to companies registered in Northern Ireland or Eire.

PART VIII.

COMPANIES NOT FORMED UNDER THIS ACT AUTHORISED TO REGISTER UNDER THIS ACT.

Companies capable of being registered.

382.—(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 second day of November, eighteen hundred and sixty-two, including any company registered under the Joint Stock Companies Acts; and

(*b*) any company formed after the date aforesaid, whether before or after the commencement of this Act, in pursuance of any Act of Parliament other than this Act, or of letters patent, or being a company within the stannaries, 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

PART VIII. —*cont.*

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:

Provided that—

(i) a company registered in any part of the United Kingdom under the Companies Act, 1862, the Companies (Consolidation) Act, 1908, or the Companies Act, 1929, shall not register in pursuance of this section;

(ii) a company having the liability of its members limited by Act of Parliament or letters patent, and not being a joint stock company as hereinafter defined, shall not register in pursuance of this section;

(iii) a company having the liability of its members limited by Act of Parliament or letters patent shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee;

(iv) 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;

(v) 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 (in cases where proxies are allowed) at a general meeting summoned for the purpose;

(vi) where a company not having the liability of its members limited by Act of Parliament 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;

(vii) 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.

(2) 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.

383. For the purposes of this Part of this Act, 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 by joint stock companies.

384. Before the registration in pursuance of this Part of this Act 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 six 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 Act of Parliament, royal charter, letters patent, deed of settlement, contract of copartnery, cost-book regulations 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 " 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 by other than joint stock companies.

385. Before the registration in pursuance of this Part of this Act 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 or other managers (if any) of the company; and

PART VIII. —*cont.*

(*b*) a copy of any Act of Parliament, letters patent, deed of settlement, contract of copartnery, cost book regulations 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.

Authentication of statements of existing companies.

386. 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.

387. 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.

388. Where the name of a company seeking registration under this Part of this Act is one by which it may not be so registered by reason of the name being in the opinion of the Board of Trade undesirable, it may, with the approval of the Board of Trade signified in writing change its name with effect from its registration as aforesaid:

Provided that the like assent of the members of the company shall be required to the change as is by section three hundred and eighty-two of this Act required to the registration under this Act.

Addition of "limited" to name.

389. When a company registers in pursuance of this Part of this Act with limited liability, the word "limited" shall form, and be registered as, part of its name:

Provided that this section shall not be taken as excluding the operation of section nineteen of this Act.

Certificate of registration of existing companies.

390. On compliance with the requirements of this Part of this Act with respect 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, and any banking company in Scotland so incorporated shall be deemed to be a bank incorporated, constituted, or established by or under Act of Parliament.

PART VIII. —*cont.*

Vesting of property on registration.

391. 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 of this Act, 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.

Saving for existing liabilities.

392. Registration of a company in pursuance of this Part of this Act 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.

393. All actions and other legal proceedings which at the time of the registration of a company in pursuance of this Part of this Act 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:

Provided that 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 Part VIII.

394.—(1) When a company is registered in pursuance of this Part of this Act, the following provisions of this section shall have effect.

(2) All provisions contained in any Act of Parliament or other 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 shall not apply unless adopted by special resolution;

PART VIII. —*cont.*

(*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 Act of Parliament relating to the company;

(*d*) subject to the provisions of this section the company shall not have power, without the sanction of the Board of Trade, 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 royal charter or letters patent with respect 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, bankruptcy, or insolvency, of any contributory, or marriage of any female contributory, the provisions of this Act with respect to the personal representatives, to the heirs and legatees of heritage of the heritable estate in Scotland of deceased contributories, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply.

(4) The provisions of this Act with respect 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 Act of Parliament, royal 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 (3) of section two hundred and ten thereof) shall derogate from any power of altering its constitution or regulations which may, by virtue of any Act of Parliament or other instrument constituting or regulating the company, be vested in the company.

(7) In this section the expression " instrument " includes deed of settlement, contract of copartnery, cost-book regulations and letters patent.

Power to substitute memorandum and articles for deed of settlement.

395.—(1) Subject to the provisions of this section, a company registered in pursuance of this Part of this Act 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 five of this Act with respect 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 the date when the alteration is no longer liable to be cancelled by order of the court, whichever last occurs, the

PART VIII. —*cont.*

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 the expression " deed of settlement " includes any contract of copartnery or other instrument constituting or regulating the company, not being an Act of Parliament, a royal charter, or letters patent.

Power of court to stay or restrain proceedings.

396. The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of a company registered in pursuance of this Part of this Act, 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.

397. Where an order has been made for winding up a company registered in pursuance of this Part of this Act, 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 IX.

WINDING UP OF UNREGISTERED COMPANIES.

Meaning of unregistered company. 26 & 27 Vict. c. 87.

398. For the purposes of this Part of this Act, the expression " unregistered company " shall include any trustee savings bank certified under the Trustee Savings Banks Act, 1863, and any partnership, whether limited or not, any association and any company with the following exceptions:—

13 & 14 Vict. c. 83. 32 & 33 Vict. c. 114.

(*a*) a railway company incorporated by Act of Parliament, except in so far as is provided by the Abandonment of Railways Act, 1850, and the Abandonment of Railways Act, 1869, and any Acts amending them;

(*b*) a company registered in any part of the United Kingdom under the Joint Stock Companies Acts, the Companies Act, 1862, the Companies (Consolidation) Act, 1908, the Companies Act, 1929, or this Act;

(*c*) a partnership, association or company which consists of less than eight members and is not a foreign partnership, association or company;

(*d*) a limited partnership registered in England or Northern Ireland.

Winding up of unregistered companies.

399.—(1) Subject to the provisions of this Part of this Act, any unregistered company may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the exceptions and additions mentioned in the following provisions of this section.

(2) If an unregistered company has a principal place of business situate in Northern Ireland, it shall not be wound up under this Part of this Act unless it has a principal place of business situate in England or Scotland or in both England and Scotland.

(3) An unregistered company shall, for the purpose of determining the court having jurisidiction in the matter of the winding up, be deemed to be registered in England or Scotland, according as its principal place of business is situate in England or Scotland, or if it has a principal place of business situate in both countries, to be registered in both countries, and the principal place of business situate in that part of Great Britain in which proceedings are being instituted shall, for all the purposes of the winding up, be deemed to be the registered office of the company.

(4) No unregistered company shall be wound up under this Act voluntarily or subject to supervision.

(5) 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.

(6) 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 fifty pounds then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary or some director, manager

PART IX. —*cont.*

or principal officer of the company, or by otherwise serving in such manner as the court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand neglected to pay the sum or to secure or compound for it to the satisfaction of the 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, or by delivering it to the secretary, or some director, manager or principal officer of the company, or by otherwise serving the same in such manner as the court may approve or direct, the company has not within ten days after service of the notice paid, secured or compounded for the debt or demand, or procured the action or proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same;

(*c*) if in England or Northern Ireland 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 in Scotland the induciæ of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made;

(*e*) if it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts.

(7) The court having jurisdiction to wind up a railway company under the Abandonment of Railways Act, 1850, and the Abandonment of Railways Act, 1869, and the Acts amending them, shall be the High Court or the Court of Session, according as the railway was authorised to be made in England or Scotland, and the special provisions of those Acts shall apply to the winding up.

PART IX. —*cont.*

(8) A petition for winding up a trustee savings bank may be presented by the National Debt Commissioners or by a commissioner appointed under the Trustee Savings Banks Act, 1887, as well as by any person authorised under the other provisions of this Act to present a petition for winding up a company. 50 & 51 Vict. c. 47.

(9) In the case of a limited partnership the provisions of this Act with respect to winding up shall apply with such modifications, if any, as may be provided by rules made by statutory instrument by the Lord Chancellor with the concurrence of the President of the Board of Trade, and with the substitution of general partners for directors.

Oversea companies may be wound up although dissolved.

400. Where a company incorporated outside Great Britain which has been carrying on business in Great Britain ceases to carry on business in Great Britain, it may be wound up as an unregistered company under this Part of this Act, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.

Contributories in winding up of unregistered company.

401.—(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:

Provided that, in the case of an unregistered company within the stannaries, a past member shall not be liable to contribute to the assets of the company if he has ceased to be a member for two years or more either before the mine ceased to be worked or before the date of the winding-up order.

(2) In the event of the death, bankruptcy or insolvency of any contributory or marriage of any female contributory, the provisions of this Act with respect to the personal representatives, to the heirs and legatees of heritage of the heritable estate in Scotland of deceased contributories, to the trustees of bankrupt or insolvent contributories and to the liabilities of husbands and wives respectively shall apply.

Power of court to stay or restrain proceedings.

402. The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of an unregistered company, where the application to stay or

PART IX. —*cont.*

restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

Actions stayed on winding-up order.

403. 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 Part IX cumulative.

404. The provisions of this Part of this Act with respect to unregistered companies shall be in addition to and not in restriction of any provisions hereinbefore in this Act contained with respect to winding up companies by the court, and the court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Act:

Provided that an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part of this Act.

Saving for enactments providing for winding up under former Companies Acts.

405. Nothing in this Part of this Act 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 Act, 1929, or any enactment repealed by that Act.

PART X.

COMPANIES INCORPORATED OUTSIDE GREAT BRITAIN.

Provisions as to Establishment of Place of Business in Great Britain.

Application of ss. 407 to 414.

406. The next eight following sections shall apply to all oversea companies, that is to say, companies incorporated outside Great Britain which, after the commencement of this Act, establish a place of business within Great Britain, and companies incorporated outside Great Britain which have, before the commencement of this Act, established a place of business within Great Britain and continue to have an established place of business within Great Britain at the commencement of this Act.

Documents &c., to be delivered to registrar by oversea companies carrying on business in Great Britain.

407.—(1) Oversea companies which, after the commencement of this Act, establish a place of business within Great Britain 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 language, a certified translation thereof;

(*b*) a list of the directors and secretary of the company containing the particulars mentioned in the next following subsection;

(*c*) the names and addresses of some one or more persons resident in Great Britain authorised to accept on behalf of the company service of process and any notices required to be served on the company.

(2) The list referred to in paragraph (*b*) of the foregoing subsection shall contain the following particulars, that is to say,—

(*a*) with respect 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 and his business occupation, if any, or if he has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships; and,

(ii) in the case of a corporation, its corporate name and registered or principal office;

(*b*) with respect to the secretary or, where there are joint secretaries, with respect 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 corporation or a Scottish firm, its corporate or firm name and registered or principal office:

Provided that, where all the partners in a firm are joint secretaries of the company, the name and principal office of the firm may be stated instead of the particulars mentioned in paragraph (*b*) of this subsection.

Paragraphs (*b*), (*c*) and (*d*) of subsection (9) of section two hundred of this Act 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) Oversea companies, other than those mentioned in subsection (1) of this section, shall, if at the commencement of this Act they have not delivered to the registrar—

(*a*) in the case of a company mentioned in subsection (1) or (2) of section three hundred and forty-four

PART X. —*cont.*

of the Companies Act, 1929, the documents and particulars specified in subsection (1) of that section;

(*b*) in the case of a company not so mentioned, the documents and particulars specified in paragraphs (*a*), (*b*) and (*c*) of subsection (1) of section two hundred and seventy-four of the Companies (Consolidation) Act, 1908, as amended by the Companies (Particulars as to Directors) Act, 1917;

7 & 8 Geo. 5. c. 28.

continue subject to the obligation to deliver those documents and particulars in accordance with the said Act of 1929 or the said Acts of 1908 and 1917, as the case may be.

Power of oversea company to hold lands.

408. Where an oversea company has delivered to the registrar of companies—

(*a*) in the case of a company to which subsection (1) of the last foregoing section applies, the documents and particulars therein mentioned;

(*b*) in the case of a company mentioned in subsection (1) or (2) of section three hundred and forty-four of the Companies Act, 1929, the documents and particulars specified in subsection (1) of that section;

(*c*) in the case of any other company, the documents and particulars specified in paragraphs (*a*), (*b*) and (*c*) of subsection (1) of section two hundred and seventy-four of the Companies (Consolidation) Act, 1908, as amended by the Companies (Particulars as to Directors) Act, 1917;

it shall have the same power to hold lands in the United Kingdom as if it were a company incorporated under this Act:

Provided that nothing in this section shall affect the power of a company to hold lands by virtue of registration in Northern Ireland.

Return to be delivered to registrar by oversea company where documents, &c., altered.

409. If any alteration is made in—

(*a*) the charter, statutes, or memorandum and articles of an oversea company or any such instrument as aforesaid; or

(*b*) the directors or secretary of an oversea company or the particulars contained in the list of the directors and secretary; or

(*c*) the names or addresses of the persons authorised to accept service on behalf of an oversea company;

the company shall, within the prescribed time, deliver to the registrar for registration a return containing the prescribed particulars of the alteration.

PART X. —*cont.*

Accounts of oversea company.

410.—(1) Every oversea company 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 (subject, however, to any prescribed exceptions) 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:

Provided that a company registered under the law relating to companies for the time being in force in Northern Ireland and having provisions in its constitution which would, if it had been registered in Great Britain, entitle it to rank as a private company, need not comply with the foregoing provisions of this subsection if there is delivered to the registrar a certificate signed by a director and by the secretary of the company that, had section one hundred and twenty-nine of, and the Seventh Schedule to, this Act extended to Northern Ireland it would at the date of the certificate have been an exempt private company.

(2) If any such document as is mentioned in the foregoing subsection is not written in the English language, there shall be annexed to it a certified translation thereof.

Obligation to state name of oversea company, whether limited, and country where incorporated.

411. Every oversea company shall—

(*a*) in every prospectus inviting subscriptions for its shares or debentures in Great Britain state the country in which the company is incorporated; and

(*b*) conspicuously exhibit on every place where it carries on business in Great Britain the name of the company and the country in which the company is incorporated; and

(*c*) cause the name of the company and of the country in which the company is incorporated to be stated in legible characters in all bill-heads and letter paper, and in all notices and other official publications of the company; and

(*d*) if the liability of the members of the company is limited, cause notice of that fact to be stated in legible characters in every such prospectus as aforesaid and in all bill-heads, letter paper, notices and other official publications of the company in Great Britain, and to be affixed on every place where it carries on its business.

Service on oversea company.

412. Any process or notice required to be served on an oversea company shall be sufficiently served if addressed to any person whose name has been delivered to the registrar

PART X. —*cont.*

under the foregoing provisions of this Part of this Act and left at or sent by post to the address which has been so delivered:

Provided that—

(*a*) where any such company makes default in delivering to the registrar the name and address of a person resident in Great Britain 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;

a document may be served on the company by leaving it at or sending it by post to any place of business established by the company in Great Britain.

Office where documents to be filed.

413.—(1) Any document, which any oversea company is required to deliver to the registrar of companies, shall be delivered to the registrar at the registration office in England or Scotland according as the company has established a place of business in England or Scotland, and if it has established or establishes a place of business both in England and in Scotland, the document shall be delivered at the registration office both in England and in Scotland, and references to the registrar of companies in this Part of this Act shall be construed accordingly.

(2) If any oversea company ceases to have a place of business in either part of Great Britain, it shall forthwith give notice of the fact to the registrar of companies for that part, 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.

414. If any oversea company fails to comply with any of the foregoing provisions of this Part of this Act 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 fifty pounds, or, in the case of a continuing offence, five pounds for every day during which the default continues.

Interpretation of ss. 407 to 414.

415. For the purposes of the foregoing provisions of this Part of this Act:—

the expression "certified" means certified in the prescribed manner to be a true copy or a correct translation;

the expression " director " in relation to a company includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;

the expression " place of business " includes a share transfer or share registration office;

the expression " prospectus " has the same meaning as when used in relation to a company incorporated under this Act;

the expression " secretary " includes any person occupying the position of secretary by whatever name called.

Special provisions as to delivery of documents by companies incorporated in Channel Islands or Isle of Man.

416. Where a company incorporated in the Channel Islands or the Isle of Man—

(*a*) after the commencement of this Act establishes a place of business in England or Scotland; or

(*b*) has before the commencement of this Act established and at the commencement of this Act continues to have a place of business in England or Scotland;

all the provisions of this Act requiring documents to be forwarded or delivered to, or filed with, the registrar of companies (other than provisions requiring the payment of a fee in respect of the registration of a company) shall apply to the company in like manner as if it were a company registered in England or Scotland, as the case may be, and if the company establishes places of business both in England and in Scotland the said provisions shall so apply as if the company were registered both in England and in Scotland.

Prospectuses.

Dating of prospectus and particulars to be contained therein.

417.—(1) It shall not be lawful for any person to issue, circulate or distribute in Great Britain any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Great Britain, whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain unless the prospectus is dated and—

(*a*) contains particulars with respect 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;

PART X. —*cont.*

(iii) an address in Great Britain where the said instrument, enactments or provisions, or copies thereof, and if the same are in a foreign language a translation thereof certified in the prescribed manner, can be inspected;

(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 Great Britain, and, if so, the address of its principal office in Great Britain;

(*b*) subject to the provisions of this section, states the matters specified in Part I of the Fourth Schedule to this Act and sets out the reports specified in Part II of that Schedule, subject always to the provisions contained in Part III of that Schedule:

Provided that the provisions of sub-paragraphs (i), (ii) and (iii) of paragraph (*a*) of this subsection shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business, and, in the application of Part I of the Fourth Schedule for the purposes of this subsection, paragraph 2 thereof shall have effect with the substitution, for the reference to the articles, of a reference to the constitution of the company.

(2) Any condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement imposed by virtue of paragraph (*a*) or (*b*) of the foregoing subsection, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) It shall not be lawful for any person to issue to any person in Great Britain a form of application for shares in or debentures of such a company or intended company as is mentioned in subsection (1) of this section unless the form is issued with a prospectus which complies with this Part of this Act and the issue whereof in Great Britain does not contravene the provisions of section four hundred and nineteen of this Act:

Provided that this subsection shall not apply if it is shown that the form of application was issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

(4) In the event of non-compliance with or contravention of any of the requirements imposed by paragraphs (*a*) and (*b*) of subsection (1) of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

(*a*) as regards any matter not disclosed, he proves that he was not cognisant thereof; or

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

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

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters contained in paragraph 16 of the Fourth Schedule to this Act, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(5) This section—

(*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 relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a prescribed 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.

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

Exclusion of foregoing section and relaxation of Fourth Schedule in case of certain prospectuses.

418.—(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 Great Britain, whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain; and

(*b*) application is made to a prescribed 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 to say, a certificate that, having regard to the proposals

PART X. —*cont.*

(as stated in the request) as to the size and other circumstances of the issue of shares or debentures and as to any limitation on the number and class of persons to whom the offer is to be made, compliance with the requirements of the Fourth Schedule to this Act 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 Fourth Schedule to this Act; and

(*b*) except in so far as it requires a prospectus to be dated, the last foregoing section shall not apply to any issue, after the permission applied for is given, of a prospectus or form of application relating to the shares or debentures.

Provisions as to expert's consent, and allotment.

419.—(1) It shall not be lawful for any person to issue, circulate or distribute in Great Britain any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Great Britain, whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain,—

(*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; or

(*b*) if the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by all the provisions (other than penal provisions) of sections fifty and fifty-one of this Act so far as applicable.

(2) In this section the expression "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.

420.—(1) It shall not be lawful for any person to issue, circulate or distribute in Great Britain any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Great Britain, whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain, unless before the issue, circulation or distribution of the prospectus in Great Britain, a copy thereof certified by the chairman and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the registrar of companies, and the prospectus states on the face of it that a copy 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 the last foregoing section;

(*b*) a copy of any contract required by paragraph 14 of the Fourth Schedule to this Act 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 four hundred and eighteen of this Act 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 the foregoing 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 a copy embodying a translation in English 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.

PART X. —*cont.*

Penalty for contravention of four foregoing sections.

421. 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 the four last foregoing sections shall be liable to a fine not exceeding five hundred pounds.

Civil liability for misstatements in prospectus.

422. Section forty-three of this Act shall extend to every prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Great Britain, whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain, with the substitution, for references to section forty of this Act, of references to section four hundred and nineteen thereof.

Interpretation of provisions as to prospectuses.

423.—(1) Where any document by which any shares in or debentures of a company incorporated outside Great Britain are offered for sale to the public would, if the company concerned had been a company within the meaning of this Act, have been deemed by virtue of section forty-five of this Act to be a prospectus issued by the company, that document shall be deemed to be, for the purpose of this Part of this Act, 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 of this Act.

(3) In this Part of this Act the expressions "prospectus", "shares" and "debentures" have the same meanings as when used in relation to a company incorporated under this Act.

PART XI.

GENERAL PROVISIONS AS TO REGISTRATION.

Registration offices in England and Scotland.

424.—(1) For the purposes of the registration of companies under this Act, there shall be offices in England and Scotland at such places as the Board of Trade think fit.

(2) The Board of Trade may appoint such registrars, assistant registrars, clerks and servants as the Board think 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 salaries of the persons appointed under this section shall be fixed by the Board of Trade with the concurrence of the Treasury, and shall be paid out of money provided by Parliament.

(4) The Board of Trade may require that the office of the registrar of the court exercising in respect of the winding up of companies the stannaries jurisdiction shall be one of the offices for the registration of companies within that jurisdiction.

(5) The Board may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies.

(6) Whenever any act is by this Act directed to be done to or by the registrar of companies, it shall, until the Board of Trade otherwise direct, be done to or by the existing registrar of companies in England or Scotland, as the case may be, or in his absence to or by such person as the Board may for the time being authorise:

Provided that, in the event of the Board altering the constitution of the existing registry offices or any of them, any such act shall be done to or by such officer and at such place with reference to the local situation of the registered offices of the companies to be registered as the Board may appoint.

Fees.

425.—(1) In respect of the several matters mentioned in the first column of the table set out in Part I of the Twelfth Schedule to this Act, 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:

Provided that no fees shall be charged in respect of the registration in pursuance of Part VIII of this Act 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 some other Act of Parliament or by letters patent.

(2) All fees paid to the registrar in pursuance of this Act shall be paid into the Exchequer.

Inspection, production and evidence of documents kept by registrar.

426.—(1) Any person may—

(*a*) inspect the documents kept by the registrar of companies, on payment of such fee as may be appointed by the Board of Trade, not exceeding one shilling for each inspection;

(*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 Board of Trade

PART XI. —*cont.*

may appoint, not exceeding five shillings for a certificate of incorporation and not exceeding sixpence for each folio of a certified copy or extract:

Provided that,—

(i) in relation to documents delivered to the registrar with a prospectus in pursuance of subparagraph (i) of paragraph (*b*) of subsection (1) of section forty-one of this Act, the rights conferred by this subsection shall be exercisable only during the fourteen days beginning with the date of publication of the prospectus or with the permission of the Board of Trade, and in relation to documents so delivered in pursuance of paragraph (*b*) of subsection (1) of section four hundred and twenty of this Act the said rights shall be exercisable only during the fourteen days beginning with the date of the prospectus or with the permission of the Board of Trade; and

(ii) the right conferred by paragraph (*a*) of this subsection shall not extend to any copy sent to the registrar under section three hundred and seventy-two of this Act of a statement as to the affairs of a company or of any comments of the receiver or his successor or a continuing receiver or manager thereon, but only to the summary thereof, except where the person claiming the right either is or is the agent of a person stating himself in writing to be a member or creditor of the company to which the statement relates, and the right conferred by paragraph (*b*) of this subsection shall be similarly limited.

(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 any of the offices for the registration of companies in England or Scotland, certified to be a true copy under the hand of the registrar (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.

(4) Any person untruthfully stating himself in writing for the purposes of proviso (ii) to subsection (1) of this section

to be a member or creditor of a company shall be liable to a fine not exceeding fifty pounds. PART XI. —*cont.*

(5) In the application of this section to Scotland, as in its application to England, a folio shall be deemed to consist of seventy-two words.

Power of registrar in England to direct removal of documents to Public Record Office.

427.—(1) Where a company has been dissolved, whether under this Act or otherwise, the registrar may, at any time after the expiration of two years from the date of the dissolution, direct that any documents in his custody relating to that company may be removed to the Public Record Office, and documents in respect of which any such direction is given shall be disposed of in accordance with the provisions of the Public Record Office Acts, 1838 to 1898, and the rules made thereunder.

(2) In this section the expression "company" includes a company provisionally or completely registered under the Act 7 and 8 Victoria chapter one hundred and ten.

(3) This section shall not extend to Scotland.

Enforcement of duty of company to make returns to registrar.

428.—(1) If a company, having made default in complying with any provision of this Act which requires it to file with, deliver or send to the registrar of companies any return, account or other document, or to give notice to him of any matter, fails to make good the default within fourteen days after the service of a notice on the company requiring it to do so, the court may, on an application made to the court by any member or creditor of the company or by the registrar 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 XII.

MISCELLANEOUS PROVISIONS WITH RESPECT TO BANKING AND INSURANCE COMPANIES, AND CERTAIN SOCIETIES, PARTNERSHIPS AND UNREGISTERED COMPANIES.

Provisions relating to Banking and Insurance Companies.

Prohibition of banking partnerships with more than ten members.

429. 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 Act of Parliament, or of letters patent.

PART XII. —*cont.*

On registration of banking company with limited liability, notice to be given to customers.

430.—(1) Where a banking company which was in existence on the seventh day of August, eighteen hundred and sixty-two, proposes to register as a limited company, it shall, at least thirty 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 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.

431.—(1) A bank of issue registered 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:

Provided that, if, in the event of the company 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.

(2) For the purposes of this section, the expression "the general assets" means the funds available for payment of the general creditor as well as the note-holder.

(3) 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.

432.—(1) Where a company carrying on the business of bankers has duly forwarded to the registrar of companies the annual return required by section one hundred and twenty-four of this Act and has added thereto a statement of the names of the several places where it carries on business, the company—

(*a*) shall not be required to furnish to the Commissioners of Inland Revenue any returns under the provisions of the Country Bankers Act, 1826, the Bankers (Scotland) Act, 1826, section twenty-one of the Bank Charter Act, 1844, or section thirteen of the Bank Notes (Scotland) Act, 1845; and

7 Geo. 4. c. 46.
7 Geo. 4. c. 67.
7 & 8 Vict. c. 32.
8 & 9 Vict. c. 38.

(*b*) shall be deemed to be a "bank" and "bankers" within the meaning of the Bankers' Books Evidence Act, 1879.

(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.

Banking and certain other companies to publish periodical statement.

433.—(1) Every company, being a limited banking company or an insurance company or a deposit, provident, or benefit society, shall, before it commences business, and also on the first Monday in February and the first Tuesday in August in every year during which it carries on business, make a statement in the form set out in the Thirteenth Schedule to this Act, or as near thereto as circumstances admit.

(2) A copy of the statement shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.

(3) Every member and every creditor of the company shall be entitled to a copy of the statement, on payment of a sum not exceeding sixpence.

(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 default fine.

(5) For the purposes of this Act a company which carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance company.

(6) This section shall not apply to any assurance company to which the provisions of the Assurance Companies Act, 1909, as to the accounts and balance sheet to be prepared annually and deposited by such a company apply, if the company complies with those provisions.

Prohibition of Partnerships with more than twenty Members.

Prohibition of partnerships with more than twenty members.

434.—(1) 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 Act of Parliament, or of letters patent, or is a company engaged in working mines within the stannaries and subject to the jurisdiction of the court exercising the stannaries jurisdiction.

PART XII. —*cont.*

2 & 3 Geo. 6. c. 57.

(2) This section shall not apply in relation to any body of persons for the time being approved for the purposes of Part I of the War Risks Insurance Act, 1939, by the Minister of Transport, being a body the objects of which are or include the carrying on of business by way of the re-insurance of risks which may be re-insured under any agreement for the purpose mentioned in paragraph (*b*) of subsection (1) of section one of that Act.

Application of certain Provisions of this Act to Unregistered Companies

Application of certain provisions of this Act to unregistered companies.

435.—(1) The provisions of this Act specified in the second column of the Fourteenth Schedule to this Act (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 Great Britain, other than those mentioned in the next following subsection, as if they were companies registered under this Act, but 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 specified by regulations made by the Board of Trade.

(2) The said provisions shall not apply by virtue of this section to any of the following, that is to say:—

(*a*) any body incorporated by or registered under any public general Act of Parliament; and

(*b*) any body 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 for the time being exempted by direction of the Board of Trade.

7 Will. 4 & 1 Vict. c. 73.

(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 Act of Parliament, but subject to the like exceptions as are provided for in the case of bodies corporate by paragraphs (*b*) and (*c*) of the last foregoing subsection.

(4) This section shall not repeal or revoke in whole or in part any enactment, royal 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 His Majesty 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. PART XII. —*cont.*

(5) The powers to make regulations conferred by this section and the Fourteenth Schedule to this Act on the Board of Trade shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

PART XIII.

GENERAL

Form of Registers, &c.

Form of registers, &c.

436.—(1) Any register, index, minute book or book of account required by this Act to be kept by a company may be kept either by making entries in bound books or by recording the matters in question in any other manner.

(2) Where any such register, index, minute book or book of account 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 fifty pounds and further shall be liable to a default fine.

Service of Documents.

Service of documents on a company.

437.—(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.

(2) Where a company registered in Scotland carries on business in England, the process of any court in England may be served on the company by leaving it at or sending it by post to the principal place of business of the company in England, addressed to the manager or other head officer in England of the company.

(3) Where process is served on a company under subsection (2) of this section the person issuing out the process shall send a copy thereof by post to the registered office of the company.

Offences.

Penalty for false statements.

438. 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 Fifteenth Schedule hereto, wilfully makes a statement false in any material particular, knowing it to be false, he shall be guilty of a misdemeanour, and shall be liable on conviction

PART XIII. —*cont.*

in Scotland on indictment to imprisonment for a term not exceeding two years, with or without hard labour, and be liable on summary conviction in England or Scotland to imprisonment for a term not exceeding four months, with or without hard labour, and in either case to a fine in lieu of or in addition to such imprisonment as aforesaid:

Provided that—

(*a*) the fine imposed on summary conviction shall not exceed one hundred pounds;

(*b*) nothing in this section shall affect the provisions of the Perjury Act, 1911, or the False Oaths (Scotland) Act, 1933.

1 & 2 Geo. 5. c. 6.
23 & 24 Geo. 5. c. 20.

Penalty for improper use of word "limited".

439. If any person or persons trade or carry on business under any name or title of which "limited", or any contraction or imitation of that word, is the last word, that person or those persons shall, unless duly incorporated with limited liability, be liable to a fine not exceeding five pounds for every day upon which that name or title has been used.

Provision with respect to default fines and meaning of "officer in default".

440.—(1) Where by any enactment in this Act it is provided that a company and every officer of the company who is in default shall be liable to a default fine, the company and every such officer shall, for every day during which the default, refusal or contravention continues, be liable to a fine not exceeding such amount as is specified in the said enactment, or, if the amount of the fine is not so specified, to a fine not exceeding five pounds.

(2) For the purpose of any enactment in this Act which provides that an officer of a company who is in default shall be liable to a fine or penalty, the expression "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 enactment.

Production and inspection of books where offence suspected

441.—(1) If on an application made—

(*a*) in England, to a judge of the High Court in chambers by the Director of Public Prosecutions, the Board of Trade or a chief officer of police; or

(*b*) in Scotland, to one of the Lords Commissioners of Justiciary by the Lord Advocate;

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

PART XIII. —*cont.*

to be found in any books or papers of or under the control of the company, an order may be made—

(i) 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

(ii) requiring the secretary of the company or such other officer thereof as may be named in the order to produce the said books or papers or any of them to a person named in the order at a place so named.

(2) The foregoing subsection 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 (ii) thereof shall be made by virtue of this subsection.

(3) The decision of a judge of the High Court or of any of the Lords Commissioners of Justiciary on an application under this section shall not be appealable.

(4) In this section the expression "chief officer of police" has (subject to the provisions of the Police Act, 1946 and the Police (Scotland) Act, 1946) the same meaning as in the Police Pensions Act, 1921.

9 & 10 Geo. 6. c. 46.
9 & 10 Geo. 6. c. 72.
11 & 12 Geo. 5. c. 31.

Provisions as to summary proceedings.

442.—(1) All offences under this Act made punishable by any fine may be prosecuted under the Summary Jurisdiction Acts, and proceedings under those Acts in respect of any such offence may, notwithstanding anything to the contrary therein, be taken by the Director of Public Prosecutions or by the Board of Trade at any time within twelve months from the date on which evidence sufficient in the opinion of the Director or the Board, as the case may be, to justify the proceedings comes to his or their knowledge:

Provided that proceedings shall not be so taken more than three years after the commission of the offence.

(2) For the purposes of the foregoing subsection, a certificate of the Director of Public Prosecutions or the Board of Trade as to the date on which such evidence as aforesaid came to his or their knowledge shall be conclusive evidence thereof.

(3) In the application of this section to Scotland, any reference to the Director of Public Prosecutions and the first reference to the Board of Trade shall be omitted, and for any reference to evidence sufficient to justify proceedings there shall be substituted a reference to evidence sufficient to justify a report to the Lord Advocate with a view to consideration of the question of proceedings.

PART XIII. —*cont.*

(4) Subsection (1) of this section, so far as it relates to the time within which proceedings may be taken, and subsections (2) and (3) thereof shall apply to proceedings in respect of offences under the Companies Act, 1929, or the Companies Act, 1947, that may be prosecuted under the Summary Jurisdiction Acts as it applies to proceedings in respect of the offences mentioned in the said subsection (1):

Provided that this subsection shall not have effect in relation to any proceedings if the time allowed under the said Acts apart from this section for taking them had already expired before the commencement of this Act.

Proceedings on indictment in Scotland against bodies corporate.

443.—(1) In any proceedings on indictment against a body corporate for an offence against this Act the indictment may be served by—

(*a*) delivery of a copy with notice to appear attached thereto at the registered office or, if there is no registered office, at the principal place of business of the body corporate; and

(*b*) delivery in Scotland of a copy of the indictment with notice to appear attached thereto to the secretary or any director or to any person in charge of any principal place of business of the body corporate.

Where a registered letter containing a copy of the indictment has been sent by post to the registered office or principal place of business of the body corporate, an acknowledgment or certificate of the delivery of the letter issued by the Post-
8 Edw. 7. c. 48. master General in pursuance of regulations under the Post Office Act, 1908, shall be sufficient evidence of the delivery of the letter at the registered office or place of business on the day specified in such acknowledgment or certificate.

(2) In any such proceedings as aforesaid the body corporate may appear, and any plea or notice on behalf of the body may be tendered or given—

(*a*) in the High Court of Justiciary, by counsel or by a representative of the body corporate; and

(*b*) in the sheriff court, by counsel or by a solicitor or by a representative of the body corporate.

(3) Where at the first diet in any such proceedings as aforesaid the body corporate does not appear or tender any plea in accordance with the provisions of the last foregoing subsection, it shall be deemed to have tendered a plea of not guilty.

(4) Where at the second diet in any such proceedings as aforesaid the body corporate does not appear in accordance with the provisions of subsection (2) of this section, the court

shall, on the motion of the prosecutor, if it is satisfied that the provisions of subsection (1) of this section have been complied with, proceed to hear and dispose of the case in the absence of the body corporate.

(5) Where in any such proceedings as aforesaid a body corporate is sentenced to a fine, the fine may be recovered in like manner in all respects as if a copy of the sentence certified by the clerk of the court were an extract decree of the Court of Session for the payment of the amount of the fine by the body corporate to the King's and Lord Treasurer's Remembrancer.

(6) Notwithstanding anything contained in sections twenty-eight or twenty-nine of the Criminal Procedure (Scotland) Act, 1887, it shall not be necessary for a plea tendered by counsel or by a solicitor in accordance with the provisions of subsection (2) of this section to be signed. 50 & 51 Vict. c. 35.

(7) If on the application of the procurator fiscal, a sheriff is satisfied that there is reasonable ground for suspecting that an offence against this Act has been or is being committed by a body corporate, the sheriff shall have the like power to grant warrant for the citation of witnesses and the production of documents and articles as he would have if a petition charging an individual with the commission of the offence were presented to him.

(8) In this section, the expression "representative" in relation to a body corporate against which such proceedings as aforesaid are brought, means an officer or servant of the body corporate duly appointed by it for the purpose of those proceedings. Such appointment need not be under the seal of the body corporate, and a statement in writing purporting to be signed by the managing director of, or by any person having or being one of the persons having the management of the affairs of, the body corporate to the effect that the person named in the statement has been appointed the representative of the body corporate for the purpose of the said proceedings shall be admissible without further proof as evidence that the person has been appointed.

(9) The foregoing provisions of this section shall apply to offences against the Companies Act, 1929, or the Companies Act, 1947, as they apply to offences against this Act.

(10) This section shall extend to Scotland only.

Application of fines.

444. The court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person on whose information or at whose suit

PART XIII. —*cont.*

the fine is recovered, and subject to any such direction all fines under this Act shall, notwithstanding anything in any other Act, be paid into the Exchequer.

Saving as to private prosecutors.

445. Nothing in this Act relating to the institution of criminal proceedings by the Director of Public Prosecutions shall be taken to preclude any person from instituting or carrying on any such proceedings.

Saving for privileged communications.

446. Where proceedings are instituted under this Act against any person by the Director of Public Prosecutions or by or on behalf of the Lord Advocate, nothing in this Act shall be taken to require any person who has acted as solicitor for the defendant to disclose any privileged communication made to him in that capacity.

Legal Proceedings.

Costs in actions by certain limited companies.

447. Where a limited company is plaintiff or pursuer in any action or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

Power of court to grant relief in certain cases.

448.—(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 (whether he is or is not an officer of the company) 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 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) of this section applies is being tried by a judge with a jury, the judge, after

hearing the evidence, may, if he is satisfied that the defendant ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge may think proper.

Power to enforce orders.

449. Orders made by the High Court under this Act may be enforced in the same manner as orders made in an action pending therein.

Jurisdiction of stannaries court.

450.—(1) In the case of a company subject to the stannaries jurisdiction, the court exercising the stannaries jurisdiction shall have and exercise the like jurisdiction and powers, as well on the common law as on the equity side thereof, as the Court of the Vice-Warden of the stannaries possessed before the commencement of the Stannaries Court (Abolition) Act, 1896, by custom, usage or statute in the case of unincorporated companies, but only so far as is consistent with the provisions of this Act and with the constitution of companies as prescribed or required by this Act.

(2) For the purpose of giving fuller effect to that jurisdiction, all process issuing out of the said court, and all orders, rules, demands, notices, warrants, and summonses required or authorised by the practice of the court to be served on any company, whether registered or not registered, or on any member or contributory thereof, or on any officer, agent or servant thereof, may be served in any part of England without any special order of the judge for that purpose, or by such special order may be served in any part of the British Islands other than Eire, on such terms and conditions as the court may think fit:

Provided that no such service of process out of the limits of the stannaries in any suit or plaint on the common law side of the court shall be effected without the special order of the judge made on a statement of the nature and object of the suit or plaint.

(3) All decrees, orders and judgments of the said court may be enforced in the same manner in which decrees, orders and judgments of the Court of the Vice-Warden of the stannaries could before its abolition have been by law enforced, whether within or beyond the stannaries.

General Provisions as to Board of Trade.

Annual report by Board of Trade.

451. The Board of Trade shall cause a general annual report of matters within this Act to be prepared and laid before both Houses of Parliament.

PART XIII. —*cont.*

Authentication of documents issued by Board of Trade.

452. Any approval, sanction or licence or revocation of licence which under this Act may be given or made by the Board of Trade may be under the hand of a secretary or assistant secretary of the Board, or of any person authorised in that behalf by the President of the Board.

Orders and certificates of Board to be evidence.

453.—(1) All documents purporting to be orders or certificates made or issued by the Board of Trade for the purposes of this Act and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or any person authorised in that behalf by the President of the Board, shall be received in evidence and deemed to be such orders or certificates without further proof, unless the contrary is shown.

(2) A certificate signed by the President of the Board of Trade that any order made, certificate issued or act done is the order, certificate or act of the Board shall be conclusive evidence of the fact so certified.

Power to alter tables and forms.

454.—(1) The Board of Trade shall have power by regulations made by statutory instrument 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 Eighth Schedule to this Act; and any reference in this Act to the said Eighth Schedule shall be construed as a reference to that Schedule with any alterations or additions made by regulations for the time being in force under this subsection.

(2) The Board of Trade may by regulations made by statutory instrument—

(*a*) alter Table A, the Twelfth Schedule to this Act so that it does not increase the amount of fees payable to the registrar under that Schedule, and the form in the Thirteenth Schedule to this Act; and

(*b*) alter or add to Tables B, C, D, and E in the First Schedule to this Act and the forms in the Second Schedule and Part II of the Sixth Schedule to this Act;

but no alteration made by the Board of Trade in Table A shall affect any company registered before the alteration, or repeal as respects that company any portion of that Table.

(3) No regulations shall be made under subsection (1) of this section so as to render more onerous the requirements therein referred to, unless a draft of the instrument containing the regulations has been laid before Parliament and has been approved by resolution of each House of Parliament.

(4) A statutory instrument containing regulations made under this section, not being regulations to which the last foregoing subsection applies, shall be subject to annulment in pursuance of a resolution of either House of Parliament. PART XIII. —*cont.*

Supplemental.

455.—(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them (that is to say):— Interpretation.

"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 one hundred and twenty-four, and, in the case of a company not having a share capital, under section one hundred and twenty-five, of this Act;

"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 annexed to the Companies Act, 1862, or in that Table as altered in pursuance of section seventy-one of the last-mentioned Act, or in Table A in the First Schedule to the Companies (Consolidation) Act, 1908, or in that Table as altered in pursuance of section one hundred and eighteen of the last-mentioned Act, or in Table A in the First Schedule to the Companies Act, 1929, or in Table A in the First Schedule to this Act; 19 & 20 Vict. c. 47

"bank holiday" means a day which is a bank holiday under the Bank Holidays Act, 1871; 34 & 35 Vict. c. 17

"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 one of this Act;

PART XIII. —*cont.*

" company within the stannaries " means a company engaged in or formed for working mines within the stannaries;

" contributory " has the meaning assigned to it by section two hundred and thirteen of this Act;

" the court ", used in relation to a company, means the court having jurisdiction to wind up the company;

" the court exercising the stannaries jurisdiction ", used in relation to any proceedings, means the county court in which the jurisdiction formerly exercised by the court of the vice-warden of the stannaries in respect of those proceedings is for the time being vested;

" creditors' voluntary winding up " has the meaning assigned to it by subsection (4) of section two hundred and eighty-three of this Act;

" 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;

" dominion register " has the meaning assigned to it by subsection (1) of section one hundred and nineteen of this Act;

" exempt private company " means an exempt private company as defined by subsection (4) of section one hundred and twenty-nine of this Act;

" existing company " means a company formed and registered under the Joint Stock Companies Acts, the Companies Act, 1862, the Companies (Consolidation) Act, 1908, or the Companies Act, 1929, but does not include a company registered under the said Acts, the said Act of 1862 or the said Act of 1908 in Northern Ireland or Eire;

" 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;

" the Gazette " means, as respects companies registered in England, the London Gazette and as respects companies registered in Scotland, the Edinburgh Gazette;

" general rules " means general rules made under section three hundred and sixty-five of this Act, and includes forms;

" group accounts " has the meaning assigned to it by subsection (1) of section one hundred and fifty of this Act;

" holding company " means a holding company as defined by section one hundred and fifty-four of this Act;

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

" 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 and 8 Victoria, chapter one hundred and ten; 20 & 21 Vict. c. 14. 20 & 21 Vict. c. 49. 21 & 22 Vict. c. 91.

" members' voluntary winding up " has the meaning assigned to it by subsection (4) of section two hundred and eighty-three of this Act;

" the minimum subscription " has the meaning assigned to it by subsection (2) of section forty-seven of this Act;

" memorandum " means the memorandum of association of a company, as originally framed or as altered in pursuance of any enactment;

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

" prescribed " means, as respects the provisions of this Act relating to the winding up of companies, prescribed by general rules, and as respects the other provisions of this Act, prescribed by statutory instrument made by the Board of Trade;

" private company " has the meaning assigned to it by subsection (1) of section twenty-eight of this Act;

" 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;

" real " and " personal ", as respects Scotland, mean respectively heritable and moveable;

" recognised stock exchange " means any body of persons which is for the time being a recognised stock exchange for the purposes of the Prevention of Fraud (Investments) Act, 1939; 2 & 3 Geo. 6. c. 16.

PART XIII. —*cont.*

" the registrar of companies ", or when used in relation to registration of companies, " the registrar ", means the registrar or other officer performing under this Act the duty of registration of companies in England or Scotland, or in the stannaries, as the case requires;

" resolution for reducing share capital " has the meaning assigned to it by subsection (2) of section sixty-six of this Act;

" a resolution for voluntary winding up " has the meaning assigned to it by subsection (2) of section two hundred and seventy-eight of this Act;

" 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 eighty-three of this Act;

" statutory meeting " means the meeting required to be held by subsection (1) of section one hundred and thirty of this Act;

" statutory report " has the meaning assigned to it by subsection (2) of section one hundred and thirty of this Act;

" subsidiary " means a subsidiary as defined by section one hundred and fifty-four of this Act;

" Table A " means Table A in the First Schedule to this Act;

" the time of the opening of the subscription lists " has the meaning assigned to it by subsection (1) of section fifty of this Act;

" unlimited company " has the meaning assigned to it by subsection (2) of section one of this Act.

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

(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 Great Britain, and references therein to a body corporate shall be construed as not including a Scottish firm.

(4) Any such provision of this Act overriding or interpreting a company's articles as is a re-enacted provision of the Companies Act, 1947, shall, except as provided by this Act, apply

in relation to articles in force at the commencement of this Act, 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.

Amendments of other Acts.

456. The Assurance Companies Acts, 1909 to 1946, sections two and thirteen of the Prevention of Fraud (Investments) Act, 1939, and sections fifty-eight, one hundred and fifteen and one hundred and seventeen of the Companies Act, 1947, shall have effect subject to the amendments specified in the Sixteenth Schedule to this Act.

Construction of references in other Acts to subsidiary companies as defined by, and companies registered under, the Companies Act, 1929. 52 & 53 Vict. c. 63.

457. Notwithstanding subsection (1) of section thirty-eight of the Interpretation Act, 1889 (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),—

(*a*) references, in whatever terms, in any Act other than this Act to a subsidiary company as defined by the Companies Act, 1929, shall be construed in like manner as if this Act had not passed;

(*b*) references in any Act other than this Act to a company formed and registered, or registered, under the Companies Act, 1929, shall, unless the context otherwise requires, be construed as references to a company formed and registered, or registered, under that Act or this Act.

Effect of provisions of former Companies Acts as to registration of charges on land and keeping books of account. 7 Edw. 7. c. 50.

458.—(1) Paragraph (*d*) of subsection (1) of section ten of the Companies Act, 1907, paragraph (*d*) of subsection (1) of section ninety-three of the Companies (Consolidation) Act, 1908, and paragraph (*d*) of subsection (2) of section seventy-nine of the Companies Act, 1929 (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.

(2) Subsection (1) of section two hundred and seventy-four of the Companies Act, 1929 (which penalised the persons responsible where proper books of account were not kept by a company throughout the two years immediately preceding the commencement of the winding up) shall be deemed always to have had effect—

(*a*) as if after the words " the period of two years immediately preceding the commencement of the winding-up " there had been inserted the words " or the

PART XIII. —*cont.*

period between the incorporation of the company and the commencement of the winding up, whichever is the shorter "; and

(*b*) as if, in the phrase " unless he shows that he acted honestly or that in the circumstances in which the business of the company was carried on the default was excusable ", for the word " or " there had been substituted the word " and ".

Repeal and savings.

459.—(1) The enactments mentioned in the first and second columns of Part I of the Seventeenth Schedule to this Act are hereby repealed to the extent specified in the third column of that Part of that Schedule, the provisions of the Companies Act, 1947, mentioned in the first column of Part II of that Schedule are, so far as they are not repealed by the foregoing provisions of this subsection, hereby repealed to the extent specified in the second column of that Part of that Schedule, and paragraph (2) of Regulation three of the Defence (Companies) Regulations, 1940, is hereby revoked.

(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 at the commencement of this Act, 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:

Provided that this subsection shall not apply to any such Order in Council, order or rule as is mentioned in any of the three next following subsections or to any regulation having effect by virtue of subsection (2) of section one hundred and twenty of the Companies Act, 1947.

(3) Any Order in Council under paragraph (*e*) of the proviso to subsection (1) of section fifty-four of the Companies Act, 1929, which is in force at the commencement of this Act shall have effect as if it were an order of the Treasury under paragraph (*e*) of the proviso to subsection (1) of section sixty-five of this Act.

(4) Any order prescribing fees for the purposes of Part III of the Companies Act, 1929, which is in force at the commencement of this Act shall have effect as if it were regulations under sections ninety-eight and one hundred and two of this Act.

(5) Any rule made with respect to procedure in the Court of Session or in a sheriff court (including appeals from the sheriff court), or with respect to costs and fees, under section three hundred and seventy-four of the Companies Act, 1929, which is in force at the commencement of this Act shall have effect as if it were contained in an Act of Sederunt under section sixteen of the Administration of Justice (Scotland) Act, 1933, or under section forty of the Sheriff Courts (Scotland) Act, 1907, as the case may be. 7 Edw. 7. c. 51.

(6) Nothing in this Act shall affect the operation of section one hundred and thirty-seven of the Companies Act, 1929, as respects inspectors appointed before, or to continue an inspection begun by inspectors appointed before, the commencement of this Act, and section one hundred and seventy-one of this Act shall apply to a report of inspectors appointed under the said section one hundred and thirty-seven as it applies to a report of inspectors appointed under section one hundred and sixty-four of this Act.

(7) An order made on an application under section two hundred and seventeen or subsection (4) of section two hundred and seventy-five of the Companies Act, 1929, which is in force at the commencement of this Act shall have effect as if it were an order under section one hundred and eighty-eight of this Act.

(8) Nothing in this Act shall affect any prosecution by a liquidator instituted or ordered by the court to be instituted under section two hundred and seventy-seven of the Companies Act, 1929, and the Board of Trade shall have the same power of directing how any costs and expenses properly incurred by a liquidator in any such prosecution are to be defrayed as they would have had if this Act had not passed.

(9) Nothing in this Act shall affect—

(*a*) the power of a company to alter its memorandum under the provisions of section three of the Mortgage Debenture Act, 1865; 28 & 29 Vict. c. 78.

(*b*) the provisions of section five of the Trade Union Act, 1871 (which avoids the registration of a trade union under the enactments relating to companies); 34 & 35 Vict. c. 31.

(*c*) the provisions of subsection (4) of section fifty-four of the Finance Act, 1940 (which provides for payment in priority to other debts of duty payable by a company in respect of assets passing on a death by virtue of section forty-six of that Act), of any other enactment (not being one expressly repealed by this Act) relating to preferential payments or of regulations so relating having effect under any enactment; 3 & 4 Geo. 6. c. 29.

PART XIII. —*cont.*
10 & 11 Geo. 6. c. 14.

(*d*) the provisions of subsection (2) of section eight of the Exchange Control Act, 1947 (which invalidates the subscription of the memorandum of association of a company by or on behalf of a person resident outside the scheduled territories as defined for the purposes of that Act, unless the subscription is with the permission of the Treasury);

(*e*) the provisions of any Regulation of the Defence (Recovery of Fines) Regulations, 1942, or the provisions of any other Defence Regulation so far as not expressly revoked by this Act;

(*f*) the enactments set out in the Eighteenth Schedule to this Act, being the enactments continued in force by section two hundred and five of the Companies Act, 1862;

or be construed as repealing any provision of the Assurance Companies Acts, 1909 to 1946:

Provided that, notwithstanding subsection (1) of section thirty-eight of the Interpretation Act, 1889, references in any such enactment or regulations as are mentioned in paragraph (*c*) of this subsection to provisions of section seventy-eight, two hundred and sixty-four or two hundred and ninety-eight of the Companies Act, 1929, shall be construed as referring both to those provisions and to the corresponding provisions of this Act.

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

(11) Any person appointed to any office under or by virtue of any former enactment relating to companies shall be deemed to have been appointed to that office under or by virtue of this Act.

(12) 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.

(13) 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.

(14) Nothing in this Act shall 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 at the commencement of this Act;

(*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 seventy-one of that Act, so far as the same applies to any company existing at the commencement of this Act;

(*d*) Table A in the First Schedule to the Companies (Consolidation) Act, 1908, or any part thereof, either as originally contained in that Schedule or as altered in pursuance of section one hundred and eighteen of that Act, so far as the same applies to any company existing at the commencement of this Act;

(*e*) Table A in the First Schedule to the Companies Act, 1929, or any part thereof, so far as the same applies to any company existing at the commencement of this Act.

(15) 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 commencement of this Act, in the same manner as if the offence had been committed under the corresponding provisions of this Act.

(16) Save to the extent to which it is otherwise provided by subsection (9) of this section, the mention of particular matters in this section shall be without prejudice to the general application of section thirty-eight of the Interpretation Act, 1889, with respect to the effect of repeals.

(17) In this section the expression "former enactment relating to companies" means the Companies Act, 1929, and any enactment repealed by that Act or by the Companies (Consolidation) Act, 1908.

Provisions as to winding-up proceedings commenced before 1st November, 1929.

460.—(1) The provisions of this Act with respect to winding up (other than sections three hundred and thirty-six, three hundred and fifty-six and three hundred and twenty-four as applied for the purposes of the last-mentioned section and subsection (2) of this section) shall not apply to any company of which the winding up commenced before the first day of November, nineteen hundred and twenty-nine, but every such company shall be wound up in the same manner and with the same incidents as if the Companies Act, 1929, and this Act (apart from the enactments aforesaid) had not 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.

PART XIII. —*cont.*

(2) A copy of every order staying the proceedings in a winding up commenced as aforesaid shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who shall make a minute of the order in his books relating to the company.

Application to Northern Ireland.

461.—(1) Nothing in this Act, except the provisions thereof which relate expressly to companies registered or incorporated in Northern Ireland or outside Great Britain, shall apply to or in relation to companies registered or incorporated in Northern Ireland.

(2) Nothing in this Act, except where it is expressly provided to the contrary, shall affect the law in force in Northern Ireland at the commencement of this Act.

Short title and commencement.

462.—(1) This Act may be cited as the Companies Act, 1948.

(2) This Act shall come into operation on the first day of July, nineteen hundred and forty-eight, being the day on which, by virtue of orders of the Board of Trade under section one hundred and twenty-three of the Companies Act, 1947, all the provisions of that Act will first be in operation, and immediately after all those provisions are in operation.

SCHEDULES.

FIRST SCHEDULE.

Tables A, B, C, D and E.

TABLE A

PART I.

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES, NOT BEING A PRIVATE COMPANY.

Interpretation.

Sections 11, 455.

1. In these regulations:—

"the Act" means the Companies Act, 1948.

"the seal" means the common seal of the company.

"secretary" means any person appointed to perform the duties of the secretary of the company.

"the United Kingdom" means Great Britain and Northern Ireland.

Expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form.

Unless the context otherwise requires, words or expressions contained in these regulations shall bear the same meaning as in the Act or 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. Subject to the provisions of section 58 of the Act, any preference shares may, with the sanction of an ordinary resolution, be issued on the terms that they are, or at the option of the company are liable, to be redeemed on such terms and in such manner as the company before the issue of the shares may by special resolution determine.

4. 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 with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class.

1ST SCH. Table A —*cont.*

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 and that any holder of shares of the class present in person or by proxy may demand a poll.

5. 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.

6. The company may exercise the powers of paying commissions conferred by section 53 of the Act, provided that the rate per cent. or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the said 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.

8. Every person whose name is entered as a member in the register of members shall be entitled without payment to receive within two months after allotment or lodgment of 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. Every certificate shall be under the seal and shall specify the shares to which it relates and the amount paid up thereon. Provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.

9. If a share certificate be defaced, lost or destroyed, it may be renewed on payment of a fee 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 nor shall

the company make a loan for any purpose whatsoever on the security of its shares or those of its holding company, but nothing in this regulation shall prohibit transactions mentioned in the proviso to section 54 (1) 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 presently 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 presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this regulation. The company's lien, if any, on a share shall extend to all dividends payable thereon.

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 presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death or bankruptcy.

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 presently payable, and the residue, if any, shall (subject to a like lien for sums not presently 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 fourteen 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.

1ST SCH. Table A —*cont.*

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 shall otherwise direct) 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, except as provided by sub-paragraph (4) of paragraph 2 of the Seventh Schedule to the Act, the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

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 shall not approve, and they may also decline to register the transfer of a share on which the company has a lien.

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;

(*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 only one class of share.

26. If the directors refuse to register a transfer they shall within two months after the date on which the transfer was lodged with the company send to the transferee notice of the refusal.

27. The registration of transfers may be suspended at such times and for such periods as the directors may from time to time determine, provided always that such registration shall not be suspended for more than thirty days in any year.

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 in lieu of distringas, or other instrument.

Transmission of Shares.

29. In case of the death of a member the survivor or survivors where the deceased was a joint holder, and the legal 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 shall elect 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 shall elect 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.

1ST SCH. Table A —*cont.*

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:

Provided always 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 ninety days the directors may thereafter 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 fourteen 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 in writing 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 non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the 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 the shares 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 as regards dividends, voting at meetings of the company and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company 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 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*) sub-divide its existing shares, or any of them, into shares of smaller amount than is fixed by the memorandum of association subject, nevertheless, to the provisions of section 61 (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.

1ST SCH. Table A —*cont.*

General Meetings.

47. 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 fifteen months shall elapse between the date of one annual general meeting of the company and that of the next. Provided that so long as the company holds its first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year. The annual general meeting shall be held at such time and place as the directors shall appoint.

48. All general meetings other than annual general meetings shall be called extraordinary general meetings.

49. 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 United Kingdom 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.

50. An annual general meeting and a meeting called for the passing of a special resolution shall be called by twenty-one 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 fourteen 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 case of special business, the general nature of that business, and shall be given, in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company:

Provided that a meeting of the company shall, notwithstanding that it is called by shorter notice than that specified in this regulation, be deemed to have been duly called if it is so agreed—

(*a*) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and

(*b*) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than 95 per cent. in nominal value of the shares giving that right.

51. 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.

1ST SCH. Table A —*cont.*

52. 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 and the appointment of, and the fixing of the remuneration of, the auditors.

53. 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.

54. 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.

55. 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 shall not be present within fifteen 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.

56. If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

57. 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 thirty 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.

58. 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

1ST SCH. Table A —*cont.*

(*d*) 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.

Unless a poll be 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.

59. Except as provided in regulation 61, 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.

60. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

61. 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.

Votes of Members.

62. 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 shall have one vote, and on a poll every member shall have one vote for each share of which he is the holder.

63. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

64. 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, curator bonis, or other person in the nature of a committee, receiver or curator bonis appointed by that court, and any such committee, receiver, curator bonis or other person may, on a poll, vote by proxy.

65. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

66. 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.

67. On a poll votes may be given either personally or by proxy.

68. 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 corporation, either under seal, or under the hand of an officer or attorney duly authorised. A proxy need not be a member of the company.

69. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company or at such other place within the United Kingdom 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 24 hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.

70. An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit—

"

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 ."

71. Where it is desired to afford members an opportunity of voting for or against a resolution the instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit—

"

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 $\frac{\text{*in favour of}}{\text{against}}$ the resolution. Unless otherwise instructed, the proxy will vote as he thinks fit.

* Strike out whichever is not desired."

1ST SCH. Table A —*cont.*

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, provided that no intimation in writing of such death, insanity, revocation or transfer as aforesaid shall have been received by the company at the office before the commencement of the meeting or adjourned meeting at which the proxy is used.

Corporations acting by Representatives at Meetings.

74. Any corporation 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 corporation which he represents as that corporation 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 direct.

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:

Provided 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 regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

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 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.

82. The company may exercise the powers conferred by section 35 of the Act with regard to having an official seal for use abroad, and such powers shall be vested in the directors.

83. The company may exercise the powers conferred upon the company by sections 119 to 123 (both inclusive) of the Act with regard to the keeping of a dominion register, and the directors may (subject to the provisions of those sections) make and vary such regulations as they may think fit respecting the keeping of any such register.

84.—(1) 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 199 of the Act.

(2) A director shall not vote in respect of any contract or arrangement in which he is interested, and if he shall do so his vote shall

1ST SCH. Table A —*cont.*

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*) to 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 the company or as holder of shares or other securities;

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.

(3) 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.

(4) 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.

(5) 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; provided that nothing herein contained shall authorise a director or his firm to act as auditor to the company.

85. 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, in such manner as the directors shall from time to time by resolution determine.

86. The directors shall cause minutes to be made in books provided for the purpose—

(*a*) of all appointments of officers made by the directors;

(*b*) of the names of the directors present at each meeting of the directors and of any committee of the directors;

(*c*) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors;

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

87. 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 dependents 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.

88. The office of director shall be vacated if the director—

(*a*) ceases to be a director by virtue of section 182 or 185 of the Act; or

(*b*) becomes bankrupt 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 188 of the Act; or

(*d*) becomes of unsound mind; or

(*e*) resigns his office by notice in writing to the company; or

(*f*) shall for more than six months have been absent without permission of the directors from meetings of the directors held during that period.

Rotation of Directors.

89. 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.

90. 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.

91. A retiring director shall be eligible for re-election.

92. 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 shall have been put to the meeting and lost.

93. 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 three nor

1ST SCH. Table A —*cont.*

more than twenty-one days before the date appointed for the meeting there shall have been left at the registered office of the company 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.

94. 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.

95. 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.

96. The company may by ordinary resolution, of which special 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.

97. The company may by ordinary resolution appoint another person in place of a director removed from office under the immediately preceding regulation, and without prejudice to the powers of the directors under regulation 95 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.

98. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors. It shall not be necessary to give notice of a meeting of directors to any director for the time being absent from the United Kingdom.

99. 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.

100. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company

as the necessary quorum of directors, the continuing directors 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.

101. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

102. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.

103. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

104. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chairman shall have a second or casting vote.

105. 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.

106. 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 and effectual as if it had been passed at a meeting of the directors duly convened and held.

Managing Director.

107. The directors may from time to time appoint one or more of their body to the office of managing director for such period and on such terms 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 his appointment shall be automatically determined if he cease from any cause to be a director.

108. A managing director shall receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the directors may determine.

109. The directors may entrust to and confer upon a managing director any of the powers exercisable by them upon such terms and

1ST SCH. Table A —*cont.*

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.

110. 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.

111. No person shall be appointed or hold office as secretary who is—

(*a*) the sole director of the company; or

(*b*) a corporation the sole director of which is the sole director of the company; or

(*c*) the sole director of a corporation which is the sole director of the company.

112. 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.

113. The directors shall provide for the safe custody of the seal, which shall only be used by the authority of the directors or of a committee of the 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.

114. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

115. 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.

116. No dividend shall be paid otherwise than out of profits.

117. 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 (other than shares of the company) as the directors may from time to time think fit. The directors may also without placing the same to reserve carry forward any profits which they may think prudent not to divide.

118. 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.

119. The directors may deduct from any dividend payable to any member all sums of money (if any) presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.

120. 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 parties, and may vest any such specific assets in trustees as may seem expedient to the directors.

121. Any dividend, interest or other moneys payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members 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.

122. No dividend shall bear interest against the company.

Accounts.

123. The directors shall cause proper books of account to be kept with respect to:—

(*a*) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(*b*) all sales and purchases of goods by the company; and

(*c*) the assets and liabilities of the company.

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.

124. The books of account shall be kept at the registered office of the company, or, subject to section 147 (3) of the Act, at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

1ST SCH. Table A —*cont.*

125. 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.

126. The directors shall from time to time, in accordance with sections 148, 150 and 157 of the Act, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets, group accounts (if any) and reports as are referred to in those sections.

127. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting, together with a copy of the auditors' report, shall not less than twenty-one days before the date of the meeting be sent to every member of, and every holder of debentures of, the company and to every person registered under regulation 31. Provided that this regulation shall not require a copy of those documents to be sent to any person of whose address the company is not aware or to more than one of the joint holders of any shares or debentures.

Capitalisation of Profits.

128. The company in general meeting may upon the recommendation of the directors resolve that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the company's reserve accounts or to the credit of the profit and loss account or otherwise available for distribution, and accordingly that such sum be set free for distribution amongst the members who would have been entitled thereto if distributed by way of dividend and in the same proportions on condition that the same be not paid in cash but be applied either in or towards paying up any amounts for the time being unpaid on any shares held by such members respectively or paying up in full unissued shares or debentures of the company to be allotted and distributed credited as fully paid up to and amongst such members in the proportion aforesaid, or partly in the one way and partly in the other, and the directors shall give effect to such resolution:

Provided that a share premium account and a capital redemption reserve fund may, for the purposes of this regulation, only be applied in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares.

129. 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 by the issue of fractional certificates or by payment in cash or otherwise as they think fit for the case of shares or debentures becoming distributable in fractions, and also to authorise any person to enter

on behalf of all the members entitled thereto 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 be entitled upon such capitalisation, or (as the case may require) for the payment up by the company on their behalf, by the application thereto of their respective proportions of the profits resolved to be capitalised, of the amounts or any part 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.

130. Auditors shall be appointed and their duties regulated in accordance with sections 159 to 162 of the Act.

Notices.

131. A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within the United Kingdom) to the address, if any, within the United Kingdom supplied by him to the company for the giving of notice to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of 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.

132. 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 of members in respect of the share.

133. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, within the United Kingdom 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.

134. Notice of every general meeting shall be given in any manner hereinbefore authorised to—

(*a*) every member except those members who (having no registered address within the United Kingdom) have not supplied to the company an address within the United Kingdom for the giving of notices to them;

(*b*) every person upon whom the ownership of a share devolves by reason of his being a legal personal representative or a trustee 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.

1ST SCH. Table A —*cont.*

Winding up

135. If the company shall be wound up the liquidator may, with the sanction of an extraordinary resolution of the company and any other sanction required by the Act, divide amongst 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.

136. 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 which judgment is given in his favour or in which he is acquitted or in connection with any application under section 448 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 and 53) shall apply.

2. The company is a private company and accordingly—

(*a*) the right to transfer shares is restricted in 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. Provided 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. 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.

5. Subject to the provisions of the Act, a resolution in writing signed by all the members for the time being entitled to receive

notice of and to attend and vote at general meetings (or being corporations by their duly authorised representatives) shall be as valid and effective as if the same had been passed at a general meeting of the company duly convened and held.

6. The directors may at any time require any person whose name is entered in the register of members of the company to furnish them with any information, supported (if the directors so require) by a statutory declaration, which they may consider necessary for the purpose of determining whether or not the company is an exempt private company within the meaning of subsection (4) of section 129 of the Act.

Note 1 Regulations 3 and 4 of this Part are alternative to regulations 24 and 53 respectively of Part I.

TABLE B.

FORM OF MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES.

1st. The name of the company is "The Eastern Steam Packet Company, Limited."

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are, "the "conveyance of passengers and goods in ships or boats between such "places as the company may from time to time determine, and the "doing all such other things as are incidental or conducive to the "attainment of the above object."

4th. The liability of the members is limited.

5th. The share capital of the company is two hundred thousand pounds divided into one thousand shares of two hundred pounds each.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers			Number of shares taken by each Subscriber
"1. John Jones of	in the county of	merchant	200
"2. John Smith of	in the county of	"	25
"3. Thomas Green of	in the county of	"	30
"4. John Thompson of	in the county of	"	40
"5. Caleb White of	in the county of	"	15
"6. Andrew Brown of	in the county of	"	5
"7. Cæsar White of	in the county of	"	10
		Total shares taken	325"

Dated the day of 19

Witness to the above signatures,
A.B., No. 13, Hute Street, Clerkenwell, London.

1ST SCH.

TABLE C.

FORM OF MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND NOT HAVING A SHARE CAPITAL.

Memorandum of Association.

1st. The name of the company is "The Kent School Association, Limited."

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are the carrying on a school for boys in the county of Kent and the doing all such other things as are incidental or conducive to the attainment of the above object.

4th. The liability of the members is limited.

5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding ten pounds.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses, and Descriptions of Subscribers.

"1. John Jones of	in the county of	schoolmaster.
"2. John Smith of	in the county of	"
"3. Thomas Green of	in the county of	"
"4. John Thompson of	in the county of	"
"5. Caleb White of	in the county of	"
"6. Andrew Brown of	in the county of	"
"7. Cæsar White of	in the county of	"

Dated the day of 19

Witness to the above signatures,

A.B., No. 13, Hute Street, Clerkenwell, London.

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF ASSOCIATION.

Interpretation.

1. In these articles :—

"the Act" means the Companies Act, 1948.

"the seal" means the common seal of the company.

"secretary" means any person appointed to perform the duties of the secretary of the company.

"the United Kingdom" means Great Britain and Northern Ireland.

1ST SCH. Table C *cont.*—

Expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form.

Unless the context otherwise requires, 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. 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 fifteen months shall elapse between the date of one annual general meeting of the company and that of the next. Provided that so long as the company holds its first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year. The annual general meeting shall be held at such time and place as the directors shall appoint.

5. All general meetings other than annual general meetings shall be called extraordinary general meetings.

6. 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 United Kingdom 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.

7. An annual general meeting and a meeting called for the passing of a special resolution shall be called by twenty-one 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 fourteen 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 case of special business, the general nature of that business and shall be given, in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are,

1ST SCH. Table C —*cont.*

under the articles of the company, entitled to receive such notices from the company:

Provided that a meeting of the company shall, notwithstanding that it is called by shorter notice than that specified in this article be deemed to have been duly called if it is so agreed—

(*a*) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and

(*b*) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together representing not less than ninety-five per cent. of the total voting rights at that meeting of all the members.

8. 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.

9. 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 and the appointment of, and the fixing of the remuneration, of the auditors.

10. 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.

11. 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.

12. 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 shall not be present within fifteen 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.

13. If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

14. 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 thirty 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.

15. 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 be 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.

16. Except as provided in article 18, 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.

17. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

18. 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.

19. Subject to the provisions of the Act a resolution in writing signed by all the members for the time being entitled to receive notice of and to attend and vote at general meetings (or being corporations by their duly authorised representatives) shall be as valid and effective as if the same had been passed at a general meeting of the company duly convened and held.

Votes of Members.

20. Every member shall have one vote.

21. 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, curator bonis or other person in the nature of a committee, receiver or curator bonis appointed by that court, and any such committee, receiver, curator bonis or other person may, on a poll, vote by proxy.

22. No member shall be entitled to vote at any general meeting unless all moneys presently payable by him to the company have been paid.

1ST SCH. Table C —*cont.*

23. On a poll votes may be given either personally or by proxy.

24. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing, or, if the appointer is a corporation, either under seal or under the hand of an officer or attorney duly authorised. A proxy need not be a member of the company.

25. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company or at such other place within the United Kingdom 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 24 hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.

26. An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit—

"

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 ."

27. Where it is desired to afford members an opportunity of voting for or against a resolution the instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit—

"

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 $\frac{\text{*in favour of}}{\text{against}}$ the resolution. Unless otherwise instructed, the proxy will vote as he thinks fit.

* Strike out whichever is not desired."

28. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

29. 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, provided that no intimation in writing of such death, insanity or revocation as aforesaid shall have been received by the company at the office before the commencement of the meeting or adjourned meeting at which the proxy is used.

Corporations acting by Representatives at Meetings.

30. Any corporation 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 corporation which he represents as that corporation could exercise if it were an individual member of the company.

Directors.

31. 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.

32. 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 shall 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.

33. 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.

34. 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 or these articles and to such regulations, being not inconsistent with the aforesaid provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

35. 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

1ST SCH. Table C. —*cont.*

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.

36. 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, in such manner as the directors shall from time to time by resolution determine.

37. The directors shall cause minutes to be made in books provided for the purpose—

(*a*) of all appointments of officers made by the directors;

(*b*) of the names of the directors present at each meeting of the directors and of any committee of the directors;

(*c*) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors;

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

Disqualification of Directors.

38. The office of director shall be vacated if the director—

(*a*) without the consent of the company in general meeting holds any other office of profit under the company; or

(*b*) becomes bankrupt or 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 188 of the Act; or

(*d*) becomes of unsound mind; or

(*e*) resigns his office by notice in writing to the company; or

(*f*) ceases to be a director by virtue of section 185 of the Act; 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 199 of the Act.

A director shall not vote in respect of any contract in which he is interested or any matter arising thereout, and if he does so vote his vote shall not be counted.

Rotation of Directors.

39. 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.

40. 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.

41. A retiring director shall be eligible for re-election.

42. 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 shall have been put to the meeting and lost.

43. 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 three nor more than twenty-one days before the date appointed for the meeting, there shall have been left at the registered office of the company 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.

44. 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.

45. 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 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.

46. The company may by ordinary resolution, of which special 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.

47. The company may by ordinary resolution appoint another person in place of a director removed from office under the immediately preceding article. Without prejudice to the powers of the directors under article 45 the company in general meeting may appoint any person to be a director either to fill a casual vacancy or as an additional director. The person appointed 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.

1ST SCH. Table C. —*cont.*

Proceedings of Directors.

48. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors. It shall not be necessary to give notice of a meeting of directors to any director for the time being absent from the United Kingdom.

49. 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.

50. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the 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.

51. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but, if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

52. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit: any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.

53. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

54. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chairman shall have a second or casting vote.

55. 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.

56. 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 and effectual as if it had been passed at a meeting of the directors duly convened and held.

Secretary.

57. 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.

58. 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.

59. The directors shall provide for the safe custody of the seal, which shall only be used by the authority of the directors or of a committee of the 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.

60. The directors shall cause proper books of account to be kept with respect to—

(*a*) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(*b*) all sales and purchases of goods by the company; and

(*c*) the assets and liabilities of the company.

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.

61. The books of account shall be kept at the registered office of the company, or, subject to section 147 (3) of the Act, at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

62. 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

1ST SCH. Table C. —*cont.*

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.

63. The directors shall from time to time in accordance with sections 148, 150 and 157 of the Act, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets, group accounts (if any) and reports as are referred to in those sections.

64. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting, together with a copy of the auditor's report, shall not less than twenty-one days before the date of the meeting be sent to every member of, and every holder of debentures of, the company. Provided that this article shall not require a copy of those documents to be sent to any person of whose address the company is not aware or to more than one of the joint holders of any debentures.

Audit.

65. Auditors shall be appointed and their duties regulated in accordance with sections 159 to 162 of the Act.

Notices.

66. A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within the United Kingdom) to the address, if any, within the United Kingdom supplied by him to the company for the giving of notice to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of 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.

67. Notice of every general meeting shall be given in any manner hereinbefore authorised to—

(*a*) every member except those members who (having no registered address within the United Kingdom) have not supplied to the company an address within the United Kingdom for the giving of notices to them;

(*b*) every person being a legal personal representative or a trustee 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. John Jones of	in the county of	schoolmaster.
" 2. John Smith of	in the county of	"
" 3. Thomas Green of	in the county of	"
" 4. John Thompson of	in the county of	"
" 5. Caleb White of	in the county of	"
" 6. Andrew Brown of	in the county of	"
" 7. Cæsar White of	in the county of	"

Dated the day of 19 ."

Witness to the above signatures,

A.B., No. 20, Bond Street, London.

TABLE D.

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND HAVING A SHARE CAPITAL.

Memorandum of Association.

1st. The name of the company is " The Highland Hotel Company, Limited."

2nd. The registered office of the company will be situate in Scotland.

3rd. The objects for which the company is established are " the " facilitating travelling in the Highlands of Scotland, by providing " hotels and conveyances by sea and by land for the accommodation " of travellers, and the doing all such other things as are incidental " or conducive to the attainment of the above object."

4th. The liability of the members is limited.

5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company, contracted before he ceases to be a member, and the costs, charges and expenses of winding up the same and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding twenty pounds.

6th. The share capital of the company shall consist of five hundred thousand pounds, divided into five thousand shares of one hundred pounds each.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to

1ST SCH. Table D. —*cont.*

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. John Jones of	in the county of	merchant	200
"2. John Smith of	in the county of	,,	25
"3. Thomas Green of	in the county of	,,	30
"4. John Thompson of	in the county of	,,	40
"5. Caleb White of	in the county of	,,	15
"6. Andrew Brown of	in the county of	,,	5
"7. Cæsar White of	in the county of	,,	10
		Total shares taken	325"

Dated the day of 19 .

Witness to the above signatures,

A.B., No. 13, Hute Street, Clerkenwell, London.

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF ASSOCIATION.

1. The number of members with which the company proposes to be registered is 50, 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, 1948, shall be deemed to be incorporated with these articles and shall apply to the company.

Names, Addresses and Descriptions of Subscribers.

"1. John Jones of	in the county of	merchant.
"2. John Smith of	in the county of	,,
"3. Thomas Green of	in the county of	,,
"4. John Thompson of	in the county of	,,
"5. Caleb White of	in the county of	,,
"6. Andrew Brown of	in the county of	,,
"7. Cæsar White of	in the county of	,,

Dated the day of 19 ."

Witness to the above signatures,

A.B., No. 13, Hute Street, Clerkenwell, London.

TABLE E.

MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY HAVING A SHARE CAPITAL.

Memorandum of Association.

1st. The name of the company is "The Patent Stereotype Company."

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are "the "working of a patent method of founding and casting stereotype plates, "of which method John Smith of London is the sole patentee, and "the doing of all such things as are incidental or conducive to the "attainment of the above objects."

WE, the several persons whose names are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers			Number of shares taken by each Subscriber
"1. John Jones of	in the county of	merchant	3
"2. John Smith of	in the county of	"	2
"3. Thomas Green of	in the county of	"	1
"4. John Thompson of	in the county of	"	2
"5. Caleb White of	in the county of	"	2
"6. Andrew Brown of	in the county of	"	1
"7. Abel Brown of	in the county of	"	1
		Total shares taken	12"

Dated the day of 19 .

Witness to the above signatures,
A.B., No. 20, Bond Street, London.

ARTICLES OF ASSOCIATION TO ACCOMPANY THE PRECEDING MEMORANDUM OF ASSOCIATION.

1. The number of members with which the company proposes to be registered is 20, but the directors may from time to time register an increase of members.

2. The share capital of the company is two thousand pounds divided into twenty shares of one hundred pounds 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*) sub-divide its shares into shares of a smaller amount than its existing shares;

(*d*) cancel any shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person;

(*e*) reduce its share capital in any way.

4. The regulations of Table A, Part I, set out in the First Schedule to the Companies Act, 1948 (other than regulations 40 to 46 inclusive) shall be deemed to be incorporated with these articles and shall apply to the company.

1ST SCH. Table E. —*cont.*

Names, Addresses and Descriptions of Subscribers

1. John Jones of	in the county of	merchant.
2. John Smith of	in the county of	"
3. Thomas Green of	in the county of	"
4. John Thompson of	in the county of	"
5. Caleb White of	in the county of	"
6. Andrew Brown of	in the county of	"
7. Abel Brown of	in the county of	"

Dated the day of 19 .

Witness to the above signatures,

A.B., No. 20, Bond Street, London.

Sections 14, 454.

SECOND SCHEDULE.

FORM OF LICENCE TO HOLD LANDS.

The Board of Trade hereby licence the to hold the lands hereunder described (*insert description of lands*) [*or* to hold lands not exceeding in the whole acres].

The conditions of this licence are (*insert conditions, if any*).

Section 30.

THIRD 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.

PART I.

FORM OF STATEMENT AND PARTICULARS TO BE CONTAINED THEREIN.

THE COMPANIES ACT, 1948.

Statement in lieu of Prospectus delivered for registration by

[*Insert the name of the company.*]

Pursuant to section 30 of the Companies Act, 1948.

Delivered for registration by

The nominal share capital of the company.	£
Divided into	Shares of £ each. " " " " " "
Amount (if any) of above capital which consists of redeemable preference shares.	Shares of £ each.
The earliest date on which the company has power to redeem these shares.	
Names, descriptions and addresses of directors or proposed directors.	

3RD SCH. —*cont.*

Amount of shares issued	Shares
Amount of commissions paid in connection therewith.	
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.	
Unless more than one year has elapsed since the date on which the Company was entitled to commence business :—	
Amount of preliminary expenses By whom those expenses have been paid or are payable.	£
Amount paid to any promoter ...	Name of promoter :— Amount £ .
Consideration for the payment ...	Consideration :—
Any other benefit given to any promoter.	Name of promoter :— Nature and value of benefit :—
Consideration for giving of benefit	Consideration :—
If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.	
Number and amount of shares and debentures issued within the two years preceding the date of this statement as fully or partly paid up otherwise than for cash or agreed to be so issued at the date of this statement.	1. shares of £ fully paid. 2. shares upon which £ per share credited as paid.
Consideration for the issue of those shares or debentures.	3. debenture £ 4. Consideration :—
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.	1. shares of £ and debentures of £
Period during which option is exercisable.	2. Until

3RD SCH. —*cont.*

Price to be paid for shares or debentures subscribed for or acquired under option.

3.

Consideration for option or right to option.

4. Consideration :—

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.

5. Names and addresses :—

Names and addresses of vendors of property (1) purchased or acquired by the company within the two years preceding the date of this statement or (2) agreed or proposed to be purchased or acquired by the company, 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.

Amount (in cash, shares or debentures) paid or payable to each separate vendor.

Amount paid or payable in cash, shares or debentures for any such property, specifying the amount paid or payable for goodwill.

Total purchase price £

Cash ... ... £
Shares ... £
Debentures ... £

Goodwill ... £

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.

Dates of, parties to, and general nature of every material contract (other than contracts entered into in the ordinary course of business or entered into more than two years before the delivery of this statement).

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

3RD SCH. —*cont.*

giving full particulars thereof, and (2) in the case of a contract wholly or partly in a foreign language, a copy of a translation thereof in English or embodying a translation in English 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.

Names and addresses of the auditors of the company.

Full particulars of the nature and extent of the interest of every director in any property purchased or acquired by the company within the two years preceding the date of this statement or proposed to be purchased or acquired by the company or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become or to qualify him as, a director, or otherwise for services rendered or to be rendered to the company by him or by the firm.

Rates of the dividends (if any) paid by the company in respect of each class of shares in the company in each of the five financial years immediately preceding the date of this statement or since the incorporation of the company whichever period is the shorter.

Particulars of the cases in which no dividends have been paid in respect of any class of shares in any of these years.

(Signatures of the persons above-named as directors or proposed directors or of their agents authorised in writing.) _____

_____

_____

Date. _____

3RD SCH. —*cont.*

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 five 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) with respect to the profits and losses and assets and liabilities of the other body corporate in accordance with sub-paragraph (2) or (3) of this paragraph, 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 fallen 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 the foregoing sub-paragraph 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 five 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 sub-paragraph (1) of this paragraph shall—

(*a*) so far as regards profits and losses, deal separately with the other body corporate's profits or losses as provided by the last foregoing sub-paragraph, 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) individually 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 the last foregoing sub-paragraph 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) individually with the assets and liabilities of each subsidiary;

and shall indicate as respects 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 OF THIS SCHEDULE.

3. In this Schedule the expression "vendor" includes a vendor as defined in Part III of the Fourth Schedule to this Act, and the expression "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 five years, the accounts of the business or body corporate have only been made up in respect of four years, three years, two years or one year, Part II of this Schedule shall have effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years.

5. Any report required by Part II of this Schedule shall either indicate by way of note any adjustments as respects 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 of this Schedule shall be made by accountants qualified under this Act for appointment as auditors of a company which is not an exempt private company and shall not be made by any accountant who is an officer or servant, or a partner of or in the employment of an officer or servant, of the company, or of the company's subsidiary or holding company or of a subsidiary of the company's holding company; and for the purposes of this paragraph the expression "officer" shall include a proposed director but not an auditor.

Sections 30, 38, 39, 41, 47, 417, 418, 420.

FOURTH SCHEDULE.

MATTERS TO BE SPECIFIED IN PROSPECTUS AND REPORTS TO BE SET OUT THEREIN.

PART I.

MATTERS TO BE SPECIFIED.

1. The number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company.

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, descriptions and addresses 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 in the company ;

(iii) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters ;

(iv) working capital ; and

(*b*) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

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 two 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, that is to say—

(*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 two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.

9.—(1) As respects 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 two 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 so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus or the purchase or acquisition of which has not been completed at the date of 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*) as respects 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 the last foregoing paragraph applies, specifying the amount, if any, payable for goodwill.

11. The amount, if any, paid within the two preceding years, or payable, as commission (but not including commission to sub-underwriters) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in or debentures of the company, or the rate of any such commission.

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.

4TH SCH. —*cont.*

13. Any amount or benefit paid or given within the two 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 two years before the date of issue of the prospectus.

15. The names and addresses of the auditors, if any, 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 proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.

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 three years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.

PART II.

REPORTS TO BE SET OUT.

19.—(1) A report by the auditors of the company with respect to—

(*a*) profits and losses and assets and liabilities, in accordance with sub-paragraph (2) or (3) of this paragraph, 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 in respect of each of the five 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 in respect of any of those years;

and, if no accounts have been made up in respect of any part of the period of five years ending on a date three months before the issue of the prospectus, containing a statement of that fact.

4TH SCH. —*cont.*

(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 five 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 the last foregoing sub-paragraph, 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) individually 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 the last foregoing sub-paragraph 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) individually with the assets and liabilities of each subsidiary;

and shall indicate as respects 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 in respect of each of the five 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

4TH SCH —*cont.*

(*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 in respect of each of the five 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 fallen 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 sub-paragraph (3) of paragraph 19 of this Schedule in relation to the company and its subsidiaries.

PART III.

PROVISIONS APPLYING TO PARTS I AND II OF SCHEDULE.

22. Paragraphs 2, 3, 12 (so far as it relates to preliminary expenses) and 16 of this Schedule shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

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 the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

25. References in paragraph 7 of this Schedule 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 of this Schedule where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors.

27. If in the case of a company which has been carrying on business, or of a business which has been carried on for less than five years, the accounts of the company or business have only been made up in respect of four years, three years, two years or one year, Part II of this Schedule shall have effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years.

28. The expression "financial year" in Part II of this Schedule means the year in respect of which the accounts of the company or of the business, as the case may be, are made up, and where by reason of any alteration of the date on which the financial year of the company or business terminates the accounts of the company or business have been made up for a period greater or less than a year, that greater or less period shall for the purpose of that Part of this Schedule be deemed to be a financial year.

29. Any report required by Part II of this Schedule shall either indicate by way of note any adjustments as respects 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 of this Schedule shall be made by accountants qualified under this Act for appointment as auditors of a company which is not an exempt private company and shall not be made by any accountant who is an officer or servant, or a partner of or in the employment of an officer or servant, of the company or of the company's subsidiary or holding company or of a subsidiary of the company's holding company; and for the purposes of this paragraph the expression "officer" shall include a proposed director but not an auditor.

Section 48.

FIFTH 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 GO TO ALLOTMENT ON A PROSPECTUS ISSUED, AND REPORTS TO BE SET OUT THEREIN.

PART I.

FORM OF STATEMENT AND PARTICULARS TO BE CONTAINED THEREIN.

THE COMPANIES ACT, 1948.

Statement in lieu of Prospectus delivered for registration by

[*Insert the name of the company.*]

Pursuant to section 48 of the Companies Act, 1948.

Delivered for registration by

The nominal share capital of the company.	£
Divided into	Shares of £ each. " " " " " "
Amount (if any) of above capital which consists of redeemable preference shares.	Shares of £ each.
The earliest date on which the company has power to redeem these shares.	
Names, descriptions and addresses of directors or proposed directors.	
If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.	
Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.	1. shares of £ fully paid. 2. shares upon which £ per share credited as paid.
The consideration for the intended issue of those shares and debentures.	3. debenture £ . 4. Consideration :—
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.	1. shares of £ and debentures of £

5TH SCH. —*cont.*

Period during which option is exercisable.	2. Until
Price to be paid for shares or debentures subscribed for or acquired under option.	3.
Consideration for option or right to option.	4. Consideration:
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.	5. Names and addresses:—
Names and addresses of vendors of property purchased or acquired, 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 intended to be carried on by the company or the amount of the purchase money is not material.	
Amount (in cash, shares or debentures) payable to each separate vendor.	
Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.	Total purchase price £ Cash ... £ Shares ... £ Debentures... £ Goodwill ... £
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.	
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company; or	Amount paid. „ payable.
Rate of the commission	Rate per cent.
The number of shares, if any, which persons have agreed for a commission to subscribe absolutely.	

5TH SCH. —*cont.*

Estimated amount of preliminary expenses.	£ .
By whom those expenses have been paid or are payable.	
Amount paid or intended to be paid to any promoter.	Name of promoter. Amount £ .
Consideration for the payment ...	Consideration :—
Any other benefit given or intended to be given to any promoter.	Name of promoter :— Nature and value of benefit :—
Consideration for giving of benefit ...	Consideration :—
Dates of, parties to and general nature of every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the delivery of this statement).	
Time and place at which the contracts or copies thereof may be inspected 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 foreign language, a copy of a translation thereof in English or embodying a translation in English 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.	
Names and addresses of the auditors of the company (if any).	
Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him	

5TH SCH. —*cont.*

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.	

(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 five 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) with respect to the profits and losses and assets and liabilities of the other body corporate in accordance with sub-paragraph (2) or (3) of this paragraph, 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 fallen 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 the last foregoing sub-paragraph 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 five 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 sub-paragraph (1) of this paragraph shall—

(*a*) so far as regards profits and losses, deal separately with the other body corporate's profits or losses as provided by the last foregoing sub-paragraph, 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

5TH SCH. —*cont.*

(ii) individually 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 the last foregoing sub-paragraph 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) individually with the assets and liabilities of each subsidiary;

and shall indicate as respects 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 OF THIS SCHEDULE.

3. In this Schedule the expression "vendor" includes a vendor as defined in Part III of the Fourth Schedule to this Act, and the expression "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 five years, the accounts of the business or body corporate have only been made up in respect of four years, three years, two years or one year, Part II of this Schedule shall have effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years.

5. Any report required by Part II of this Schedule shall either indicate by way of note any adjustments as respects 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 of this Schedule shall be made by accountants qualified under this Act for appointment as auditors of a company which is not an exempt private company and shall not be made by any accountant who is an officer or servant, or a partner of or in the employment of an officer or servant, of the company or of the company's subsidiary or holding company or of a subsidiary of the company's holding company; and for the purposes of this paragraph the expression "officer" shall include a proposed director but not an auditor.

SIXTH SCHEDULE.

Sections 124, 454.

CONTENTS AND FORM OF ANNUAL RETURN OF A COMPANY HAVING A SHARE CAPITAL.

PART I.

CONTENTS.

1. The address of the registered office of the company.

2.—(1) If the register of members 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.

(2) If any register of holders of debentures of the company or any duplicate of any such register or part of any such register is, under the provisions of this Act, kept, in England in the case of a company registered in England or in Scotland in the case of a company registered in Scotland, 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 commencement of the company up to the date of the return;
(*c*) the amount called up on each share;
(*d*) the total amount of calls received;
(*e*) the total amount of calls unpaid;
(*f*) the total amount of the sums (if any) paid by way of commission in respect of any shares or debentures;
(*g*) 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;
(*j*) the total amount of shares for which share warrants are outstanding at the date of the return and of share warrants issued and surrendered respectively since the date of the last return, and the number of shares comprised in each warrant.

4. Particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges which are required (or, in the case of a company registered in Scotland, which, if the company had been registered in England, would be 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 first day of July, nineteen hundred and eight.

6TH SCH. —*cont.*

5. A list—

(*a*) containing the names and addresses of all persons who, on the fourteenth 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;

(*c*) if the names aforesaid are not arranged in alphabetical order, having annexed thereto an index sufficient to enable the name of any person therein to be easily found.

6. All such particulars with respect 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 with respect to directors and the secretary respectively 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 fourteenth day after the date of the annual general meeting for the year 19).

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1. Address.

(*Address of the registered office of the company.*)

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2. Situation of 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 in Great Britain other than the registered office of the company at which is kept any register of holders of debentures of the company or any duplicate of any such register or part of any such register which is kept outside Great Britain.*)

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3. Summary of Share Capital and Debentures. 6TH SCH. —*cont.*

(*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

(*b*) *Issued Share Capital and Debentures.*

	Number	*Class*	
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
	.....	.....	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
	.....	.....	shares
	.....	.....	shares
Number of shares of each class issued as partly paid up for a consideration other than cash and 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.
Number of shares (if any) of each class issued at a discount.	.....	.....	shares
	.....	.....	shares
	.....	.....	shares
	.....	.....	shares

Amount of discount on the issue of shares which has not been written off at the date of this return. £.....

	Number	*Class*	
Amount called up on number of shares of each class. £..... per share on	.....	.....	shares
£..... per share on	.....	.....	shares
£..... per share on	.....	.....	shares
£..... per share on	.....	.....	shares

Total amount of calls received, including payments on application and allotment and any sums received on shares forfeited. £.....

6TH SCH. —*cont.*

		Number	*Class*	
Total amount (if any) agreed to be considered as paid on number of shares of each class issued as fully paid up for a consideration other than cash.	£..... on	.....	.....	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
		.....	.....	shares

Total amount of calls unpaid ... £.....

Total amount of the sums (if any) paid by way of commission in respect of any shares or debentures. £.....

Total amount of the sums (if any) allowed by way of discount in respect of any debentures since the date of the last return. £.....

	Number	*Class*	
Total number of shares of each class forfeited.	.....	.....	shares
	.....	.....	shares
	.....	.....	shares
	.....	.....	shares

Total amount paid (if any) on shares forfeited. £.....

Total amount of shares for which share warrants to bearer are outstanding. £.....

Total amount of share warrants to bearer issued and surrendered respectively since the date of the last return. Issued: £..... Surrendered: £.....

Number of shares comprised in each share warrant to bearer, specifying in the case of warrants of different kinds, particulars of each kind. .....

4. Particulars of Indebtedness.

Total amount of indebtedness of the company in respect of all mortgages and charges which are required (or, in the case of a company registered in Scotland, which, if the company had been registered in England, would be required) to be registered with the registrar of companies under the Companies Act, 1948, 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 or stock in the company on the fourteenth day after the annual general meeting for 19 , and of persons who have held shares or stock 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.

Folio in register ledger containing particulars	Names and addresses	Account of Shares				Remarks
		Number of shares held by existing members at date of return *†	Particulars of shares transferred since the date of the last return, or, in the case of the first return, of the incorporation of the company, by (*a*) persons who are still members and (*b*) persons who have ceased to be members‡			
			Number †	Date of registration of transfer		
				(*a*)	(*b*)	

* The aggregate number of shares held by each member must be stated, and the aggregates 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. Where any shares have been converted into stock the amount of stock held by each member must be shown.

‡ The date of registration of each transfer should be given as well as the number of shares transferred on each date. The particulars should be placed opposite the name of the transferor and not opposite that of the transferee, but the name of the transferee may be inserted in the "Remarks" column immediately opposite the particulars of each transfer.

Notes.

1. If the return for either of the two 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 and stock 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 or to changes as compared with that date in the amount of stock held by a member.

2. 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.

6TH SCH —*cont*

6. Particulars of Directors and Secretaries.

Particulars of the persons who are directors 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 corporation, the corporate name.)	Any former Christian name or names and surname.	Nationality.	Usual residential address. (In the case of a corporation, the registered or principal office.)	Business occupation and particulars of other directorships.	Date of birth.

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 corporation or a Scottish firm, the corporate or firm name.)	Any former Christian name or names and surname.	Usual residential address. (In the case of a corporation or Scottish firm, 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 peer or 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 peer or a person usually known by a British title different from his surname, the name by which he was known previous to the adoption of or succession to the title; or

(*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 eighteen years or has been changed or disused for a period of not less than twenty years; or

(*c*) in the case of a married woman the name or surname by which she was known previous to the marriage.

6TH SCH.—*cont.*

The names of all bodies corporate incorporated in Great Britain 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 company 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.

Dates of birth need only be given in the case of a company which is subject to section 185 of the Companies Act, 1948, namely, a company which is not a private company or which, being a private company, is the subsidiary of a body corporate incorporated in the United Kingdom which is neither a private company nor a company registered under the law relating to companies for the time being in force in Northern Ireland and having provisions in its constitution which would, if it had been registered in Great Britain, entitle it to rank as a private company.

Where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated.

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* Delivered for filing by.....

CERTIFICATES AND OTHER DOCUMENTS ACCOMPANYING ANNUAL RETURN

Certificate to be given by a Director and the Secretary of every Private Company (whether an Exempt Private Company or not).

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.

Further Certificate to be given as aforesaid if the Number of Members of the Company exceeds Fifty.

We certify that the excess of the number of members of the company over fifty consists wholly of persons who, under paragraph (*b*) of subsection (1) of section twenty-eight of the Companies Act, 1948, are not to be included in reckoning the number of fifty.

Signed....., Director.

Signed....., Secretary.

Certified copies of Accounts.

Except where the company is either an exempt private company as defined by section 129 (4) of the Companies Act, 1948, which sends with this return a certificate in the form set out below or an assurance

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* This should be printed at the bottom of the first page of the return.

† In the case of the first return strike out the second alternative. In the case of a second or subsequent return strike out the first alternative.

6TH SCH. —*cont.*

company which has complied with the provisions of section 7 (4) of the Assurance Companies Act, 1909, 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 company in general meeting 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 foreign language there must also be annexed to that balance sheet a translation in English 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.

Additional Certificate to be given in the case of an Exempt Private Company by the Persons signing the above-mentioned Certificates.

We certify that, to the best of our knowledge and belief, the conditions mentioned in subsection (2) of section one hundred and twenty-nine of the Companies Act, 1948, are satisfied at the date of this return and have been satisfied at all times since.....*

Signed....., Director.

Signed....., Secretary.

Banking Companies.

A banking company, in order to avail itself of the benefit of s. 432 of the Companies Act, 1948, must add to this return a statement of the names of the several places where it carries on business.

* Insert " 1st July, 1948 " (the date of the commencement of the Companies Act, 1948) or, if the company was registered after that date, the date on which it was registered, or, if the proviso to s. 129 (1) of the Companies Act, 1948, has effect in relation to the return, the time at which it was shown to the Board of Trade that the conditions mentioned in the certificate were satisfied.

SEVENTH SCHEDULE.

Sections 129, 410.

CONDITIONS AS TO INTERESTS IN SHARES AND DEBENTURES OF EXEMPT PRIVATE COMPANY.

Basic Conditions.

1. The basic conditions as to the shares or debentures of the company whose exemption is in question are—

(*a*) that no body corporate is the holder of any of the shares or debentures; and

(*b*) that no person other than the holder has any interest in any of the shares or debentures;

but these conditions are subject to the exceptions provided for by the following paragraphs of this Schedule.

Exceptions for normal Dealings of a business Nature.

2.—(1) The rules contained in the following sub-paragraphs of this paragraph shall apply for the purposes both of the basic conditions and of the exceptions from those conditions.

(2) Where any share or debenture or any interest in any share or debenture is subject to a charge in favour of a banking or finance company by way of security for the purposes of a transaction entered into in the ordinary course of its business as such—

(*a*) any interest under the charge, whether of the banking or finance company or a nominee for it, shall be disregarded; and

(*b*) if the banking or finance company or its nominee is the holder of the share or debenture, the person entitled to the equity of redemption shall be treated as the holder, whether he has a present right to redeem or not.

(3) Any interest under a contract for the transfer of any share or debenture or of any interest in any share or debenture shall, until execution of an instrument of transfer by the parties, be disregarded unless execution thereof is unreasonably delayed.

(4) Subject to sub-paragraph (2) of this paragraph, on execution of an instrument of transfer of a share or debenture, the transferee and not the transferor shall be treated as the holder, notwithstanding that the transfer requires registration with the company, unless registration is refused.

(5) Any interest of the company itself in any of its shares or debentures, and any lien or charge arising by operation of law and affecting any of the shares or debentures shall be disregarded.

Exceptions for Cases of Death and for family Settlements.

3.—(1) The basic conditions shall be subject to exceptions for—

(*a*) any shares or debentures forming part of the estate of a deceased holder thereof, so long as administration of his estate has not been completed; and

7TH SCH. —*cont.*

(*b*) any shares or debentures held by trustees on the trusts of a will or family settlement disposing of the shares or debentures, so long as no body corporate has for the time being any immediate interest under the said trusts other than—

(i) a body corporate established for charitable purposes only and having no right to exercise or control the exercise of any part of the voting power at any general meeting of the company;

(ii) a body corporate which is a trustee of the said trusts and has such an interest only by way of remuneration for acting as trustee thereof.

(2) For the purposes of this paragraph—

(*a*) shares or debentures held by trustees on trusts arising on an intestacy shall, if the shares or debentures or an interest therein formed part of the intestate's estate at the time of his death, be treated as if the trusts arose under a will disposing of the shares or debentures;

(*b*) the expression "family settlement" means a settlement made either—

(i) in consideration or contemplation of an intended marriage of the settlor or any of the settlor's issue or in pursuance of a contract entered into in consideration or contemplation of any such marriage; or

(ii) otherwise in favour of any of the following persons, that is to say the settlor, his parents and grandparents, and any other individual who at the date of the settlement is a member of the company or, in the case of a settlement of debentures, a member or debenture holder of the company, and the wife or husband and issue, and the wife or husband of any of the issue, of the settlor, his parents, or any such other individual, and persons taking in the event of a failure of the issue or any class of the issue of any person taking under the settlement;

(*c*) the expressions "parent", "grandparent" and "issue" shall be construed as if the stepchild, adopted child or illegitimate child of any person were that person's child;

(*d*) any reference to a wife or husband shall include a former wife or husband and a reputed wife or husband;

(*e*) the expression "will" includes any testamentary disposition;

(*f*) any reference to a will or family settlement disposing of any shares or debentures shall include a will or family settlement disposing of an interest under another will or family settlement disposing of the shares or debentures.

Exception for Cases of Disability.

4. Where the person entitled to any share or debenture or any interest in any share or debenture is of unsound mind or otherwise under any disability, and by reason thereof the share, debenture or interest is vested in an administrator, curator or other person on behalf of the person entitled thereto, then in relation to the share,

debenture or interest the person in whom it is so vested and the person entitled thereto shall be treated for the purposes of this Schedule as if they were the same person.

Exception for Trusts for Employees.

5. The basic conditions shall be subject to an exception for any shares or debentures held by trustees for the purposes of a scheme maintained for the benefit of employees of the company, including any director holding a salaried employment or office in the company.

Exception for Shares held by Exempt Private Companies.

6.—(1) The first of the basic conditions shall be subject to an exception for shares held by another private company which is itself an exempt private company :

Provided that this exception shall not apply, if, taking all the following companies together, that is to say—

(*a*) the company whose exemption is in question (hereafter in this Schedule referred to as "the relevant company") ;

(*b*) any company holding shares to which this exception has to be applied in determining the relevant company's right to be treated as an exempt private company ; and

(*c*) any further company taken into account for the purposes of this proviso in determining the right to be so treated of any company holding any such shares as aforesaid ;

the total number of persons holding shares in those companies is more than fifty, joint shareholders being treated as a single person and the companies themselves and (subject to sub-paragraph (4) of this paragraph) their employees and former employees being disregarded.

(2) Where the relevant company and another company hold shares in each other, the other company shall be treated for the purposes of the foregoing sub-paragraph as an exempt private company if—

(*a*) in determining its right to be so treated the exception in that sub-paragraph would apply to the shares in it held by the relevant company, on the assumption that the relevant company was an exempt private company ; and

(*b*) in all other respects the other company is entitled to be so treated ;

and where another company's right to be so treated depends on the application to any shares in it of that sub-paragraph, and the application thereof to those shares depends indirectly on the relevant company's right to be so treated, this sub-paragraph shall apply as if those shares were held by the relevant company.

(3) Where by virtue of this paragraph any shares are excepted from the first of the basic conditions, the second of those conditions shall be subject to an exception for any interest in those shares which any person has by virtue of debentures of the company holding those shares, or as trustee of a deed for securing an issue of debentures of that company.

7TH SCH. —*cont.*

(4) In the proviso to sub-paragraph (1) of this paragraph, the direction that employees and former employees of the companies shall be disregarded in computing the number of shareholders shall not apply to a person holding shares in a company of which he is not for the time being an employee unless, having been formerly in the employment of that company, he held, while in that employment, and has continued after the determination of that employment to hold, shares in that company.

Exception for Banking or Finance Company providing Capital.

7.—(1) The first of the basic conditions shall be subject to an exception for any shares or debentures held by or by a nominee for a banking or finance company, where the banking or finance company acquired the shares or debentures or its interest therein in the ordinary course of its business as such and by arrangement with the relevant company or its promoters:

Provided that this exception shall not apply if the banking or finance company has the right (or, where there is more than one such company holding shares or debentures to which this exception has to be applied in determining the relevant company's right to be treated as an exempt private company, they have between them the right) to exercise or control the exercise of one fifth or more of the total voting power at any general meeting of the relevant company.

(2) Where by virtue of the foregoing sub-paragraph any shares or debentures are excepted from the first of the basic conditions, the second of those conditions shall be subject to an exception for the banking or finance company itself, where the shares or debentures are held by a nominee for it, and for any interest in those shares or debentures which any person has by virtue of debentures of the banking or finance company or as trustee of a deed for securing an issue of debentures of that company.

Exceptions for Bankruptcies, Liquidations, etc.

8. The basic conditions shall be subject to exceptions for—

(*a*) any shares or debentures forming part of the assets in a bankruptcy or liquidation of a holder thereof; and

(*b*) any shares or debentures held either—

(i) on trusts created for the benefit of his creditors generally by a person having an interest therein; or

(ii) otherwise for the purposes of any composition or scheme made or approved under any Act by a court or an officer of a court for arranging the affairs of such a person.

Meaning of "banking or finance company".

9. In this Schedule the expression "banking or finance company" means any body corporate or partnership whose ordinary business includes the business of banking and any other body corporate whose

ordinary business includes the business of lending money or of subscribing for shares or debentures, except that it does not include any such other body corporate unless either— 7TH SCH. —*cont.*

(*a*) its shares are quoted or dealt in on a recognised stock exchange; or

(*b*) it is designated for the purposes of this paragraph by order of the Board of Trade; or

(*c*) it is a subsidiary of a body corporate whose shares are so quoted or dealt in or which is so designated.

EIGHTH SCHEDULE.

Sections 56, 149, 152, 157, 454.

ACCOUNTS.

PRELIMINARY.

1. Paragraphs 2 to 11 of this Schedule 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 Part II of this Schedule in the case of a holding company and by Part III thereof in the case of companies of the classes there mentioned; and this Schedule has effect in addition to the provisions of sections one hundred and ninety-six and one hundred and ninety-seven of this Act.

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, and the earliest date on which the company has power to redeem those shares;

(*b*) so far as the information is not given in the profit and loss account, any share capital on which interest has been paid out of capital during the financial year, and the rate at which interest has been so paid;

(*c*) the amount of the share premium account;

(*d*) particulars of any redeemed debentures which the company has power to re-issue.

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;

8TH SCH. —*cont.*

(*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) The reserves, provisions, liabilities and fixed and current assets shall be classified under headings appropriate to the company's business:

Provided that—

(*a*) where the amount of any class is not material, it may be included under the same heading as some other class; and

(*b*) where any assets of one class are not separable from assets of another class, those assets may be included under the same heading.

(2) Fixed assets shall also be distinguished from current assets.

(3) 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 the next following sub-paragraph, 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 at the commencement of this Act (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 commencement of this Act cannot be obtained without unreasonable expense or delay, be treated as if it were the amount of a valuation of those assets made at the commencement of this Act 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 a valuation so made of the remaining assets.

(2) The foregoing sub-paragraph shall not apply—

(*a*) to assets for which the figures relating to the period beginning with the commencement of this Act 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 trade marks.

8TH SCH. —*cont.*

(3) For the assets under each heading whose amount is arrived at in accordance with sub-paragraph (1) of this paragraph, there shall be shown—

(*a*) the aggregate of the amounts referred to in paragraph (*a*) of that sub-paragraph; and

(*b*) the aggregate of the amounts referred to in paragraph (*b*) thereof.

(4) As respects the assets under each heading whose amount is not arrived at in accordance with the said sub-paragraph (1) because their replacement is provided for as mentioned in sub-paragraph (2) (*b*) of this paragraph, 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. 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:

Provided that—

(*a*) this paragraph shall not require a separate statement of any of the said three amounts which is not material; and

(*b*) the Board of Trade may direct that it shall not require a separate statement of the amount of provisions where they are satisfied that that is not required in the public interest and would prejudice the company, but subject to the condition that any heading stating an amount arrived at after taking into account a provision (other than as aforesaid) shall be so framed or marked as to indicate that fact.

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 sub-headings, this paragraph shall apply to each of the separate amounts shown in the sub-headings instead of applying to the aggregate amount thereof.

8TH SCH. —*cont.*

8.—(1) There shall be shown under separate headings—

(*a*) the aggregate amounts respectively of the company's trade investments, quoted investments other than trade investments and unquoted investments other than trade investments;

(*b*) if the amount of the goodwill and of any patents and trademarks or part of that amount is shown as a separate item in or is otherwise ascertainable from the books of the company, or from any contract for the sale or purchase of any property to be acquired by the company, or from any documents in the possession of the company relating to the stamp duty payable in respect of any such contract or the conveyance of any such property, the said amount so shown or ascertained so far as not written off or, as the case may be, the said amount so far as it is so shown or ascertainable and as so shown or ascertained, as the case may be;

(*c*) the aggregate amount of any outstanding loans made under the authority of provisos (*b*) and (*c*) of subsection (1) of section fifty-four of this Act;

(*d*) the aggregate amount of bank loans and overdrafts;

(*e*) the net aggregate amount (after deduction of income tax) which is recommended for distribution by way of dividend.

(2) Nothing in head (*b*) of the foregoing sub-paragraph shall be taken as requiring the amount of the goodwill, patents and trademarks to be stated otherwise than as a single item.

(3) The heading showing the amount of the quoted investments other than trade investments shall be sub-divided, where necessary, to distinguish the investments as respects which there has, and those as respects which there has not, been granted a quotation or permission to deal on a recognised stock exchange.

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 trustee for the company, the nominal amount of the debentures and the amount at which they are stated in the books of the company shall be stated.

11.—(1) The matters referred to in the following sub-paragraphs shall be stated by way of note, or in a statement or report annexed, if not otherwise shown.

(2) The number, description and amount of any shares in the company which any person has an option to subscribe for, together with the following particulars of the option, that is to say—

(*a*) the period during which it is exercisable;

(*b*) the price to be paid for shares subscribed for under it.

(3) 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.

(4) Particulars of any charge on the assets of the company to secure the liabilities of any other person, including, where practicable, the amount secured.

(5) 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.

(6) Where practicable the aggregate amount or estimated amount, if it is material, of contracts for capital expenditure, so far as not provided for.

(7) 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.

(8) The aggregate market value of the company's quoted investments, other than trade 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.

(9) The basis on which foreign currencies have been converted into sterling, where the amount of the assets or liabilities affected is material.

(10) The basis on which the amount, if any, set aside for United Kingdom income tax is computed.

(11) Except in the case of the first balance sheet laid before the company after the commencement of this Act, 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.—(1) 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 United Kingdom income tax and other United Kingdom taxation on profits, including, where practicable, as United Kingdom income tax any taxation imposed elsewhere to the extent of the relief, if any, from United Kingdom income tax 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, if material, set aside or proposed to be set aside to, or withdrawn from, reserves;

(*f*) subject to sub-paragraph (2) of this paragraph, the amount, if material, 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;

8TH SCH. —*cont.*

(*g*) the amount of income from investments, distinguishing between trade investments and other investments ;

(*h*) the aggregate amount of the dividends paid and proposed.

(2) The Board of Trade may direct that a company shall not be obliged to show an amount set aside to provisions in accordance with sub-paragraph (1) (*f*) of this paragraph, if the Board is satisfied that that is not required in the public interest and would prejudice the company, but subject to the condition that any heading stating an amount arrived at after taking into account the amount set aside as aforesaid shall be so framed or marked as to indicate that fact.

13. If the remuneration of the auditors is not fixed by the company in general meeting, the amount thereof shall be shown under a separate heading, and for the purposes of this paragraph, any sums paid by the company in respect of the auditors' expenses shall be deemed to be included in the expression " remuneration ".

14.—(1) The matters referred to in the following sub-paragraphs 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.

(3) The basis on which the charge for United Kingdom income tax is computed.

(4) Whether or not the amount stated for dividends paid and proposed is for dividends subject to deduction of income tax.

(5) Except in the case of the first profit and loss account laid before the company after the commencement of this Act the corresponding amounts for the immediately preceding financial year for all items shown in the profit and loss account.

(6) 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 OR 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.

(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 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 of this Schedule 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, sub-paragraph (1) (*a*) of paragraph 12, and sub-paragraph (2) of paragraph 14 of this Schedule 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 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 and is not dealt with in the company's accounts, of the subsidiaries' profits after deducting the subsidiaries' losses (or vice versa)—

(i) for the respective financial years of the subsidiaries ending with or during the financial year of the company; and

(ii) for their previous financial years since they respectively became the holding company's subsidiary;

(*c*) the net aggregate amount of the subsidiaries' profits after deducting the subsidiaries' losses (or vice versa)—

(i) for the respective financial years of the subsidiaries ending with or during the financial year of the company; and

(ii) for their other financial years since they respectively became the holding company's subsidiary;

so far as those profits are dealt with, or provision is made for those losses, in the company's accounts;

(*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 sub-paragraph is not obtainable, a statement that it is not obtainable:

8TH SCH. —*cont.*

Provided that the Board of Trade may, on the application or with the consent of the company's directors, direct that in relation to any subsidiary this sub-paragraph shall not apply or shall apply only to such extent as may be provided by the direction.

(5) Paragraphs (*b*) and (*c*) of the last foregoing sub-paragraph 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, and the profits or losses attributable to any shares in a subsidiary for the time being held by the holding company or any other of its subsidiaries shall not (for that or any other purpose) be treated as aforesaid 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, except that they may in a proper case be so treated where—

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

(*b*) the shares were acquired from that body corporate or a subsidiary of it;

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.

(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 that 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 the following paragraphs of this Part of this Schedule, 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 of this Schedule, 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 one hundred and ninety-six and one hundred and ninety-seven of this Act shall not, by virtue of the two last foregoing paragraphs, apply for the purpose of the consolidated accounts.

20. Paragraph 7 of this Schedule shall not apply for the purpose of any consolidated accounts laid before a company with the first balance sheet so laid after the commencement of this Act.

21. In relation to any subsidiaries of the holding company not dealt with by the consolidated accounts—

(*a*) sub-paragraphs (2) and (3) of paragraph 15 of this Schedule 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 sub-paragraph (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 sub-paragraph (6) of paragraph 15 of this Schedule 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 of this Schedule other than—

(*a*) as respects its balance sheet, those of paragraphs 2 and 3, paragraph 4 (so far as it relates to fixed and current assets), paragraph 8 (except sub-paragraph (1) (*d*)), paragraphs 9 and 10, and paragraph 11 (except sub-paragraph (8)); and

(*b*) as respects its profit and loss account, those of sub-paragraph (1) (*h*) of paragraph 12, paragraph 13 and sub-paragraphs (1), (4) and (5) 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.

8TH SCH. —*cont.*

(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 the said 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 the expression " banking or discount company" means any company which satisfies the Board of Trade that it ought to be treated for the purposes of this Schedule as a banking company or as a discount company.

24.—(1) In relation to an assurance company within the meaning of the Assurance Companies Acts, 1909 to 1946, which is subject to and complies with the requirements of those Acts as respects the preparation and deposit with the Board of Trade of a balance sheet and profit and loss account, the foregoing paragraph shall apply as it applies in relation to a banking or discount company, and such an assurance company shall also not be subject to the requirements of sub-paragraphs (1) (*a*) and (3) of paragraph 8 and sub-paragraphs (4) to (7) and sub-paragraph (10) of paragraph 11 of this Schedule:

Provided that the Board of Trade may direct that any such assurance company whose business includes to a substantial extent business other than assurance business shall comply with all the requirements of the said Part I or such of them as may be specified in the direction and shall comply therewith as respects either the whole of its business or such part thereof as may be so specified.

(2) Where an assurance company is entitled to the benefit of this paragraph, then any wholly owned subsidiary thereof shall also be so entitled if its business consists only of business which is complementary to assurance business of the classes carried on by the assurance company.

(3) For the purposes of this paragraph a company shall be deemed to be the wholly owned subsidiary of an assurance company if it has no members except the assurance company and the assurance company's wholly owned subsidiaries and its or their nominees.

25.—(1) A company to which this paragraph applies shall not be subject to the following requirements of this Schedule, that is to say—

(*a*) as respects its balance sheet, those of paragraph 4 (except so far as the said paragraph relates to fixed and current assets) and paragraphs 5, 6 and 7; and

(*b*) as respects its profit and loss account, those of sub-paragraph (1) (*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 as respects matters to be stated in its accounts or by way of note thereto and as respects information to be furnished to the Board of Trade or a person authorised by them 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 requirements of Part I

of this Schedule from which the company is exempt by virtue of this paragraph, not to give the true and fair view required by this Act.

(3) 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 Board of Trade desirable in the national interest:

Provided that, if the Board of Trade are satisfied that any of the conditions prescribed for the purposes of this paragraph has not been complied with in the case of any company, they 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 of this Schedule is a holding company, the reference in Part II of this Schedule 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, unless the context otherwise requires,—

(*a*) the expression "provision" shall, subject to sub-paragraph (2) of this paragraph, 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*) the expression "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*) the expression "capital reserve" shall not include any amount regarded as free for distribution through the profit and loss account and the expression "revenue reserve" shall mean any reserve other than a capital reserve;

and in this paragraph the expression "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 commencement of this Act; 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.

8TH SCH. —*cont.*

28. For the purposes aforesaid, the expression "quoted investment" means an investment as respects which there has been granted a quotation or permission to deal on a recognised stock exchange, or on any stock exchange of repute outside Great Britain, and the expression "unquoted investment" shall be construed accordingly.

Section 162.

NINTH SCHEDULE.

MATTERS TO BE EXPRESSLY STATED IN AUDITORS' REPORT.

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 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 Eighth Schedule to this Act are not required to be disclosed.

4. In the case of a holding company submitting 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 Eighth Schedule to this Act are not required to be disclosed.

TENTH SCHEDULE.

Section 277

ORDERS IN COURSE OF WINDING UP PRONOUNCED IN VACATION IN SCOTLAND.

PART I.

ORDERS WHICH ARE TO BE FINAL.

Orders under section two hundred and sixty-four as to the time for proving debts and claims.

Orders under section two hundred and sixty-eight as to the attendance of, and production of documents by, persons indebted to, or having property of, or information as to the affairs or property of, a company.

Orders under section three hundred and forty-six as to meetings for ascertaining wishes of creditors or contributories.

Orders under section three hundred and forty-nine as to the examination of witnesses in regard to the property or affairs of a company.

PART II.

ORDERS WHICH ARE TO TAKE EFFECT UNTIL MATTER DISPOSED OF BY INNER HOUSE.

Orders under section two hundred and twenty-six, two hundred and thirty-one, two hundred and fifty-six, three hundred and ninety-seven, four hundred and two or four hundred and three restraining or permitting the commencement or the continuance of legal proceedings.

Orders under subsection (4) of section two hundred and thirty-eight limiting the powers of provisional liquidators.

Orders under section two hundred and forty-two, three hundred and four or three hundred and fourteen appointing a liquidator to fill a vacancy, or appointing (except to fill a vacancy caused by the removal of a liquidator by the court) a liquidator for a winding up voluntarily or subject to supervision.

Orders under section two hundred and forty-five sanctioning the exercise of any power by a liquidator other than the powers specified in paragraphs (*c*), (*d*), (*e*) and (*f*) of subsection (1).

Orders under section two hundred and fifty-eight requiring the delivery of property or documents to the liquidator.

Orders under section two hundred and seventy-one as to the arrest and detention of an absconding contributory and his property.

Orders under section three hundred and eleven for continuance of winding up subject to supervision.

Section 315.

ELEVENTH SCHEDULE.

PROVISIONS OF THIS ACT WHICH DO NOT APPLY IN THE CASE OF A WINDING UP SUBJECT TO SUPERVISION OF THE COURT.

Section.	*Subject Matter.*
235.	Statement of company's affairs to be submitted to official receiver.
236.	Report by official receiver.
237.	Power of court to appoint liquidators.
238.	Appointment and powers of provisional liquidator.
239.	Appointment, style, &c., of liquidators in England.
240.	Provisions where person other than official receiver is appointed liquidator.
241.	Provisions as to liquidators in Scotland.
242 except subs. (5).	General provisions as to liquidators.
246.	Exercise and control of liquidator's powers in England.
247.	Books to be kept by liquidator in England.
248.	Payments of liquidator in England into bank.
249.	Audit of liquidator's accounts in England.
250.	Control of Board of Trade over liquidators in England.
251.	Release of liquidators in England.
252.	Meetings of creditors and contributories to determine whether committee of inspection shall be appointed.
253.	Constitution and proceedings of committee of inspection.
254.	Powers of Board of Trade in England where no committee of inspection.
255.	Additional powers of committee of inspection in Scotland.
263.	Appointment in England of special manager.
270.	Power in England to order public examination of promoters and officers.
273.	Delegation to liquidator of certain powers of court in England.
368.	Power in England to appoint official receiver as receiver for debenture holders or creditors.

TWELFTH SCHEDULE.

Sections 425, 454.

FEES TO BE PAID TO THE REGISTRAR OF COMPANIES.

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 5s. 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 1s. 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 5s. 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 £20.
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.

12TH SCH. —*cont.*

Matter in respect of which Fee is payable.	*Amount of Fee.*
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 other than the memorandum or the abstract required to be delivered to the registrar by a receiver or manager, the statement required to be sent to the registrar by the liquidator in a winding up in England or a document required to be delivered under section four hundred and sixteen of this Act.	Five shillings.
For making a record of any fact by this Act required or authorised to be recorded by the registrar.	Five shillings.

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 twenty pounds.

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 fifty pounds.

Sections 433, 454.

THIRTEENTH SCHEDULE.

FORM OF STATEMENT TO BE PUBLISHED BY BANKING AND INSURANCE COMPANIES AND DEPOSIT, PROVIDENT OR BENEFIT SOCIETIES.

*The share capital of the company is , divided into shares of each.
The number of shares issued is

Calls to the amount of pounds per share have been made, under which the sum of pounds has been received.

The liabilities of the company on the first day of January (*or* July) were—

Debts owing to sundry persons by the company.

On judgment, £

On specialty, £

On notes or bills, £

On simple contracts, £

On estimated liabilities, £

The assets of the company on that day were—

Government securities [*stating them*]

Bills of exchange and promissory notes, £

Cash at the bankers, £

Other securities, £

* If the company has no share capital the portion of the statement relating to capital and shares must be omitted.

FOURTEENTH SCHEDULE

Section 435.

PROVISIONS OF THIS ACT APPLIED TO UNREGISTERED COMPANIES.

Subject matter.	*Provisions applied.*	*Limitations on Application.*
Prospectuses and allotments.	Sections thirty-seven to forty-six, fifty, fifty-one and fifty-five, and the Fourth Schedule.	To apply so far only as may be specified by regulations made by the Board of Trade and to such bodies corporate as may be so specified.
Annual return ...	Sections one hundred and twenty-four to one hundred and twenty-nine and four hundred and thirty-two, and the Sixth and Seventh Schedules.	Not to apply so as to require particulars in respect of any period before the commencement of this Act, and as respects 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 one hundred and forty-seven to one hundred and sixty-three, one hundred and ninety-six, one hundred and ninety-seven and four hundred and thirty-three, the Eighth Schedule (except sub-paragraphs (*a*) to (*d*) of paragraph 2, sub-paragraphs (*c*), (*d*) and (*e*) of paragraph 3 and sub-paragraph (1)(*c*) of paragraph 8) and the Ninth Schedule.	To apply so far only as may be specified as aforesaid and to such bodies corporate as may be so specified.
Investigations ...	Sections one hundred and sixty-four to one hundred and seventy-five.	—
Register of directors and secretaries.	Section two hundred.	—
Registration of documents, enforcement and other supplemental matters.	Sections one hundred and ninety-eight, four hundred and twenty-five to four hundred and twenty-eight, four hundred and thirty-six to four hundred and thirty-eight, four hundred and forty to four hundred and forty-six and four hundred and fifty, subsection (1) of section four hundred and fifty-four, section four hundred and fifty-five and the Twelfth and Fifteenth Schedules.	To apply so far only as they have effect in relation to provisions applying by virtue of the foregoing entries in this Schedule.

Section 438.

FIFTEENTH SCHEDULE.

PROVISIONS REFERRED TO IN SECTION 438 OF THIS ACT.

Section or provision of Schedule.	*Subject matter.*
15.	Conclusiveness of certificate of incorporation.
30.	Statement in lieu of prospectus to be delivered to registrar by company on ceasing to be private company.
38.	Matters to be stated and reports to be set out in prospectus.
48.	Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to registrar.
52.	Return as to allotments.
95.	Registration of charges created by companies registered in England.
96 (1).	Duty of company to register charges created by company.
97.	Duty of company to register charges existing on property acquired.
106.	Application of Part III to charges created, and property subject to charge acquired, by company incorporated outside England.
109.	Restrictions on commencement of business.
125 (except para. (*a*) of subs. (1)).	Particulars in annual return of company not having a share capital.
128.	Certificates to be sent by private company with annual return.
129 (1).	Certificate of satisfaction of conditions constituting a company an exempt private company.
130.	Statutory meeting and statutory report.
162 (1), (3).	Auditors' report and right to information and explanations.
181.	Restrictions on appointment or advertisement of director.
305.	Notice by liquidator of his appointment.
372 (2).	Abstract of receiver's receipts and payments.
374.	Delivery to registrar of accounts of receivers and managers.
407.	Documents, &c., to be delivered to registrar by oversea companies carrying on business in Great Britain.
409.	Return to be delivered to registrar by oversea company where documents, &c., altered.
410.	Accounts of oversea company.
411.	Obligation to state name of oversea company, whether limited, and country where incorporated.
451.	Annual report by Board of Trade.
Sch. VI, Part I, paras. 2, 4, 6.	Particulars in annual return of company having a share capital.

SIXTEENTH SCHEDULE.

Section 456.

AMENDMENTS OF OTHER ACTS.

The Assurance Companies Acts, 1909 to 1946.

1. The Assurance Companies Acts, 1909 to 1946, shall have effect as if—

(*a*) for subsection (4) of section two of the Assurance Companies (Winding Up) Act, 1933, as substituted by the Assurance Companies (Winding Up) Act, 1935, there were substituted the following subsection :— 23 & 24 Geo. 5. c. 9. 25 & 26 Geo. 5. c. 45.

"(4) Where an appointment is made under this section the provisions of sections one hundred and sixty-six and one hundred and sixty-seven of the Companies Act, 1948, shall apply with respect to an inspector appointed under this section in like manner as they apply to an inspector appointed under section one hundred and sixty-four of that Act, and any such refusal as under subsection (3) of the said section one hundred and sixty-seven 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 one hundred and sixty-six, shall also be a ground on which the company may, on the petition of the Board of Trade presented by leave of the court, be wound up by the court in accordance with the provisions of the Companies Act, 1948"; and

(*b*) the powers conferred on the Board of Trade and the Industrial Assurance Commissioner respectively by virtue of subsection (3) of section seven of the Assurance Companies Act, 1946, to make regulations providing for the modification, in consequence of the passing of that Act, of the forms set out in the Schedule to the Assurance Companies Act, 1909, extended to the modification, having regard to the provisions of the Eighth Schedule to this Act, of any form set out in the Schedules to either of those Acts. 9 & 10 Geo. 6. c. 28.

The Prevention of Fraud (Investments) Act, 1939.

2.—(1) Subsection (2) of section two of the Prevention of Fraud (Investments) Act, 1939, shall have effect as if for paragraphs (*b*), (*c*) and (*d*) thereof there were substituted the following paragraphs :—

"(*b*) issuing any prospectus to which—

(i) section thirty-eight of the Companies Act, 1948, applies or would apply if not excluded by paragraph (*b*) of subsection (5) of that section or by section thirty-nine of that Act; or

16TH SCH. —*cont.*

(ii) section four hundred and seventeen of that Act applies or would apply if not excluded by paragraph (*b*) of subsection (5) of that section or by section four hundred and eighteen of that Act;

(*c*) issuing any document relating to securities of a corporation incorporated in Great Britain which is not a registered company, being a document which—

(i) would, if the corporation were a registered company, be a prospectus to which section thirty-eight of the Companies Act, 1948, applies or would apply if not excluded by paragraph (*b*) of subsection (5) of that section or by section thirty-nine of that Act; and

(ii) contains all the matters and is issued with the consents which, by virtue of sections four hundred and seventeen and four hundred and nineteen of that Act it would have to contain and be issued with if the corporation were a company incorporated outside Great Britain and the document were a prospectus issued by that company; and

(*d*) issuing any form of application for shares in, or debentures of, a corporation together with—

(i) a prospectus which complies with the requirements of section thirty-eight of the Companies Act, 1948, or is not required to comply therewith because excluded by paragraph (*b*) of subsection (5) of that section or by section thirty-nine of that Act, or complies with the requirements of Part X of that Act relating to prospectuses and is not issued in contravention of section four hundred and nineteen of that Act; or

(ii) in the case of a corporation incorporated in Great Britain which is not a registered company, a document containing all the matters and issued with the consents mentioned in sub-paragraph (ii) of paragraph (*c*) of this subsection".

(2) Subsection (2) of section thirteen of the said Act shall have effect as if for paragraphs (*a*) and (*b*) thereof there were substituted the following paragraphs:—

"(*a*) in relation to any distribution of a prospectus to which section thirty-eight of the Companies Act, 1948, applies or would apply if not excluded by paragraph (*b*) of subsection (5) of that section or by section thirty-nine of that Act or section four hundred and seventeen of that Act applies or would apply if not excluded by paragraph (*b*) of subsection (5) of that section or by section four hundred and eighteen of that Act, or in relation to any distribution of a document relating to securities of a corporation incorporated in Great Britain which is not a registered company, being a document which—

(i) would, if the corporation were a registered company, be a prospectus to which the said section thirty-eight applies or would apply if not excluded as aforesaid; and

(ii) contains all the matters and is issued with the consents which, by virtue of sections four hundred and seventeen and four hundred and nineteen of that Act it would have to contain and be issued with if the corporation were a company incorporated outside Great Britain and the document were a prospectus issued by that company;

(*b*) in relation to any issue of a form of application for shares in, or debentures of, a corporation, together with—

(i) a prospectus which complies with the requirements of section thirty-eight of the Companies Act, 1948, or is not required to comply therewith because excluded by paragraph (*b*) of subsection (5) of that section or by section thirty-nine of that Act, or complies with the requirements of Part X of that Act relating to prospectuses and is not issued in contravention of section four hundred and nineteen of that Act, or

(ii) in the case of a corporation incorporated in Great Britain which is not a registered company, a document containing all the matters and issued with the consents mentioned in sub-paragraph (ii) of paragraph (*a*) of this subsection,

or in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures, or ".

3. Sub-paragraph (iii) of paragraph (*a*) of subsection (3) of the said section thirteen shall have effect as if for the words " a subsidiary company as defined by section one hundred and twenty-seven of the Companies Act, 1929 ", there were substituted the words " a subsidiary company as defined by section one hundred and fifty-four of the Companies Act, 1948 ".

The Companies Act, 1947.

4. At the end of section fifty-eight of the Companies Act, 1947, there shall be added the following subsection:—

" (4) In this section the expression " director " includes any person occupying the position of director by whatever name called."

5.—(1) Subsections (1), (4) and (5) of section one hundred and fifteen of the Companies Act, 1947, shall have effect subject to the amendments respectively set out in sub-paragraphs (2), (3) and (4) of this paragraph.

(2) In subsection (1), for the words " subsections (1) to (6) of the section of this Act relating to preferential payments in a winding up " there shall be substituted the words " section ninety-one of this Act."

(3) In subsection (4), for the words " The provisions of this Act relating to a fraudulent preference of a surety or guarantor ", there shall be substituted the words " Section ninety-two of this Act ".

16TH SCH. —*cont.*

(4) In subsection (5), for the words "The provisions of this Act relating to the liability in respect of a rentcharge on land disclaimed under section two hundred and sixty-seven of the principal Act", there shall be substituted the words "Section ninety-nine of this Act".

6. In subsection (3) of section one hundred and seventeen of the Companies Act, 1947, for the words from "and subsections (3) to (6)" to the end of the subsection there shall be substituted the words "and section one hundred and sixty-seven of the Companies Act, 1948, subsection (1) of section one hundred and sixty-eight thereof and so much of subsection (2) of that section as relates to forwarding a copy of the inspector's report to the registered office of the company shall apply in relation to an inspector appointed under this section as they apply in relation to an inspector appointed under section one hundred and sixty-four of that Act, but with the substitution for references to the company or other body corporate and its affairs of references to the manager under the scheme and to the administration of the scheme".

SEVENTEENTH SCHEDULE.

Section 459.

ENACTMENTS REPEALED.

PART I.

GENERAL REPEALS.

Session and Chapter.	Short Title.	Extent of Repeal.
19 & 20 Geo. 5. c. 23.	The Companies Act, 1929.	The whole Act.
24 & 25 Geo. 5. c. 23.	The Workmen's Compensation (Coal Mines) Act, 1934.	In section three, in subsection (6), the words from "and (*b*)" to the end of paragraph (*c*), and the words "or the company, as the case may be".
25 & 26 Geo. 5. c. 8.	The Unemployment Insurance Act, 1935.	In section twenty, subsection (1).
26 Geo. 5 & 1 Edw. 8. c. 32.	The National Health Insurance Act, 1936.	In section one hundred and seventy-seven, subsection (1).
1 Edw. 8. & 1 Geo. 6. c. 54.	The Finance Act, 1937.	In Part III of the Fifth Schedule, in paragraph 5, the words from "in the winding-up" to "that charge" and the words "and companies".
2 & 3 Geo. 6. c. 57.	The War Risks Insurance Act, 1939.	Section five.
5 & 6 Geo. 6. c. 21.	The Finance Act, 1942.	In section twenty, subsections (2) and (3), and in subsection (4) the words "and the last foregoing subsection shall not apply to a company registered in Scotland".
7 & 8 Geo. 6. c. 15.	The Reinstatement in Civil Employment Act, 1944.	In section eighteen, subsections (2) and (3), and subsection (4) so far as it relates to those subsections.
9 & 10 Geo. 6. c. 62.	The National Insurance (Industrial Injuries) Act, 1946.	In section seventy-one, subsection (1), and in the Ninth Schedule the entry relating to the Companies Act, 1929.
9 & 10 Geo. 6. c. 67.	The National Insurance Act, 1946.	In section fifty-five, subsection (1).
10 & 11 Geo. 6. c. 47.	The Companies Act, 1947.	Sections one to fifty-seven and fifty-nine to ninety.
		In section ninety-one, subsection (3), in subsection (4) the words "and two hundred and ninety-eight", in subsection (5) the words from "and in relation to" to the end of the subsection, and subsections (7) and (8).

17TH SCH. —*cont.*

Session and Chapter.	Short Title.	Extent of Repeal.
10 & 11 Geo. 6. c. 47—*cont.*	The Companies Act, 1947 —*cont.*	In section ninety-two, subsection one. Sections ninety-three to ninety-eight and one hundred to one hundred and fourteen. In section one hundred and fifteen, in subsection (1), the words "other than a company within the stannaries" and the words from "and also" to the end of the subsection. Sections one hundred and eighteen to one hundred and twenty-one. In section one hundred and twenty-two, in subsection (1), the words from "and, except" to the end of the subsection, and subsections (2) to (7). In section one hundred and twenty-three, in subsection (1), the words from "and this Act" to the end of the subsection, and subsection (3) so far as it relates to Part I of the Ninth Schedule. The First to Eighth Schedules, and Part I of the Ninth Schedule.

PART II.

PROVISIONS OF THE COMPANIES ACT, 1947, REPEALED EXCEPT FOR PURPOSES OF SECTION ONE HUNDRED AND FIFTEEN THEREOF.

Provision.	*Extent of Repeal.*
Section ninety-one ...	The whole section except so far as it has effect for the purposes of subsection (1) of section one hundred and fifteen of the Companies Act, 1947.
Section ninety-two ...	The whole section except as applied by subsection (4) of the said section one hundred and fifteen.
Section ninety-nine ...	The whole section except as applied by subsection (5) of the said section one hundred and fifteen.

EIGHTEENTH SCHEDULE.

Section 459.

ENACTMENTS SAVED.

AN ACT TO REGULATE JOINT STOCK BANKS IN ENGLAND. (7 & 8 Vict. c. 113, s. 47).

Existing companies to have the powers of suing and being sued.

Every company of more than six persons established on the sixth day of May, one thousand eight hundred and forty-four, for the purpose of carrying on the trade or business of bankers within the distance of sixty-five miles from London, and not within the provisions of the Act passed in the session of the seventh and eighth years of Queen Victoria, chapter one hundred and thirteen, intituled "An Act to regulate Joint Stock Banks in England," shall have the same powers and privileges of suing and being sued in the name of any one of the public officers of such co-partnership as the nominal plaintiff, petitioner, or defendant on behalf of such co-partnership; and all judgments, decrees, and orders made and obtained in any such suit may be enforced in like manner as is provided with respect to such companies carrying on the said trade or business at any place in England exceeding the distance of sixty-five miles from London under the provisions of the Country Bankers Act, 1826, provided that such first-mentioned company shall make out and deliver from time to time to the Commissioners of Inland Revenue the several accounts or returns required by the last-mentioned Act, and all the provisions of the last-recited Act as to such accounts or returns shall be taken to apply to the accounts or returns so made out and delivered by such first-mentioned companies as if they had been originally included in the provisions of the last-recited Act.

THE JOINT STOCK BANKING COMPANIES ACT, 1857, PART OF S. 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.

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