

# ANNOTATED LAWS OF PALESTINE

A STATEMENT OF THE STATUTE LAW  
OF PALESTINE IN ALPHABETICAL ORDER  
WITH CROSS-REFERENCES, ANNOTATIONS  
TO DECIDED CASES, NOTES ON PRACTICE, ETC.

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COMPANIES

S. B U R S I, L A W P U B L I S H E R  
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in Palestine and so far as provision is not otherwise made in this Ordinance and, in particular but without prejudice to the foregoing power, with regard to the following matters, namely—

- (a) the exercise and performance by the liquidator as an officer of the court of all or any of the powers and duties conferred or imposed upon the court by this Ordinance in respect of:
- (i) holding and conducting meetings to ascertain the wishes of creditors and contributories to protect their respective rights;
  - (ii) settling lists of contributories and rectifying the register of members, when required;
  - (iii) collecting, applying and distributing the assets;
  - (iv) requiring delivery of property or documents to the liquidator;
  - (v) fixing a time within which debts and claims must be proved;
- (b) the disposal of moneys arising out of a liquidation pending distribution thereof;
- (c) fees to be paid in respect of proceedings under this Part;
- (d) payment of costs incurred by the official receiver in relation to any winding-up under this Ordinance out of the assets of the company or otherwise;
- (e) forms to be used in connection with this Part;
- (f) the regulation of the delivery and form or statement reports or accounts to be lodged with the official receiver under the provisions of this Part;
- (g) the carrying into effect of the objects of section 207.

*Source:* Sec. 305(1) of the Act under which Rules are made by the Lord Chancellor with the concurrence of the President of the Board of Trade. But the Act does not specify the matters regarding which rules may be made.

*Rules:* For the general authority of the Chief Justice to make Rules of Court, see art. 49 of the Palestine Order in Council. And see *CIVIL PROCEDURE*. "General rules" are defined in sec. 2(1) as general rules made under the Ordinance.

"So far as provision is not otherwise made": See secs. 235(3), 243(1) and 257, which give additional powers.

See the Winding Up Rules, which follow the text of the Ordinance, and the notes thereto.

The Official Receiver is empowered by r. 179 to issue Orders and Regulations which are not of a judicial character.

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*Removal of defunct companies from register.*

Registrar may  
strike defunct  
company off  
register.

242. (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 enquiring 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 to the company or the liquidator, if any, a like notice as is provided in the last preceding 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 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 that 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 a certified copy of the order being filed with the registrar, 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) 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 director or officer of the company or, if there is no director or officer of the company whose name and address are known to the registrar of companies, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

*Source:* Sec. 295 of the Act.

Sec secs. 188 and 206.

*Sub-sec. (3):*

*Form:* For a form of notice, see P.G. 1404 of 26.4.43, p. 523.

*Sub-sec. (5):* For a form of notice, see P.G. 1406 of 3.5.45, p. 553.

*Sub-sec. (6):*

*Application to Court:* For the Court having jurisdiction see sec. 150 and notes.

For the procedure applicable see the notes following the definition of "Court", in sec. 2(1), *ante* pp. 19-23. The following particulars of the English practice are given in connection with the remarks appearing at the bottom of p. 20: Applications in England are made by petition under O. 53B, r. 5(h). The ordinary R.S.C. apply to the proceedings (r. 3) which are entitled in the High Court of Justice, Chancery Division, in the matter of the Company and in the matter of "The Companies Act, 1929".

242A. Subject to general rules any affidavit required to be sworn under the provisions or for the purposes of this Ordinance may be sworn before any Judge, Registrar of the Court or Magistrate, Official Receiver or, in the case of a person who is out of Palestine, before a Magistrate or Justice of the Peace or other person qualified to administer oaths in the country where he resides, he being certified to be a Magistrate or Justice of the Peace, or qualified as aforesaid by a British Ambassador, Envoy, Minister, Charge d'Affaires and Secretary of Embassy or Legation, exercising his functions in any

Swearing  
affidavits.

foreign country, and any British Consul-General, Consul, Vice-Consul, Acting Consul, Pro-Consul and Consular Agent, exercising his functions in any foreign place, or by a Notary Public.

This and the following section were enacted by the 1939 Amendment Ordinance.

Like sec. 238, which it enlarges, it was taken from sec. 293 of the Act. Instead of being enacted as a separate provision, this section should have replaced sec. 238 which is now in any event repealed by implication, having been rendered obsolete by these new provisions. *Cf.* sec. 118 of the Bankruptcy Ordinance (Vol. II, p. 385).

*Subject to General Rules:* See W.U. Rules, notes to r. 20 and rr. 21 *sqq.*, r. 76.

As regards documents sworn abroad, see also the Evidence Ordinance.

Exemptions  
of deeds,  
etc. from  
stamp duty.

242B. In the case of a winding up by the court of a company, every deed, transfer, or other instrument relating solely to immovable property or to any mortgage, charge or other encumbrance on, or any right or interest in, any property movable or immovable, which forms part of the assets of the company and which, after the execution of such instrument is, or remains part of the assets of the company and every power of attorney, proxy paper, order, certificate, affidavit, bond or other instrument in writing relating solely to the property of any company which is being wound up or to any proceedings under any such winding up, shall be exempt from stamp duty, except in respect of fees under this Ordinance.

See notes to the preceding section as regards enactment.

The section is adapted from sec. 281 of the Act and see also sec. 124 of the Bankruptcy Ordinance, 1936 (Vol. II, p. 387).

The section was adopted too freely from the English model, without taking into account the differences of the two legal systems; the result is very confused.

Stamp duty is not in Palestine payable on dispositions of immovable property, whether transfer or mortgage. Nor is stamp duty payable on proxies or affidavits. The word "deed" is also misplaced (see *ante* p. 179). The words "except in respect of fees under this Ordinance" gives the false impression that any of the instruments enumerated above attract stamp duty under the Ordinance.

## PART VII. — REGISTRATION OFFICE AND FEES.

Registration  
office.

243. (1) The High Commissioner shall appoint a registrar of companies who shall have an office in Jerusalem, and may also appoint such other officers as he may think necessary and may make rules with respect to their duties and may remove any persons so appointed.

(2) The High Commissioner may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies.

(3) Any person may inspect the documents kept by the registrar on payment of such fees as may be appointed by the High Commissioner not exceeding fifty mils for each inspection, and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document which is required to be lodged under the provisions of this Ordinance, to be certified by the registrar, on payment for the certificate, certified copy or extract of such fees as the High Commissioner may, by order, appoint, not exceeding fifty mils for a certificate of incorporation and not exceeding twenty mils for each hundred words of a certified copy or extract.

(4) A copy of, or extract from, any document kept and registered by the registrar, 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.

(5) Whenever any act is by this Ordinance directed to be done to or by the registrar of companies, it shall, until the High Commissioner otherwise directs, be done to or by the existing registrar of companies, or, in his absence, to or by such person as the High Commissioner may for the time being authorise; but, in the event of the High Commissioner altering the constitution of the existing registry office, any such act shall be done to or by such officer and at such place as the High Commissioner may appoint.

*Source:* Sub-sec. (1) is similar in terms to sec. 312(2) of the Act which empowers the Board of Trade to make the appointments. Sub-sec. (2) is taken from sec. 312(5) of the Act, with this same difference, and the same applies to sub-sec. (3) from sec. 314(1) and sub-sec. (5) from sec. 312(6). Sub-sec. (4) is taken from sec. 314(3).

*Amendments:* The Statute Law Revision Ordinance substituted the words "rules" for "regulations" in sub-sec. (1) and added the words "by order" in sub-sec. (3).

*Sub-sec. (1):* No rules have been made under this section. For the powers to make rules, see sec. 241 (which refers to winding up) and notes.

*Appointment:* By order made on the 30.3.42 (P.G. 1183 of 2.4.42, sup. 2, p. 624) the Administrator General was appointed Registrar of Companies.

*Powers:* The functions and powers of the Registrar are detailed in the Ordinance. The remedy available to any person aggrieved by a decision of the Registrar is by way of petition to the High Court for an order directed against the Registrar. See, the Courts Ordinance, sec. 7(b), *CIVIL PROCEDURE*.

*Sub-sec. (3)*: The words "by order" following the words "High Commissioner" where they appear for the second time, were inserted by the Statute Law Revision Ordinance.

The following Order, dated 11.11.1929 and promulgated on 16.11.29 (*vide* Drayton Vol. III, p. 1661) was made under this sub-section.

Short title.	1. This order may be cited as the Companies (Fees) Order.
Fees for inspection, etc.	2. The fee payable for each inspection of documents kept by the Registrar in the Registry of Companies shall be fifty mils, and the fee payable for a certificate of the incorporation of a company shall be fifty mils, and the fee for a certified copy or extract of any other document which is required to be lodged under the provisions of the Companies Ordinance with the Registrar shall be twenty mils for each hundred words of such copy or extract.

*Document*: This term is defined in sec. 2(1).

*Sub-sec. (4)*: See the definition of "document" in sec. 2(1).

*Sub-sec. (5)*: See also sec. 245.

Fees.

244. There shall be paid to the registrar in respect of the several matters mentioned in the sixth Schedule to this Ordinance the several fees therein specified, or such other fees as the High Commissioner may, by order, direct.

*Source*: Sec. 313(1) of the Act.

*Amendment*: The words "by order" were inserted before "from time to time" by the Statute Law Revision Ordinance. But the words "from time to time" were themselves omitted in Drayton (*semble*) by oversight.

*Cross-references*: See sec. 17 and notes. Notes to secs. 39(2) and 43.

*The Sixth Schedule*: An order dated 24.9.29 (P.G. 244 of 1.10.29, p. 1011) enacted the proviso to item (3) of Part I of the Sixth Schedule.

The fees set out in the Sixth Schedule were replaced by the Companies (Fees) Order, 1944<sup>(1)</sup>, made under this section. The new fees, set out in the Sixth Schedule to the Ordinance (*post*) are the fees appearing in the Schedule to the Order. They are exactly double the former fees.

Former registration office, registers, etc., continued.

245. (1) The office existing at the commencement of this Ordinance for registration of companies shall be continued as if it had been established under this Ordinance.

(2) Registers of companies kept in any such existing office shall be deemed part of the registers of companies to be kept under this Ordinance.

This section has no counterpart in the Act.

See also sec. 243(5).

Enforcement of duty of company, receiver or liquidator to make returns.

246. (1) If any company or any receiver of the property of a company or the liquidator of any company on whom a notice has

(1) P.G. 1324 of 16.3.44, sup. 2., p. 261.



been served requiring the company, the receiver or the liquidator, as the case may be, to make good any default within the meaning of this section fails to make good the default within fourteen days after the service of the notice, 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 of the company or the receiver or liquidator, as the case may be, 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 officers of the company responsible for the default, or by the receiver or liquidator, as the case may be.

(2) Nothing in this section shall be taken to prejudice the operation of any enactments imposing penalties on a company or its officers or on receivers or liquidators in respect of any default.

(3) In this section the expression "default" means, in the case of a company, failure to comply with any provision of this Ordinance which requires a company to file with or send to the registrar of companies any return, account or other document or to give any notice to him of any matter, and, in the case of a receiver or liquidator, failure to file, deliver or make any return, account or other document, or to give any notice which he is, by law, required to file, deliver, make or give.

*Source:* By adding, in sub-sec. (3) which has no counterpart in the Act, a definition of "default" for the purpose of the section, the draftsman succeeded in combining in sub-secs. (1) and (2) the effect of (in sub-sec. (1)) secs. 279(1), 311(1), 315(1) and (in sub-sec. (2)) 279(3), 311(3) and 315(3) of the Act. The working of the Act is consequently altered and the section is more concise than the corresponding provisions in England.

Sec. 279 of the Act deals with the enforcement of duties of liquidators, sec. 311 with duties of receivers and sec. 315 with duties of the Company.

But note that sec. 136 incorporates part of the provisions of sub-sec. (1).

*Sub-sec. (1):*

*Fourteen days:* See sec. 6 of the Interpretation Ordinance.

*Court:* See the notes following the definition of "Court" in sec. 2(1). In England (*vide ante*, pp. 20-1) applications to Court under secs. 311 and 315 of the Act are made by summons under O. 53B., r. 8(j). The R.S.C. applying to other proceedings also apply to such applications (r. 3), which are entitled in the High Court of Justice, Chancery Division, in the matter of the Company and in the matter of the Companies Act, 1929". (r. 4).

*Sub-sec. (2):* See also secs. 251-2 and notes.

*Sub-sec. (3):* "Document" is defined in sec. 2(1).

PART VIII. — APPLICATION OF ORDINANCE TO COMPANIES FORMED AND REGISTERED UNDER FORMER ORDINANCES OR OUTSIDE PALESTINE.

Application of Ordinance to companies formed under former companies Ordinances.

247. In the application of this Ordinance to existing companies, it shall apply in the same manner in the case of a company limited by shares as if the company had been formed and registered under this Ordinance as a company limited by shares; in the case of a company limited by guarantee, as if the company had been formed and registered under this Ordinance as a company limited by guarantee; and in the case of a company other than a limited company, as if the company had been formed and registered under this Ordinance 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 Ordinance then in force.

*Source:* Sec. 316 of the Act.

*Existing Companies:* are defined in sec. 2(1) as companies formed and registered under the 1919 or the 1921 Ordinances (see notes to sec. 1, *ante* p. 15). The remaining former Ordinances are not mentioned as they had been enacted in the form of amendments to the 1921, the principal Ordinance, which repealed the 1919 Ordinance. The 1921 Ordinance applied to companies registered under the Registration of Companies and Partnerships Ordinance, 1919.

Notwithstanding the provisions of this section, Table A does not apply to existing companies. See the definition of "articles" in sec. 2(1), and secs. 8 and 10.

A reference, in other laws, to "companies registered under the Companies Ordinance" would exclude "existing companies" (see also notes to sec. 239, *ante*). The Banking Ordinance applies, however, to existing companies. See *BANKING*, vol. II, p. 227(1). The Short Term Crop Loans Ordinance of 1935, which also made use of such an expression, was amended in 1936 so as to cover existing companies. See the enactments referred to in the notes to sec. 18(4), *ante* pp. 54-5.

*Cf.* Secs. 53A, 54 and notes.

"*Company limited by shares... by guarantee... unlimited Company*": See sec. 4 and notes.

Registration of foreign companies.

248. (1) No foreign company, not already registered as a foreign company in Palestine, shall establish a place of business in Palestine unless it is registered as a foreign company under this section.

(2) (i) The application for registration shall be made to the registrar within one month from the establishment of the place of business and shall be accompanied by the following documents—

(1) But note that sec. 3(1) of the Banking Ordinance does not refer to Companies registered under the 1921 Ordinance.

- (a) a certified copy of the charter, statutes or memorandum and articles of the company or other instrument constituting or defining the constitution of the company and, if the instrument is not written in the English language, a certified translation thereof;
- (b) a list of the directors of the company;
- (c) the names and addresses of some one or more persons resident in Palestine authorised to accept on behalf of the company service of process and any notices required to be served on the company;
- (d) a certified copy of a power of attorney enabling some person ordinarily resident in Palestine to act for the company in Palestine.

(ii) In the event of any alteration being made in any such instrument or in the directors or in the names or addresses of any such persons as aforesaid, the company shall, within the prescribed time, file with the registrar a notice of the alteration.

(3) The registrar shall submit the application to the High Commissioner who may, in his absolute discretion, authorise or refuse registration.

(4) There shall be paid to the registrar upon the registration of a company—

- (a) a fee of twenty five pounds or such other fee as may be prescribed or, in the case of a corporation not constituted for purposes of profit, a fee of ten pounds or such other fee as may be prescribed, and
- (b) a fee to be prescribed for the publication of the registration of the company in the *Gazette*:

Provided that no other fees in respect of its capital or, as the case may be, membership shall be payable.

(5) If any company to which this section applies fails to comply with any of the requirements thereof, the company and every officer or agent of the company who is knowingly a party to the default is guilty of an offence and is liable to a fine of fifty pounds or in the case of a continuing offence to a fine of five pounds for every day during which the default continues.

(6) For the purpose of this section—

“certified” means certified in the prescribed manner to be a true copy or a correct translation;

“place of business” includes a share transfer or share registration office.

*Source:* Sub-secs. (1) and (2) are taken from sec. 344(1) of the Act. Clause (ii) of sub-sec. (2) is taken from sec. 346. Sub-secs. (3) and (4) have no counterpart in the Act. Sub-sec. (5) is taken from sec. 351 (read together with sec. 365) and sub-sec. (6) from the definitions in sec. 352. Para. (d) of sub-sec. (2) is new.

There are verbal divergences. See notes to sub-sec. (2).

*Amendments:* See notes to sub-sec. (4)(a).

*Sub-sec. (1):*

"*Foreign company*": This includes associations which are not companies within the meaning of the Ordinance. See definitions in sec. 2(1). See also notes to sec. 250.

"*Place of business*": This includes a share transfer or share registration office (sub sec. (6)).

*Registration; when required:* The sub-section refers to foreign companies about to establish a place of business in Palestine. Under the former law (sec. 80 of the Companies Ordinance, 1921) companies "desirous of carrying on business in Palestine" had to register as foreign companies under that Ordinance. In a number of cases, decided prior to the enactment of the 1929 Ordinance, dealing with the registration of foreign companies, the question turned on the effect of the words "carrying on business in Palestine".

These cases<sup>(1)</sup> are to that extent obsolete. The cases under this section decided subsequently to the enactment of the present Ordinance deal with the expression "establish a place of business in Palestine". In C.D.C., T.A. 55/39<sup>(2)</sup> the Court overruled the defence based upon non-registration of the plaintiff company on the ground that the defendant had failed to prove that the plaintiff company had a place of business or warehouse in Palestine. In C.A.D.C., Ha. 81/36<sup>(3)</sup> the Court quotes C.A. 140/26 and C.A. 55/29 (*supra*) relied upon by the plaintiff (without pointing out that the law had undergone a change) and goes on to say:

"Moreover, sec. 248 of the Companies Ordinance, 1929, dealing with the registration of foreign companies in Palestine, prescribed in sub-sec. (1) thereof (*sub-section quoted*). It is clear from this provision that so long as the Appellant Company has not established a place of business in Palestine, there is no need for its registration here as a foreign company. The Respondent does not allege that the Appellant has a place of business in Palestine, and consequently his contention in this regard cannot be upheld."

In C.A. 181/37<sup>(4)</sup>, distinguishing C.A. 140/26<sup>(5)</sup>, it was held that a foreign company which has entered into contractual relationships with a local resident was entitled to sue in Palestine notwithstanding the fact that it was not registered locally. And in C.A.D.C., T.A. 149/37<sup>(6)</sup> the Court held: "In view of the fact that the goods were ordered in Vienna and not in Palestine the Magistrate erred in finding that the Plaintiffs could not sue here because they had not been registered in Palestine." The rule is best stated

(1) *Vis.*: C.A. 140/26 (1, P.L.R. 99; 1, R. 342); C.A. 36/28 (1, P.L.R. 303; 4, R. 1493); C.A. 55/29 (1, R. 350).

(2) 1940, T.A. 3.

(3) P.P. 15.12.36.

(4) 4, P.L.R. 302; 1937, S.C.J. (N.S.) 419; 2, Ct.L.R. 118.

(5) Note 1, *supra*.

(6) *Not reported*.

in C.A. 194/33<sup>(7)</sup>: "A foreign commercial association manufacturing goods abroad and having no place of business or agency in Palestine, and which sells its goods to a purchaser in Palestine, is not carrying on business in Palestine, and it can take proceedings in the Palestine Courts to recover the price of such goods without first registering as a foreign company or partnership". But note that this decision emphasises "carrying on business in Palestine" which is no longer a criterion under the present wording of the section.

The change made in this section by the 1929 Ordinance was not taken into account in the Stamp Duty Ordinance. See *ante*, p. 93, footnote (8) and see sec. 71 of that Ordinance. As regards banking *cf.* definition of "company" in sec. 2 of the Banking Ordinance, Vol. II, p. 221.

*Effect of Registration*: A foreign company registered under the Ordinance is deemed to be 'established' in Palestine for the purpose of payment of stamp duty on its debentures (C.D.C., Jm. 273/34)<sup>(8)</sup>. It becomes subject to the jurisdiction of the Palestine Courts (C.A. 23/27)<sup>(9)</sup>.

*Effect of non Registration*: A foreign company which carries on business in Palestine without being registered was held to be an illegal company incapable of instituting proceedings in Palestine (C.A. 140/26<sup>(10)</sup>; C.A. 194/33<sup>(11)</sup>). But the first case was decided under the old law and the second case, as has been pointed out above, emphasised the wording of the former Ordinance. The test to determine illegality is, under the section as now framed, whether the company has established a place of business in Palestine. Note that a period of one month is allowed for registration.

On illegality, compare notes to sec. 3.

See also notes to sub-sec.(2).

And see sec. 239.

*Charitable Trusts*: A foreign corporation which holds property in trust in Palestine, within the meaning of the Charitable Trusts Ordinance (Vol. 3, pp. 192 *sqq.*) will be recognised as trustee under this section (Charitable Ordinance, sec. 38(1)). For the purpose of registration the members of the committee of management or other persons authorised to control the affairs of the corporation are deemed to be the directors (sub-sec. (2)). If the corporation fails to register the Attorney General may apply to the Court for the appointment of a trustee, as though there were no existing trustee (sub-sec. (3)).

*Currency of Capital*: See sec. 54A and notes.

*Sub-sec. (2)*:

The Act does not provide a period of one month, this being provided by the Companies (Forms) Order, 1929, para. 3.

*Local authorised representative*: In C.A. 64/28<sup>(12)</sup>, decided on the section

(7) 2, P.L.R. 289; P.P. 24.5.35; 4, R. 1443.

(8) P.P. 21.6.35; 7, R. 109 (as 237/34). See sec. 127(13).

(9) 1, P.L.R. 156. A case decided under the old law.

(10) Note 1, *supra*.

(11) Note 7, *supra*.

(12) 1, R. 345. In *Britano-Roumain Co. v. Mirzakandoff* (4, R. 1379) the District Court of Jaffa refused to administer the oath to a foreign company *inter alia* on the ground that it would be useless to put on oath "a juridical personality... whose representatives may change every day."

of the old law (sec. 81(c)) corresponding to sub-sec. (2)(c) of this section, it was held by a majority (Baker A/C.J. *dissentiente*) that a foreign company could be bound by the act of an employee authorised to transact business for the company, although his name was not set out in the list under the sub-section. The Court therefore held that the oath could be administered to such an employee on behalf of the company.

In C.A.D.C., T.A. 232/37<sup>(13)</sup> the appellant had contracted in the name of a foreign corporation limited by shares not registered in Palestine, but working in Russia. The Court held that it would be legally impossible for the respondent to sue the corporation in Russia: "So long as this situation prevails, we have to regard the firm 'Intourist' as not being in existence. Appellant therefore is responsible personally."

In C.A.D.C., Ja. 100/35<sup>(14)</sup> a foreign company was sued through its off-loading agent. The agent contended that the company could not be sued in Palestine as, *inter alia*, it had no local representative authorised to accept service. The Court held that an agent is not necessarily a legal representative of a foreign company unless definitely so proved, and dismissed the action.

*Form:* See notes to Clause (ii), Form No. III, *supra*.

For a recent form of notice see P.G. 1524, of 26.9.46, p. 924.

*Certified Copy and Translation:* Sub-sec. (6) defines "certified" for the purpose of this section as "certified in the prescribed manner to be a true copy or a correct translation." In sec. 2(1) "prescribed", when not used in relation to winding up is stated to mean "prescribed by the High Commissioner", presumably by Order. No Orders have been made in this respect. For certified copies reference should therefore be made to the title *EVIDENCE*. A translation may be certified locally by any of the notaries public attached to the Courts.

*List of Directors:* See the definition of "director" in sec. 2(1). See note *Charitable Trust* to sub-sec. (1) *supra*.

*Clause (ii). Forms:*

The following forms may be used:

#### I.

### THE COMPANIES ORDINANCE, CAP. 22.

#### *Name of Company*

Return of Alteration in the List of Particulars of Directors of a Company Incorporated outside Palestine.

(Pursuant to sec. 248).

Name of Company:

Presented for filing by:

To the Registrar of Companies, P.O.B. 1254, Jerusalem.

Return of alteration in the list of particulars of directors of \_\_\_\_\_, a company incorporated in \_\_\_\_\_ and which has established a place of business in Palestine at \_\_\_\_\_.

<sup>(13)</sup> 1937, T.A. 40.

<sup>(14)</sup> 7, R. 110.

Name and surname	Usual residential address	Other business, occupations or directorships, if any	Remarks as to alterations

Signed

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 194—.

*(The person signing should be authorised under sub-sec. (2)(i)(c)).*

## II.

## THE COMPANIES ORDINANCE, CAP. 22.

*Name of Company*

Return of Alteration in the Charter, Statutes, Memorandum or Articles of Association or other Instrument constituting or defining the Constitution of a Company Incorporated outside Palestine.

(Pursuant to sec. 248).

Name of Company:

Presented for filing by:

To the Registrar of Companies, P.O.B. 1254, Jerusalem.

Return of alteration in the ("Charter", "statutes" or, as the case may be) constituting or defining the constitution of \_\_\_\_\_ a company incorporated in \_\_\_\_\_ and which has established a place of business in Palestine at \_\_\_\_\_.

*(Refer in brief to the document annexed, being a certified copy of the altered instrument of alteration, together, where required, with a certified translation).*

Signed

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 194—.

*(The person signing should be authorised under sub-sec. (2)(i)(c)).*

## III.

## THE COMPANIES ORDINANCE, CAP. 22.

*Name of Company*

List of the names and addresses of persons resident in Palestine authorised to accept service on behalf of a Company Incorporated outside Palestine.

(Pursuant to sec. 248).

Name of Company:

Presented for filing by:

To the Registrar of Companies, P.O.B. 1254, Jerusalem.

List of persons resident in Palestine authorised to accept on behalf of the Company service of process and any notice required to be served on \_\_\_\_\_, a company incorporated in \_\_\_\_\_ and which has established a place of business in Palestine at \_\_\_\_\_.

Name and Surname	Address	Description of occupation

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 194—. Signed  
 (The persons signing should be authorised under sub-sec. (2)(i)(c)).

*Sub-sec. (3)*: As in the case of local companies formed under the Ordinance (and again unlike the practice in England) the High Commissioner has an overriding discretion to refuse registration. See sec. 14 and notes.

*Sub-sec. (4)*:

*Para. (a)*: The following Order made by the High Commissioner under this section and published in P.G. 1324 of 16.3.44, sup. 2, p. 263, has altered the fees payable under this section.

Citation. 1. This Order may be cited as the Companies (Foreign Companies) (Fees) Order, 1944.

Fees to be paid on registration of foreign company prescribed. 2. There shall be paid to the Registrar upon the registration of a foreign company, instead of the fees specified in sub-section (4)(a) of section 248 of the Companies Ordinance, a fee of fifty pounds or, in the case of a corporation not constituted for purposes of profit, a fee of twenty pounds.

*Para. (b)*: The publication fee is the same as that applying to other companies. See secs. 16 and 17 and notes (*ante*, pp. 49 and 50).

*Fees*: In C.D.C., Jm. 19/24<sup>(15)</sup>, a case decided under the old law, a company registered as a foreign company and proposing to deal with the acquisition of land in Palestine, was sued for the balance of fees payable if it had been registered as a local company formed under the Ordinance, it being contended that the main object of the company was to do business in Palestine. The claim was allowed. It may, at first sight, appear that this decision applies *a fortiori* to the present law as a company intending "to carry on business in Palestine" required registration under the old law, whilst the present requirement for registration is the establishment of "a place of business in Palestine". But the entire law relating to the registration of foreign companies has been recast and the decision would conflict with sec. 249 which contemplates the registration as foreign companies of companies whose main object is the acquisition and development of lands generally in Palestine.

*Sub-sec. (5)*: See secs. 251-2 and notes.

*Sub-sec. (6)*:

"Certified": See notes to sub-sec. (2).

"Place of business": See notes to sec. 127(13).

249. (1) No foreign company which has as its object or one of its objects the acquiring and developing of land in Palestine generally and is not already registered shall be registered in Palestine unless it has obtained a certificate under the hand of the High Commissioner empowering it to hold land generally in Palestine.

(2) The High Commissioner may, in his discretion, grant a

Foreign company formed with object of acquiring land generally must obtain certificate.

(15) I, R. 338.



certificate to a foreign company which has as its object the acquiring and developing of land in Palestine generally, and which was registered prior to the date of this Ordinance, empowering it to hold land generally.

(3) The provisions of section 15(2) shall apply to any foreign company which obtains such a certificate.

This section has no counterpart in the Act, (but sec. 345 thereof may be compared). It corresponds with sec. 15 which applies to local companies formed under the Ordinance. See notes to that section.

The wording of the section appears to allow registration as a foreign company of a company formed abroad for the sole object of acquiring and developing lands generally in Palestine. See the notes to sub-sec. (4) of sec. 248.

*Sub-sec. (2)* appears to be directed to the Jewish National Fund and the "P.I.C.A.", both of which were registered abroad prior to 1929.

250. (1) The following provisions shall apply to a foreign company registered in Palestine under this Ordinance or under any previous Companies Ordinance—

Application  
of provisions  
to foreign  
company.

- (a) any process or notice required to be served on the company shall be sufficiently served if addressed to any person whose name had been so filed as aforesaid and left at or sent by post to the address which has been so filed;
- (b) the company shall file in every year with the registrar such a statement in the form of a balance sheet as would, if it were a company formed and registered under this Ordinance and having a share capital, be required to be included in the annual summary;
- (c) the company, if it uses the word "limited" or any contraction or imitation of that word as part of its name, shall—
  - (i) in every prospectus inviting subscription for its shares or debentures in Palestine, state the country in which it is incorporated; and
  - (ii) conspicuously exhibit on every place where it carries on business in Palestine the name of the company and the country in which the company is incorporated; and
  - (iii) have the name of the company and of the country in which the company is incorporated mentioned in legible character in all billheads and letter paper and in all notices, advertisements and other official publications of the company.

(2) If any such company fails to comply with the requirements of this section the company and every officer or agent of the company who is knowingly a party to the default is liable to a fine of fifty pounds or, in case of a continuous offence, to a fine of five pounds for every day during which the default continues.

*Source:* Sub-sec. (1)(a) is taken from sec. 349 of the Act, clause (b) from sec. 347(1) and clause (c) from sec. 348. Sub-sec. (2) is taken from sec. 351 read together with sec. 365.

*Divergences:* Sec. 349 also makes provision for service in case where the persons whose name and address have been filed are dead or have ceased so to reside or refuse to accept service or for any reason cannot be served. In sec. 348 the requirements copied in para. (c) of the Ordinance apply in the case of all foreign companies, but the English section also provides (sub-sec. (4)) that when the liability of the members of the company is limited the fact should be stated in the prospectus, letter- paper, etc., etc. It is difficult to appreciate the reason for telescoping the English section which, in the corresponding para. (c) appears incomplete and partly meaningless.

*"Whose name has been so filed..":* See sec. 248(2)(i)(b).

*Charitable Trusts:* See this note to sec. 248(1).

*Service of Process:* Cf. sec. 113.

*Use of the word "limited":* It will be remembered, from the definition of "foreign company" in sec. 2(1) that partnerships consisting of more than 10 members are also included. Unlike the Act, therefore, the Ordinance also provides for registration of juridical persons registered abroad not as limited companies.

*Application of the Ordinance to Foreign Companies:* In C.A. 80/29<sup>(1)</sup>, when dealing with the application of the 1921-5 Ordinance to foreign companies, the Court stated: "The draftsman of the Companies Ordinance, 1921, has been at some pains to render obscure the application of that Ordinance to foreign companies...". This obscurity has been remedied in the present law. Certain provisions are made specifically applicable to foreign companies. The remainder of the Ordinance consequently does not apply<sup>(2)</sup>. The following sections are made applicable to foreign companies:

Sec. 15(2) by sec. 249(3)

Sec. 100 by sec. 100(4)

Sec. 101 by sec. 101(4)

Sec. 117 by sec. 239(2)(a)

Sec. 127 by sec. 127(3)(13)

Secs. 142-242B by sec. 239(2)(a).

See notes to sec. 248.

*Sub-sec. (2):* See secs. 251-2 and notes.

<sup>(1)</sup> 1, P.L.R. 560; 1, R. 350.

<sup>(2)</sup> See the definition of "Company" in sec. 2(1): "formed and registered"; a foreign company is not *formed* under the Ordinance. The word "company", therefore, whenever used in the Ordinance, does not include foreign company.

## PART IX. — MISCELLANEOUS.

*Legal proceedings, offences, etc.*

251. The court imposing any fine under this Ordinance may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings, or in or towards rewarding the person on whose information or at whose suit the fine is recovered, and, subject to any such direction, all fines under this Ordinance shall be paid into court.

Application  
of fines.

*Source:* Sec. 367 of the Act, which provides for payment of the fines, subject to the directions at the beginning of the section, into the Exchequer.

*Court:* This means any Court and not "Court" as defined ("unless the context otherwise requires") in sec. 2(1): The Court competent to impose fines is defined in sec. 252.

*Fines,* like any other punishment imposed by the Ordinance or other enactments, are maximal; the Court cannot impose a greater punishment than provided by statute, but there is no binding minimum. See sec. 30 of the Interpretation Ordinance.

*Application of Fines.* The proceeds of fines go to the general revenue. (Interpretation Ordinance, sec. 31).

252. All offences in respect of the continuance of which there is a daily penalty under this Ordinance shall be tried by the district court.

Jurisdiction  
for continu-  
ance of  
offences.

This section has no counterpart in the Act.

*Court:* This section takes "Court" out of the meaning defined in sec. 2(1). Although under that definition "Court" also means the District Court, the District Court referred to in this section is not the Court having jurisdiction to wind up the company. The ordinary venue of the District Court in criminal cases will apply under this section. See *CRIMINAL PROCEDURE*.

*Daily Penalty:* In *CR.A. 6/41*<sup>(1)</sup> the District Court had convicted an officer of a company for failing to submit annual returns under sec. 36(1) and (8), and had imposed a fine of L.P. 25 and one pound per day until actual submission of the returns. This last part of the sentence was struck out on appeal as it was held that it amounted to the imposition of a penalty in respect of the future.

*Trial upon Information:* A company may be committed for trial under sec. 18(2) of the Criminal Procedure (Trial Upon Information) Ordinance. In such cases the advocate pleads to the information on behalf of the company (*CR.C.D.C., T.A., 118/44*)<sup>(2)</sup>.

253. Where a limited company is plaintiff in any action or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe

Costs in  
actions by  
certain limited  
companies.

(1) 8, P.L.R. 61; 1941, S.C.J. 89.

(2) 1944, S.C.D.C. 462. The position differs in England (*ibid.*, distinguishing *R. v. Daily Mirror Newspapers Ltd.* [1922] 2 K.B. 530; 91 L.J.K.B. 712; 127, L.T. 218; 38, T.L.R. 531).

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.

*Source:* Sec. 371 of the Act.

For legal proceedings in relation to companies, see the notes following the definition of "Court" in sec. 2(1), and see notes to sec. 18(4), *ante* pp. 56-7.

As regards security for costs see Civil Procedure Rules, r. 285 and Magistrates' Courts Procedure Rules, r. 212.

Note that this section applies to limited companies. Unlimited companies do not fall within these provisions. But they also fall under C.P.R. 285. Foreign companies, whether limited or unlimited, may be called upon to provide security. See *CIVIL PROCEDURE*.

Penalty for improper use of word "limited".

254. 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 of five pounds for every day upon which that name or title has been used.

*Source:* Sec. 364 of the Act.

See secs. 251-2 for the fine.

As regards the use of the word "limited" see *ante* p. 69, note *Cross-reference*.

#### PART X.

Registration as private company, of company otherwise registered under the Ordinance.

255. (1) Subject to the provisions of this section any company registered under this Ordinance otherwise than as a private company may register as a private company but such registration 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 this section.

(2) A company registered under this Ordinance otherwise than as a private company desiring to register as a private company shall by special resolution alter its articles to bring them into conformity with the provisions of part II (A) of this Ordinance unless the articles of the company already embody those provisions and shall, upon application for registration, deliver to the Registrar of Companies a printed or typewritten copy of its articles.

(3) The Registrar shall submit the application to the High Commissioner who may in his absolute discretion either authorise or refuse the registration of the company as a private company.

(4) Upon receiving the authorisation of the High Commissioner for the registration of the company as a private company, the Registrar shall close the former registration of the company and may dispense with the delivery to him of documents with 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 Ordinance.

(5) A registration fee of ten pounds or such other fee as may be prescribed and a fee to be prescribed for the publication of the registration of the company in the *Gazette* shall be paid to the Registrar upon the registration of a company under this section.

(6) In the event of the company being wound up, every person who having ceased to be a member of the company prior to its registration as a private company, would, if the company had not been registered as a private company in pursuance of this section and had commenced to be wound up at the date of the commencement of the winding up of the private company, have been 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 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, shall be contributory in respect of the debts and liabilities of the private company contracted before the date of his ceasing to be a member and vested in it by registration in pursuance of this section.

(7) 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, the provisions of this Ordinance with respect to the executors or administrators and heirs of deceased contributories and to the trustees of bankrupt or insolvent contributories shall apply.

(8) All property, real and personal, belonging to or vested in a company at the date of its registration in pursuance of this section, shall on registration pass to and vest in the company as incorporated under this section for all the estate and interest of the company therein.

(9) All actions and other legal proceedings which at the time of the registration of a company in pursuance of this section are pending by or against the company, or any officer or any member thereof, may be continued in the same manner as if the registration had not taken place.

(10) The provisions of this Ordinance with respect to staying and restraining actions and proceedings against a company at any time after the presentation of the petition for winding-up and before the making of the winding-up order shall, in the case of a company registered in pursuance of this section where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

*Source:* Sub-secs. (1) and (4) are respectively adopted from sec. 16(1) and (2) of the Act. Sub-sec. (6) is taken from sec. 333(3)(f); sub-sec. (7) from sec. 333(3)(g). Sub-secs. (8), (9) and (10) are taken from secs. 330, 332 and 335. Sub-secs. (2), (3) and (5) are new. But none of those provisions in the Act apply to the registration as private companies of companies otherwise registered under the Ordinance. Sec. 16 deals with the registration of unlimited companies as limited, and secs. 330-5 deal with the effects of registration under the Act. But the wording of sec. 255 of the Ordinance was taken from those sections of the Act. Sec. 54 of the Ordinance, which deals with the registration of unlimited companies as limited, and which was taken from the same sources, may be compared for the wording.

*Former Law:* On the former section 255, see *ante*, p. 15.

*Enactments:* This section was enacted by the 1936 Amendment Ordinance, which, for the first time, introduced private companies into Palestine (see notes to sec. 25A). No provisions similar to those contained in sec. 255 were found necessary under the Act, as private companies had been known in England for some time past.

*Amendment:* The 1939 Amendment Ordinance redrafted sub-sec. (6) "in a similar manner", in the words of the draft reasons, "and for similar reasons, to those which are explained... in the corresponding amendment to sec. 256(8) (now sub-sec. (9)) which deals with the conversion of a cooperative society into a company".

See sec. 256 and notes.

See generally notes to secs. 25A *sqq.*

## PART XI.

256—(1) Subject to the provisions of this section any registered cooperative society may register as a company, but such registration shall not affect the rights or liabilities of the society in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of the society before the registration, and those rights or liabilities may be enforced in manner provided by this Ordinance.

Registration  
as company  
of cooperative  
society regis-  
tered under the  
Cooperative  
Societies  
Ordinance.

(2) A registered cooperative society desiring to register as a company shall prepare a scheme for the reconstruction of the society as a company and shall submit such scheme for the approval of the registrar of cooperative societies, who may in his absolute discretion refuse his approval without assigning any reason for such refusal. If the registrar of cooperative societies approves of the scheme it shall be placed before a general meeting of the members of the society, of which not less than twenty-one days notice specifying the intention to propose the scheme has been duly given, and if a resolution adopting the scheme is passed by a majority of not less than three-fourths of such members as, being entitled so to do, vote at such meeting in person or by proxy, a memorandum of association, and if so desired, articles of association shall be drawn up in conformity with Part II of this Ordinance and upon application for registration a printed or typewritten copy of such memorandum and articles of association, if any, shall be delivered to the registrar of companies.

(3) The registrar of companies shall submit the application to the High Commissioner who may in his absolute discretion either authorise or refuse the registration of the society as a company.

(4) Upon receiving the authorisation of the High Commissioner for the registration of the society as a company the registrar of companies shall give notice thereof to the registrar of cooperative societies who thereupon shall cancel the registration of the society as a cooperative society and shall publish a notice of the cancellation in the *Gazette*, and upon the cancellation of such registration the registrar of companies shall register the society as a com-

pany and shall cause the memorandum or summary thereof to be published, at the cost of the company, in the *Gazette*.

(5) There shall be paid to the Registrar of Companies in respect of the registration of the society under this section the several fees specified in the sixth schedule to this Ordinance.

(6) All property, movable or immovable, in possession or in action, belonging to or vested in a cooperative society at the date of its registration as a company in pursuance of this section, shall, on registration, pass to and vest in the company as incorporated under this section for all the estate and interest of the society therein.

(7) All debts, liabilities and obligations whether present, future or contingent, incurred by a cooperative society subsisting at the date of its registration as a company in pursuance of this section, shall, on registration, pass and be deemed to have been transferred to the company as incorporated under this section to the extent of the liability of the society in respect thereof.

(8) All actions and other legal proceedings which at the time of the registration of a company in pursuance of this section are pending by or against the society, or any officer or any member thereof, may be continued in the same manner as if the registration had not taken place.

(9) In the event of the company being wound up every person who, being a person who ceased to be a member of the cooperative society prior to registration, and every estate which, being the estate of a deceased member of the cooperative society, would, if the society had not been registered as a company in pursuance of this section and had commenced to be wound up at the date of the commencement of the winding up of the company, have been liable to pay or contribute to the payment of any debt or liability of the society, 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 society so far as relates to such debts or liabilities as aforesaid, shall be a contributory in respect of the debts and liabilities of the company contracted by the society and passing to the company on registration in pur-



suance of this section, as such debts and liabilities existed at the time when such person ceased to be a member or, in the case of such estate as aforesaid, at the time of the decease of such member.

(10) Upon the registration of a cooperative society as a company under this section the registrar of companies shall close the registration, if any of the society under the provisions of section 3 of the Banking Ordinance, or under the provisions of section 56(4) and sections 60 and 62 of the Cooperative Societies Ordinance.

(11) The provisions of sections 62 and 92 of this Ordinance shall not apply to a cooperative society registered as a company under this section.

(12) Upon the registration of a cooperative society as a company under this section the Registrar of Cooperative Societies shall transmit to the Registrar of Companies a transcript of all entries in his Register of Mortgages and Charges relating to mortgages or charges created by the society prior to its registration as a company and subsisting at the time of such registration, together with all instruments in his possession creating or evidencing such mortgages or charges, and the Registrar of Companies shall thereupon enter, without any fee, in his Register of Mortgages and Charges the particulars contained in the said transcript with respect to every such mortgage or charge.

This subsection shall be deemed to have come into operation on the date of the enactment of the Companies (Amendment) Ordinance, 1937.

This section has no counterpart in the Act. It was enacted in 1937, (by the Ordinance No. 12 of 1937) to enable cooperative societies to register as limited companies. This scheme enabled a number of banks registered as cooperative societies to avoid the restrictions imposed at the time by the banking legislation. See Vol. II, pp. 228-9.

*Amendments:* The 1939 Amending Ordinance replaced sub-secs. (5)-(9) and added sub-secs. (11) and (12). The exact effect of the Amendment is stated in the *Objects and Reasons* accompanying the draft of the amendment. The following is a summary thereof: 1) A verbal amendment was made in sub-sec. (6). 2) The provisions of sub-sec. (7) were enacted. 3) Sub-sec. 256(8) was renumbered (9) with considerable alterations: "Under the existing sec. 256(8) and (9), where a cooperative society is converted into a company and the company is subsequently wound up, anyone who ceased to be a member of the society within two years before the conversion would become a con-

tributory in the winding up a) in respect of all debts, etc. incurred before the conversion, even after he ceased to be a member of the society, and b) even if the company was not wound up till many years after the conversion; this result might create hardships, and is likely to defer cooperative societies from converting into companies". The effect of the amendment is that the liability of a member is co-extensive with that under sec. 33 of the Cooperative Societies Ordinance, as though there had been no conversion. 4) The existing sub-sec. (9), which was redundant having regard to secs. 146-7, was deleted. See *COOPERATIVE SOCIETIES*.

*Former Law:* For the former sec. 256, see *ante* p. 15.

Rules.

257. The High Commissioner in Council may make rules prescribing the conditions under which the registrar of cooperative societies may grant his approval to a scheme submitted under the provisions of sub-section (2) of section 256 of this Ordinance.

This section was enacted by the 1937 (No. 12 of 1937) Amendment Ordinance. See notes to sec. 256.

No. rules have been made under this section.

For the former sec. 257 see *ante*, p. 16.

258-9. (These sections are now omitted. See *ante*, p. 16.)

## THE FIRST SCHEDULE

(Section 5(4).)

*Source:* Table B of Schedule I to Act; but the Act fills up model form.

### FORMS OF MEMORANDUM OF ASSOCIATION.

#### FORM A.

#### MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES.

1. The name of the company is Limited.
2. The objects for which the company is established are  
(*Here state the substantive objects of the company*).  
(*See notes to secs. 5 and 6 and cross references*).
3. The liability of the members is limited.
4. The share capital of the company is pounds divided  
into shares of each (of which shares  
of each are redeemable).

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.	Numbers of shares taken by each subscriber.
1 of	
2 of	
3 of	
4 of	
5 of	
6 of	
7 of	
Total shares taken:	

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 .

Witness to the above signatures.

FORM B.

*Source:* Table C of the Act, which fills up model forms and also sets out model articles.

MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE  
AND NOT HAVING A SHARE CAPITAL.

1. The name of the company is \_\_\_\_\_ Limited.
2. The objects for which the company is established are  
(*Here state the substantive objects of the company*).
3. The liability of the members is limited.
4. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges and expenses of winding-up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding \_\_\_\_\_ 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	of
2	of
3	of
4	of
5	of
6	of
7	of

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 .

Witnesses to the above signatures.

### FORM C.

*Source:* Table D of the Act.

*Divergence:* The Act also sets out model articles.

#### MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND HAVING A SHARE CAPITAL.

1. The name of the company is \_\_\_\_\_ Limited.
2. The objects for which the company is established are  
(*Here state the substantive objects of the company*).
3. 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 amongst themselves, such amount as may be required, not exceeding \_\_\_\_\_ pounds.
4. The share capital of the company shall consist of \_\_\_\_\_ pounds, divided into \_\_\_\_\_ shares of \_\_\_\_\_ pounds each (of which \_\_\_\_\_ shares of \_\_\_\_\_ each are redeemable).

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.		Numbers of shares taken by each subscriber.
1	of	
2	of	
3	of	
4	of	
5	of	
6	of	
7	of	
Total shares taken:		

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 .

Witness to the above signatures.

FORM D.

Source: Table E of the Act, which also sets out model articles.

MEMORANDUM OF ASSOCIATION OF AN UNLIMITED COMPANY

HAVING A SHARE CAPITAL.

1. The name of the company is
2. The objects for which the company is established are  
(Here state the substantive objects of the company).

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.		Numbers of shares taken by each subscriber.
1	of	
2	of	
3	of	
4	of	
5	of	
6	of	
7	of	
Total shares taken:		

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 .

Witness to the above signatures.

## THE SECOND SCHEDULE.

(Section 6.)

See the notes to that section.

POWERS WHICH EVERY COMPANY SHALL BE DEEMED TO POSSESS SUBJECT TO ANY CONTRARY INTENTION EXPRESSED IN ITS MEMORANDUM OF ASSOCIATION.

(a) To purchase, take on lease or in exchange, hire or otherwise acquire and hold for any estate or interest any lands, buildings, rights, privileges, concessions, licences, machinery, plant, stock-in-trade and any movable or immovable property of any kind necessary or convenient for the purposes of, or in connection with, the company's business or any branch or department thereof.

See notes to sec. 15 (*ante*, pp. 46 sqq.) regarding acquisition of lands.

(b) To erect, construct, lay down, enlarge, alter, maintain and remove or replace any roads, railways, tramways, sidings, bridges, reservoirs, shops, stores, factories, buildings, works, plant and machinery necessary or convenient for the company's business, and to contribute to or subsidize or join with any other firm, person or company in the erection, construction, maintenance or replacement of any of the above, and to work, manage and control the same or join with others in so doing.

(c) To apply for, purchase, or by other means acquire and protect, prolong and renew, whether in Palestine or elsewhere, any patents, patent rights, *brevets d'invention*, licences, protections and concessions which may appear likely to be advantageous or useful to the company, and to use and turn to account and to manufacture under or grant licences or privileges in respect of the same, and to expend money in experimenting upon, and testing, and in improving or seeking to improve, any patents, inventions or rights which the company may acquire or propose to acquire.

(d) To purchase or otherwise acquire and undertake the whole or any part of the business, goodwill and assets of any person, firm or company carrying on, or proposing to carry on, any of the businesses which this company is authorised to carry on, or the carrying on of which is calculated to benefit this company or to advance its interests, or possessed of property suitable for the purposes of this company; and to undertake all or any of the liabilities of such person, firm or company, or to acquire an interest in, amalgamate with, or enter into any arrangement for sharing profits, or for cooperation, or for limiting competition, or for mutual assistance with any such

person, firm or company, and to give or accept, by way of consideration for any of the acts or things aforesaid or property acquired, any shares, fully or partly paid up, debentures, debenture stock or securities that may be agreed upon, and to hold and retain, or sell, mortgage and deal with any shares, debentures, debenture stock or securities so received.

(e) To improve, manage, cultivate, develop, exchange, let on rent, royalty, share of profits or otherwise mortgage, sell, dispose of, turn to account, grant licences and other rights and privileges in respect of, or otherwise deal with, all or any part of the property and rights of the company for such consideration as the company may think fit.

(f) To invest and deal with the moneys of the company not immediately required for the purposes of the business of the company in or upon such securities and in such manner as may from time to time be determined.

(g) To lend and advance money or give credit to and to guarantee the debts and contracts of such persons, firms or companies and on such terms as may seem expedient, and in particular to customers and others having dealings with the company, and to give guarantees or become security for any such persons, firms or companies.

(h) To borrow or raise or secure the payment of money for the purposes of, or in connection with, the company's business.

(i) To issue and deposit any securities which the company has power to issue by way of mortgage to secure any sum less than the nominal amount of such securities, and also by way of security for the performance of any contracts or obligations of the company or of its customers or other persons.

(j) To pay for any property or rights acquired by the company, and to remunerate any person, firm or company rendering services to this company, either in cash or fully or partly paid-up shares, with or without preferred or deferred rights in respect of dividend or repayment of capital or otherwise, or by any securities which the company has power to issue, or partly in one mode and partly in another, and generally on such terms as the company may determine.

(k) To accept payment for any property or rights sold or otherwise disposed of or dealt with by the company, either in cash, by instalments or otherwise, or in fully or partly paid-up shares of any company or corporation, with or without deferred or preferred rights in respect of dividend or repayment of capital or otherwise, or in debentures or debenture stock, mortgages or other securities of any

company or corporation, or partly in one mode and partly in another and generally on such terms as the company may determine, and to hold, dispose of or otherwise deal with any shares, stock or securities so acquired.

(l) To establish or promote or concur in establishing or promoting any other company whose objects shall include the acquisition and taking over of all or any of the assets and liabilities of, or shall be in any manner calculated to advance directly or indirectly the objects or interests of, this company, and to acquire and hold shares, stock or securities or guarantee the payment of any securities or other obligations of any such company, or of any company having objects similar to those of this company, or carrying on, or proposing to carry on, any business in which this company is interested or from which this company is likely to derive any benefit.

(m) To enter into any partnership or arrangement for sharing profits, union of interests or cooperation with any company, firm or person carrying on, or proposing to carry on, any business within the objects of this company, and to acquire and hold, sell, deal with or dispose of shares, stock or securities of any such company, and to guarantee the contracts or liabilities of, subsidize or otherwise assist any such company.

(n) To subscribe for, take, purchase or otherwise acquire and hold shares or other interests in, or securities of, any other company having objects altogether or in part similar to those of this company or carrying on any business capable of being conducted so as directly or indirectly to benefit this company.

(o) To act as agents or brokers and as trustees for any person, firm or company, and to undertake and perform sub-contracts, and also to act in any of the businesses of the company through or by means of agents, brokers, sub-contractors or others.

As regards the use of the word "trustee", see *ante*, p. 28.

(p) To sell or otherwise dispose of the whole or any part of the undertaking of the company, either together or in portions, for such consideration as the company think fit, and in particular for shares, debentures or securities of any company purchasing the undertaking.

See notes to sec. 117, *ante*, p. 259 heading "*Other Arrangements*".

(q) To pay all or any expenses incurred in connection with the formation, promotion and incorporation of the company, or to contract with any person, firm or company to pay such expenses, and to pay commissions to brokers and others for underwriting, placing, selling



or guaranteeing the subscription of any shares, debentures, debenture stock or securities of this company.

(r) To draw, make, accept, indorse, discount, execute and issue promissory notes, bills of exchange, bills of lading, warrants, debentures and other negotiable or transferable instruments.

(s) To grant pensions, allowances, gratuities and bonuses to employees or ex-employees of the company or its predecessors in business or the dependents of such persons, and to establish and support, or to aid in the establishment and support of, any schools and any educational, scientific, literary, religious or charitable institutions or trade societies, whether such institutions or societies be solely connected with the business carried on by the company or its predecessors in business or not, and to institute and maintain any club or other establishment or profit-sharing scheme calculated to advance the interests of the company or of the persons employed by the company.

(t) To apply for, promote and obtain any Ordinance, law, order, or licence of any authority for enabling the company to carry any of its objects into effect, or for effecting any modification of the company's constitution, or for any other purpose which may seem expedient, and to oppose any proceedings or applications which may seem calculated directly or indirectly to prejudice the company's interests.

(u) To enter into any arrangements with any Governments or authorities, supreme, municipal, local or otherwise, or any corporations, companies or persons that may seem conducive to the attainment of the company's objects or any of them, and to obtain from any such Government, authority, corporation, company or person any charters, contracts, decrees, rights, privileges and concessions which the company may think desirable, and to carry out, exercise and comply with such charters, contracts, decrees, rights, privileges and concessions.

(v) To distribute among the members in specie any property of the company, or any proceeds of sale or disposal of any property of the company, but so that no distribution amounting to a reduction of capital be made except with the sanction, if any, for the time being required by law.

(w) To do all or any of the above things in any part of the world, and either as principals, agents, trustees, contractors or otherwise, and either alone or in conjunction with others, and either by or through agents, sub-contractors, trustees or otherwise.

See note to item (o).

(x) To procure the company to be registered or recognised in the United Kingdom or any British colony, dependency or mandated territory and in any foreign country or place.

(y) To do all such other things as are or may be deemed incidental or conducive to the attainment of the above objects or any of them.

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### THE THIRD SCHEDULE.

(Section 10.)

#### TABLE A.

ENACTMENT: Table A, enacted as a schedule to the Ordinance, provides statutory regulations for companies.

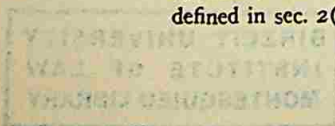
SOURCE: Table A is adapted from Table A of the First Schedule to the Companies Act, 1929, with certain alterations. Both the corresponding articles in the Act and the divergences are mentioned in the notes, *infra*.

AMENDMENT: Unlike the Ordinance, which has undergone a number of amendments, Table A has remained practically unaltered from 1929, with a solitary exception mentioned in the notes to art. 81.

APPLICATION: Sec. 8(2) of the Ordinance, which deals with the registration of articles of association by a company, provides that companies with a share capital may adopt all or part of the regulations of Table A, and sec. 10 of the Ordinance makes Table A apply automatically to all companies limited by shares and registered after the commencement of the Ordinance unless the company excludes it or registers other articles. From the wording of sec. 10, Table A does not, therefore, apply to foreign companies, existing companies (as defined in sec. 2(1)), companies limited by guarantee and unlimited companies. From sec. 25A it is also clear that Table A does not apply (at any rate without modifications) to private companies. (See notes to secs. 8, 10, 25A, 247). As regards existing companies, however, previous legislation also set out model articles. See definition of "Articles" in sec. 2(1), *ante*, p. 18.

But whereas companies limited by shares need not register articles at all and Table A will automatically apply as the articles of such companies, both in the case of such companies and of all other companies other than foreign companies, to which the Ordinance applies, Table A may be adopted with variations, where required by the nature of the company. It is customary, particularly in the case of private companies, where alterations of Table A must be introduced, to register "short articles" which state that Table A shall apply as the articles of association of the company, subject to modifications which are set out.

Table A constitutes the articles of association of companies to which it applies (either with or without modification) but the expression "articles" as defined in sec. 2(1), includes all articles of association of a company, (*ante* p.18).



CONSTRUCTION, INTERPRETATION: Provisions appearing in Table A cannot be *ultra vires* (*ante* p. 41). They state both the substantive law, usually to serve as reminders to companies secretaries and other officials<sup>(1)</sup> and also provide regulations for the management of the company. (See generally, notes to secs. 8 and 10, *ante* pp. 40-2).

ALTERATION: See sec. 12 and notes, *ante* p. 43 and see notes to sec. 35, *ante* at p. 96. For instances where the articles may not be altered without coming into conflict with the Ordinance, and as such *ultra vires*, see secs. 40, 66(6), 77, 80, 198.

See the notes to sec. 35 (*ante*, at p. 96) for an instance of an alteration designed to transfer a director's share without his consent, the alteration being approved by the Court.

PRIVATE COMPANIES: In addition to the note APPLICATION, *supra*, see notes to sec. 25A, *ante* pp. 75-9, and the notes to the various articles requiring alteration for private companies, *infra*.

REGULATIONS FOR THE MANAGEMENT OF A COMPANY LIMITED  
BY SHARES.  
PRELIMINARY.

1. In these regulations, unless the context otherwise requires, expressions defined in the Companies Ordinance, or any modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined; and words importing the singular shall include the plural, and *vice versa*, and words importing the masculine gender shall include females, and words importing persons shall include bodies corporate.

*Source*: Art. 1 of Table A in the Act. But the provision following the semi-colon is new. It also appears in the Interpretation Ordinance, and could have been omitted.

BUSINESS.

2. The directors shall have regard to the restrictions on the commencement of business imposed by section 92 of the Companies Ordinance, if and so far as those restrictions are binding upon the company.

This article has no counterpart in Table A of the Act. It was presumably inserted to remind the officers of the company to comply with the requirement of sec. 92 of the Ordinance. See note CONSTRUCTION, INTERPRETATION, (*supra*).

*Private Companies*: Sec. 92 of the Ordinance does not apply to private companies nor to companies which have no share capital, and this article may therefore be deleted when adapting Table A to such companies. It will be re-

<sup>(1)</sup> Most of these provisions do not appear in the English Model, e.g. arts. 2, 5, 45(1), 69, 73, 74 and 105.

membered (*ante* p. 77) that a special article should be inserted either before or after this article, providing for the limitations on the transfer of shares.

### SHARES.

3. Subject to the provisions, if any, in that behalf of the memorandum of association of the company, and without prejudice to any special rights previously conferred on the holders of existing shares in the company, any share in the company may be issued with such preferred or deferred rights or rights of redemption or other special rights or such restrictions, whether in regard to dividend, voting, return of share capital or otherwise, as the company may from time to time by special resolution determine.

*Source:* This article is taken from art. 2 of Table A in the Act, subject to certain variations in wording. The English article ends with the words "and any preference share may, with the sanction of a special resolution, be issued on the terms that it is, or at the option of the company is liable, to be redeemed."

These words appear as a separate article (Art. 40) in the present Schedule. See sec. 38 of the Ordinance and notes, *ante* pp. 112-3.

And see secs. 37, 43 and 44 of the Ordinance, *ante*, and notes.

If the different classes of shares are specified in the memorandum of association, they may not be altered unless that power is either expressly or impliedly reserved in the memorandum (see *ante* p. 43), or under sec. 117 (*q.v.*).

The classes of shares mentioned in this article are not exhaustive<sup>(1)</sup>.

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 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 a special resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing, by proxy, one third of the issued shares of the class.

*Source:* Art. 3 of Table A of the Act. The English article concludes with the words "and that any holder of shares of the class present in person or by proxy may demand a poll". A similar divergence will be noted in art. 55 which, unlike the Act, does not allow proxies to demand a poll.

See secs. 43 and 44 of the Ordinance and notes (*ante*, pp. 116-123).

5. No share shall be offered to the public for subscription except upon the terms that the amount payable on application shall be at least

(1) *Vide*, e.g. C.A. 385/43 (1944, A.L.R. 325) where 'A' shares and 'B' shares are mentioned.

five per cent of the nominal amount of the share; and the directors shall, as regards any allotment of shares, duly comply with such of the provisions of the Companies Ordinance as may be applicable thereto.

This provision, which has no counterpart in Table A of the Act, merely restates the provisions of secs. 91(4), 86 and 93 of the Ordinance (see note CONSTRUCTION, INTERPRETATION, *supra*).

*Private Companies* should delete this provision from their articles (*ante*, p. 78).

6. If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, if any, not exceeding fifty mils and on such terms, if any, as to evidence and indemnity as the directors think fit.

*Source*: Art. 5 of Table A of the Act.

See also sec. 94 and notes, *ante*, pp. 215-9.

Art. 4 in the Act, which precedes this article, was omitted in the Ordinance. It provides that every member is entitled to a share certificate. See sec. 94 of the Ordinance.

7. No part of the funds of the company shall be employed in the purchase of the company's shares.

*Source*: Art. 6 of Table A of the Act. The wording in the Act is more precise, the article providing as follows:

6. No part of the funds of the company shall directly or indirectly be employed in the purchase of, or in loans upon the security of, the company's shares, but nothing in this regulation shall prohibit transactions mentioned in the proviso to section 45(1) of the Act.

(Sec. 45(1) of the Act corresponds to sec. 98(1) of the Ordinance).

See sec. 98 of the Ordinance and notes, *ante* pp. 224-5. It will be seen that the words omitted from the corresponding article in the Act are not required having regard to the wording of sec. 98.

#### LIEN.

8. The company shall have a lien on every share, not being a fully-paid share, for all moneys whether presently payable or not, called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares, other than fully-paid shares, standing registered in the name of a single person, for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause. The company's lien, if any, on a share shall extend to all dividends payable thereon.

*Source*: Art. 7 of Table A of the Act.

See notes to art. 10, *infra*.

9. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled by reason of his death or bankruptcy to the share.

*Source:* Art. 8 of Table A of the Act.

10. The proceeds of the sale shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall, subject to a like lien for sums not presently payable as existed upon the shares prior to the sale, be paid to the person entitled to the shares at the date of the sale. The purchaser shall be registered as the holder of the shares, 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.

*Source:* Art. 9 of Table A of the Act for the second part of the Article, beginning after the full-stop; and art. 10 of that Table for the rest of the instant article. In Table A of the Act, art. 9 begins with the words "For giving effect to any such sale the directors may authorise some person to transfer the shares sold to the purchaser thereof." As regards these omitted words *cf.* sec. 31(3) of the Ordinance. Shares sold by the company in discharge of a lien are acquired by operation of law<sup>(1)</sup>.

See also art. 8 above and the notes to sec. 31 of the Ordinance, *ante* pp. 90-2,

#### CALLS ON SHARES.

11. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares, provided that no call shall exceed one fourth of the nominal amount of the share or be payable at less than one month from the last call; and each member shall, subject to receiving at least fourteen days' notice specifying the time or times of payment, pay to the company at the time or times so specified the amount called on his shares.

*Source:* Art. 11 of Table A of the Act.

(1) English case law decided, on the basis of the old Act, where those words do not appear, is to that effect: *Re General Exchange Bank ex parte Lewis* [1871] L.R. 6. Ch. App. 818; 40, L.J.Ch. 429; 24, L.T. 787. *Everitt v. Automatic Weighing Co.* [1892] 3 Ch. 506; 62, L.J.Ch. 241; 67, L.T. 349; *Hopkinson v. Mortimer Harley & Co.* [1917] 1, Ch. 646; 86, L.J.Ch. 467; 116, L.T. 676.

*Private Companies*: It is customary, when drawing up the articles of a private company, to omit the words appearing between the first comma and the semi-colon following (*vide ante*, pp. 77-8).

On calls see also secs. 36(3) (d) and (e), 41-2, 52, 56, 127(1), 143, 145-7, 166(2), 182, 183, 189(d), 199(e) and 225(1) (c) of the Ordinance, and the following five articles.

Secs. 20(2) and 159 of the Act provide that liability on calls constitutes, in England, a specialty debt. These words do not appear in the corresponding sections of the Ordinance (secs. 19 and 145):

12. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

*Source*: Art. 12 of Table A of the Act.

13. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of five pounds per cent *per annum* from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

*Source*: Art. 13 of Table A of the Act.

14. The provisions of these regulations as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

*Source*: Art. 14 of Table A of the Act. The article in the Act begins as follows: "The provisions of these regulations as to the liability of joint holders and as to payment of interest...".

15. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

*Source*: Art. 15 of Table A of the Act.

See sec. 41(a) of the Ordinance, *ante* p. 115.

16. The directors, may, if they think fit, receive from any member, willing to advance the same, all or any part of the moneys uncalled and unpaid upon any shares held by him, and upon all or any of the moneys so advanced may, until the same would, but for such advance, become presently payable, pay interest at such rate, not exceeding, without the sanction of the company in general meeting, six per cent, as may be agreed upon between the member paying the sum in advance and the directors.

*Source*: Art. 16 of Table A of the Act.

See sec. 41(b) of the Ordinance, *ante* p. 115.

## TRANSFER AND TRANSMISSION OF SHARES.

17. The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

*Source:* Art. 17 of Table A of the Act.

On transfers of shares see secs. 31-4 and notes, *ante* pp. 89-94.

The signature of the transferee on the instrument indicates his intention to become a member, as required by sec. 26(2) (*ante*, p. 81). The registration of the transfer completes the transfer of ownership (*vide ibidem*).

An instrument of transfer is required where ownership is transferred. As regards pledge or mortgage of shares, see *ante*, pp. 91-2.

18. Shares in the company shall be transferred in the following form or in any usual or common form which the directors shall approve:—

I, A.B. of..... in consideration of the sum of £P..... paid to me by C. D. of..... (hereinafter called "the said transferee") ..... do hereby transfer to the said transferee the share (*or shares*) numbered..... in the undertaking called the ..... Company, Limited, to hold unto the said transferee, his executors, administrators, and assigns, subject to the several conditions on which I held the same at the time of the execution thereof; and I, the said transferee, do hereby agree to take the said share (*or shares*) subject to the conditions aforesaid. As witness our hands the..... day of.....

Witness to the signature, etc.

*Source:* Art. 18 of Table A of the Act.

19. The directors may decline to register any transfer of shares, not being fully-paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognise any instrument of transfer unless —

(a) a fee not exceeding 150 mils is paid to the company in respect thereof; and

(b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other



evidence as the directors may reasonably require, to show the right of the transferor to make the transfer.

*Source:* Art. 19 of Table A of the Act. The English article concludes with the words: "If the directors refuse to register a transfer of any shares, they shall within two months after the date on which the transfer was lodged with the company send to the transferee notice of the refusal." This provision already appears in sec. 66(1) of the Act and sec. 94(3) of the Ordinance.

For liens in favour of the company, see art. 8.

And for the ordinary annual general meeting, art. 45.

*Private Companies:* One of the principal characteristics of private companies is the restrictions placed by the articles on the transfer of shares (sec. 25A(1)(a)). As to the manner of effecting the necessary alterations in art. 19, see note 6 at p. 78, *ante*.

20. The executors or administrators of a deceased sole holder of a share or, if there are no executors or administrators, the persons beneficially entitled as heirs of a deceased sole holder shall be the only persons recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders the survivors or survivor, or the executors or administrators of the deceased survivor or, if there is no executor or administrator, the persons beneficially entitled as heirs of such survivor, shall be the only persons recognised by the company as having any title to the share.

*Source:* Art. 20 of Table A of the Act.

The Act refers to "legal personal representatives of a deceased sole holder of a share", instead of the first thirty-one words in the Ordinance. And the same divergence occurs at the end of the article. This avoidance of the English law expression may also be traced in the Ordinance, *ante*, p. 94.

See also notes to sec. 20(2) (*ante*, p. 88) and to sec. 31(1) & (4) (*ante*, p. 91 and 93).

21. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be required by the directors, have the right, either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy.

*Source:* Art. 21 of Table A of the Act.

See the sections referred to in the notes to the preceding article, and the notes to those sections.

And see art. 19.

22. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

*Source:* Art. 22 of Table A of the Act.

See sec. 29(2) of the Ordinance and notes (*ante*, at p. 88).

See also secs. 31(4) and 33 and notes.

Sec. 47(3) of the Bankruptcy Ord. (Vol. II p. 326) allows the trustee to transfer shares.

Under Art. 110, the persons mentioned in Art. 22 are entitled to receive notice of general meetings.

#### FORFEITURE OF SHARES.

23. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remain 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.

*Source:* Art. 23 of Table A of the Act.

On this and the following six articles, see sec. 42 of the Ordinance and notes, *ante*, pp. 115-6, and notes to sec. 45, at p. 124. See also sec. 35 and notes (*ante*, pp. 94 *sqq.*).

*Forfeiture:* In C.A. 385/43<sup>(1)</sup>, a sum of L.P. 500 had been paid as a deposit on shares amounting to L.P. 3000. Upon the allottee failing to pay the balance due on the shares, the latter were forfeited and sold by the company at face value. The allottee sued for the return of his deposit of L.P. 500, on the ground that the company had suffered no loss. The Court held that the deposit was not returnable, distinguishing *in re Bolton, North British Artificial Silk Co. Ltd.*<sup>(2)</sup>, where the company, after forfeiture of the shares, had attempted to hold the allottee liable for calls thereon.

24. The notice shall name a further day, not earlier than the expiration of fourteen days from the date of the notice, on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

*Source:* Art. 24 of Table A of the Act.

See notes to the preceding article.

<sup>(1)</sup> 1944, A.L.R. 325.

<sup>(2)</sup> [1930] 2, Ch.D. 48; 99 L.J.Ch. 209; 143 L.T. 425.

25. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

*Source:* Art. 25 of Table A of the Act.

See notes to art. 23.

26. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

*Source:* Art. 26 of Table A of the Act.

See notes to art. 23.

27. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company receive payment in full of the nominal amount of the shares.

*Source:* Art. 27 of Table A of the Act.

See also sec. 144 of the Ordinance and notes, including cross-references (*ante*, p. 309).

28. A sworn declaration in writing that the declarant is a director of the company and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share and that declaration, and the receipt of the company for the consideration, if any, given for the share, on the sale or disposition thereof shall constitute a good title to the share, and the person to whom the share is sold or disposed of shall 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.

*Source:* Art. 28 of Table A of the Act. The English article is differently worded and specifically authorises the company to execute a transfer of the share. See notes to art. 10, *supra*.

*Sworn Declaration:* The English article has "statutory declaration". The declaration must be sworn before a Magistrate or Registrar of a District Court

(Oaths Ordinance.) A fee of 200 mils is payable in Court (Court Fees Rules). See *CIVIL PROCEDURE*.

See also notes to art. 23, *supra*.

29. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

*Source*: Art. 29 of Table A of the Act.

See notes to art. 23.

#### CONVERSION OF SHARES INTO STOCK.

30. The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock, and may, with the like sanction, reconvert any stock into paid-up shares of any denomination.

*Source*: Art. 30 of Table A of the Act. But the authority is given, under the Act, to the company and is exercisable by ordinary resolution. The Ordinance follows, in this respect, Table A of the 1908 Act. This divergence is consistent with the divergence existing between sec. 43 of the Ordinance and sec. 50 of the Act; See note *Source* at p. 118.

The sanction of the general meeting should be given by special resolution; sec. 43(1)(c) of the Ordinance (*ante*, p. 116).

As to stock generally, see sec. 43 and notes (pp. 116-121).

*Private Companies*: The provisions in the articles dealing with stock (arts. 30-3) should be omitted in the case of private companies (*vide ante*, p. 78).

31. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as, and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

*Source*: Art. 31 of Table A of the Act.

As to stock generally, see sec. 43 and notes (pp. 116-121).

*Private Companies* should omit this and the following two articles from their articles of association (*ante*, p. 78).

32. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges, and advantages as regards dividends, voting at meetings of the company, and other

matters as if they held the shares from which the stock arose, but no such privilege or advantage, except participation in the dividends and profits of the company, shall be conferred by any such *aliquot* part of stock as would not, if existing in shares, have conferred that privilege or advantage.

*Source:* Art. 32 of Table A of the Act.  
See notes to the two preceding articles.

33. Such of the regulations of the company, other than those relating to share warrants, as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder."

*Source:* Art. 33 of Table A of the Act. The words "other than those relating to share warrants" do not appear in the Act. See notes to art. 34, *infra*.  
See notes to arts. 30 & 31, *supra*.

And see sec. 43(4) (*ante*, p. 117) and notes (p. 120).

#### SHARE WARRANTS.

34. The company may issue share warrants, and accordingly the directors may in their discretion, with respect to any share which is fully paid up, on application in writing signed by the person registered as holder of the share, and authenticated by such evidence, if any, as the directors may from time to time require as to the identity of the person signing the request, and on receiving the certificate, if any, of the share, and the amount of the stamp duty on the warrant and such fee as the directors may from time to time require, issue under the company's seal a warrant, duly stamped, stating that the bearer of the warrant is entitled to the shares therein specified, and may provide by coupons or otherwise for the payment or dividends, or other moneys, on the shares included in the warrant.

This and the following five articles have no equivalent in Table A of the Act. They are taken from Table A of the Act of 1908 (arts. 35-40 thereof).

*Private Companies* should delete from their articles the provisions corresponding to arts. 34-9. See *ante*, pp. 78 and 83.

On share warrants generally, see sec. 28 and notes, *ante*, pp. 82-4, sec. 30 and notes, *ante*, p. 89.

35. A share warrant shall entitle the bearer to the shares included in it, and shares shall be transferred by the delivery of the share warrant, and the provisions of the regulations of the company with respect to transfer and transmission of shares shall not apply thereto.

See notes to the preceding article.

36. The bearer of a share warrant shall, on surrender of the warrant to the company for cancellation, and on payment of such sum as the directors may from time to time prescribe, be entitled to have his name entered as a member in the register of members in respect of the shares included in the warrant.

See notes to art. 34.

37. The bearer of a share warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited the depositor shall have the same right of signing a requisition for calling a meeting of the company, and of attending and voting and exercising the other privileges of a member at any meeting held after the expiration of two clear days from the time of deposit, as if his name were inserted in the register of members as the holder of the shares included in the deposited warrant. Not more than one person shall be recognised as depositor of the share warrant. The company shall, on two days' written notice, return the deposited share warrant to the depositor.

See notes to art. 34.

38. Subject as herein otherwise expressly provided no person shall, as bearer of a share warrant, sign a requisition for calling a meeting of the company, or attend, or vote, or exercise any other privilege of a member at a meeting of the company, or be entitled to receive any notices from the company; but the bearer of a share warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the company.

See notes to art. 34.

39. The directors may from time to time make rules as to the terms on which, if they shall think fit, a new share warrant or coupon may be issued by way of renewal in case of defacement, loss, or destruction.

See notes to art. 34.

#### REDEMABLE SHARES.

40. The company may, subject to the provisions of the Companies Ordinance, or any modification thereof for the time being in force, issue and redeem redeemable preference shares.

This article has no exact counterpart in Table A. of the Companies Act, but see note *Source* to art. 3, *supra*.

See sec. 38 of the Ordinance and notes (*ante*, pp. 112-3). And see secs. 43-4 of the Ordinance and notes.

#### ALTERATION OF CAPITAL.

41. The directors may, with the sanction of a special resolution of the company, increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

*Source:* Art. 34 of Table A of the Act. Under the English Article the power is exercised by the company, by ordinary resolution. A corresponding variant appears in sec. 43 of the Ordinance, which also requires a special resolution, whilst sec. 50 of the Act, from which it is taken, refers to powers being exercised by general meeting. It was held in England, in Campbell's case<sup>(1)</sup> that the capital of the company could be increased without first varying the articles by special resolution to include that power (where Table A did not apply). But this decision cannot apply in Palestine, in view of the difference in wording between the two enactments, for where a power must be exercised by special resolution, the power must be created and inserted in the articles before it can be exercised<sup>(2)</sup>.

See sec. 43 of the Ordinance and notes (*ante*, pp. 116-121).

42. Subject to any direction to the contrary that may be given by the resolution sanctioning the increase of share capital all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meeting in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and, after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which, by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares, cannot, in the opinion of the directors, be conveniently offered under this article.

*Source:* Art. 35 of Table A of the Act. Instead of the words "by the resolution sanctioning the increase of share capital" the Act reads "by the company in general meeting". (See notes to the preceding article).

As to the persons entitled to receive notice of general meetings, see art. 110, *post*.

See sec. 43 of the Ordinance and notes (*ante*, pp. 116-121).

(1) *In re* Bank of Hindustan, China and Japan, Hipsley's case, Alison's case [1873] 9, Ch.A. 1; 43, L.J.Ch. 1; 29, L.J. 519. *Cf.* note *Source ante*, at p. 124 in the notes to sec. 45 of the Ordinance.

(2) *Imperial Hydropathic Hotel Co., Blackpool v. Hampson* [1882] 23, Ch.D. 1; 49, L.T. 150; *Boschoek Proprietary Co. v. Fuke* [1906] 1, Ch. 148; 75, L.J.Ch. 261; 94, L.T. 398; 22, T.L.R. 196.

43. The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture and otherwise as the shares in the original share capital.

*Source:* Art. 36 of Table A of the Act.

See notes to the preceding two articles.

44. The company may, by special resolution, —
- (a) consolidate and divide its share capital into shares of larger amount than its existing shares;
  - (b) by subdivision of its existing shares, or any of them, divide the whole, or any part, of its share capital into shares of smaller amount than is fixed by the memorandum of association subject, nevertheless, to the provisions of paragraph (d) of subsection 1 of section 43 of the Companies Ordinance;
  - (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;
  - (d) reduce its share capital in any manner and with and subject to any incident authorised, and consent required, by law.

*Source:* Arts. 37-8 of Table A of the Act. The same difference occurs here as in sec. 43 of the Ordinance, *i.e.* the power is exercised in England by ordinary resolution. See also notes to art. 41, *supra*. Clause (d) is taken from art. 38 of Table A of the Act.

On clauses (a)-(c) see sec. 43 of the Ordinance and notes (*ante*, pp. 116-121).

For clause (d) see sec. 45 of the Ordinance and notes (*ante*, pp. 123-5).

#### GENERAL MEETINGS.

45. (1) The statutory general meeting of the company shall be held within the period required by section 62 of the Companies Ordinance.

(2). A general meeting shall be held once in every year at such time, not being more than fifteen months after the holding of the last preceding general meeting, and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened at the expense of the company by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.



*Source:* Sub-sec. (1) is a reminding provision which has no counterpart in the Act. See note CONSTRUCTION, INTERPRETATION, *ante* at p. 433. Sub-sec. (2) is taken from art. 39 of Table A of the Act.

The corresponding article under the Act provides for meetings "at such time in the third month following etc." The omission of the word "third" in the local text is unjustified as it leads to the absurd conclusion that in default of a meeting held within 15 months, a meeting must be held within 13 months.

See secs. 61 *sqq* of the Ordinance.

*Private Companies:* Sec. 62 does not apply to private companies. (Sec. 62(11) and the first part of this article should therefore be deleted when adapting Table A to a private company).

46. The above mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

*Source:* Art. 40 of Table A of the Act.

47. 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 63 of the Companies Ordinance. If at any time there are not within Palestine 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.

*Source:* Art. 41 of Table A of the Act.

See secs. 63 and 64(2) of the Ordinance (*ante*, pp. 146 *sqq.*).

#### PROCEEDINGS AT GENERAL MEETINGS.

48. Seven days' notice at the least, exclusive of the day on which the notice is served but inclusive of the day for which notice is given, specifying the place, the day and the hour of meeting and, in case of special business, the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but the non-receipt of the notice by any member shall not invalidate the proceedings at any general meeting. In addition to any other prescribed manner of giving notice of a general meeting, at least seven days' notice thereof shall be given by advertising the same in a newspaper circulating in the area in which the company carries on its business.

*Source:* Arts. 42-3 of Table A of the Act. The heading preceding those two articles reads *Notice of General Meeting* and it is only the following ar-

ticles which, in the Act, follow the heading *Proceedings at General Meetings*. Art. 42 of the Act begins with the following provision, which precedes the words "seven days notice": "Subject to the provisions of sec. 117(2) of the Act relating to special resolutions." (Sec. 117(2) of the Act corresponds with sec. 66(4) of the Ordinance). The omission of this provision does not appear to vary the requirements of sec. 66(4) and it is submitted that the article should be read as though the omitted words formed part thereof.

The words "notice is served" are, in the Act, followed by the words "or deemed to be served". The latter words should have been retained, having regard to the provisions of art. 106.

The clause appearing between the semi-colon and the first full-stop is taken from art. 43 of Table A of the Act, but that article also refers to the accidental omission to give notice of a meeting. The last sentence does not appear in the Act and local companies (not only private companies, *vide ante*, p. 78) would do well to delete this onerous provision from their articles. The English article 42 ends with the following words which appear after the semi-colon: "but with the consent of all members entitled to receive notice of some particular meeting, that meeting may be convened by such shorter notice and in such manner as those members may see fit." This provision refers to the proviso to sec. 117(2), which has no counterpart in the Ordinance.

For the persons entitled to receive from the company notices of meetings, see art. 110.

For what is special business, see art. 49, *infra*.

For a form of notice, see *ante* p. 140.

See also secs. 61 *sqq.*, of the Ordinance, and notes, in particular at pp. 149 and 153.

49. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting with the exception of sanctioning a dividend, the consideration of the accounts, balance sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in place of those retiring by rotation, and the fixing of the remuneration of the auditors.

*Source*: Art. 44 of Table A of the Act.

For the meetings see secs. 61 *sqq.* of the Ordinance; for most of the matters excepted by this article, see secs. 106 *sqq.* and cross-references in the notes thereto.

50. 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, a quorum shall be formed when there are present personally or by proxy (a) three members in person and (b) members holding between them one quarter of the voting power of the company.

*Source*: Art. 45 of Table A of the Act. But the words following the

comma appear in the Act as follows: "three members personally present shall be a quorum".

The change in the wording brings in two material differences between Palestine and English company practice. Proxies are not counted in England when ascertaining whether a quorum is present; they are in Palestine. The limitation regarding a fourth of the voting power does not apply in England.

The words "in person" appearing after the sign (*a*) are contradictory<sup>(1)</sup> to the preceding clause which provides for attendance personally *or by proxy*.

Both in England and in Palestine special provisions are made for the representation of corporations at meetings. (Sec. 65 of the Ordinance and sec. 116 of the Act). A person appointed under sec. 65 to represent a corporation is not deemed to appear by proxy, so that even in articles providing (like the English Table A) for the personal attendance of quorum members, persons appointed under sec. 65 are counted.

For proxies, see arts. 63 *sqq.*, *infra*.

*Private companies* should alter the minimum from three to two, as a private company need not have more than two members. See *ante*, p. 78.

51. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week at the same time and place, and, if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

*Source:* Art. 46 of Table A of the Act.

52. The chairman, if any, of the board of directors or any other person nominated for the purpose by the board of directors, shall preside as chairman at every general meeting of the company.

*Source:* Art. 47 of Table A of the Act. But the words "or any other person nominated for the purpose by the board of directors" do not appear in the Act.

53. If there is no such chairman or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.

*Source:* Art. 48 of Table A of the Act.

54. 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

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<sup>(1)</sup> Rather than redundant, as suggested by Kantrovitch & Baker (*Palestine Company Practice*, p. 23, footnote).

left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

*Source:* Art. 49 of Table A of the Act.

See sec. 69 of the Ordinance, *ante*, p. 159.

For notices, see arts. 106 *sqq.*

55. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is, before or on the declaration of the result of the show of hands, demanded by at least three members, and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against that resolution.

*Source:* Art. 50 of Table A of the Act. In the English articles, between the words "three members" and "and, unless" the following words appear: "present in person or by proxy entitled to vote or by one member or two members so present and entitled, if that member or these two members together hold not less than 15 per cent of the paid up capital of the company".

See also notes to art. 4, *ante* p. 434.

As to who may demand a poll, see also notes to art. 56, *infra*.

*Private Companies* should alter "three members" to "two members" or "one member" (*ante*, p. 78).

56. 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.

*Source:* Art. 51 of Table A of the Act.

A proxy to vote at a meeting does not entitle the holder to demand a poll if no special provision to that effect is inserted in the articles. See also notes to art. 66, *post*.

57. 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.

*Source:* Art. 52 of Table A of the Act.

58. 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.

*Source:* Art. 53 of Table A of the Act.

See notes to next article regarding art. 58A (*Private Companies*).

#### VOTES OF MEMBERS.

59. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

*Source:* Art. 54 of Table A of the Act.

On a show of hands, each member (or person) present can have only one vote, irrespectively of the number of proxies he may hold. *Quaere* whether non-members who hold proxies (where this is allowed by the articles, *i.e.* where art. 64 is modified) can vote on a show of hands. See art. 63.

*Private Companies:* In the articles of private companies, this article is usually preceded by an article of which a common form is given *ante* at p. 78 (art. 58A). This type of article may also be used by public companies.

*Voting Rights:* Certain shares may have no right of voting, and art. 59 will not apply to them.

*Beneficial Owner:* The company is not concerned with the beneficial ownership of shares, but will only consider registration of the holder as proof of ownership of the share. See sec. 29(2) and notes.

60. 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.

*Source:* Art. 55 of Table A of the Act.

*Cf.* art. 108, *infra*.

61. 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, curator, or other person in the nature of a committee or curator appointed by that court, and any such committee, curator or other person may, on a poll, vote by proxy.

*Source:* Art. 56 of Table A of the Act. The Act refers to *curator bonis*. The word *curator* is known to Palestine law, but *committee*<sup>(1)</sup> is an English law expression for which the local equivalent should have been given (*guardian, wasi, wakil, etc.*):

(1) With the accent on the last syllable.

*Court* does not, in this context, have the limited application of the meaning defined in sec. 2(1) of the Ordinance. It may also include religious courts with competence in matters of interdiction.

62. No member shall be entitled to vote at any general meeting unless all calls or other sum presently payable by him in respect of shares in the company have been paid.

*Source:* Art. 57 of Table A of the Act.

63. On a poll, votes may be given either personally or by proxy.

*Source:* Art. 58 of Table A of the Act.

See notes to art. 59, *supra*.

64. 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 the seal or under the hand of an officer or attorney so authorised. No person shall act as a proxy unless either he is entitled on his own behalf to be present and vote at the meeting at which he acts as proxy, or he has been appointed to act at that meeting as proxy for a corporation.

*Source:* Art. 59 of Table A of the Act. But the second part of the article is opposite in effect to the English model; the Act reading: "A proxy need not be a member of the company".

For appointment by a corporation, see sec. 65 and notes (*ante*, pp. 149-150) and for the use of the seal, *cf.* notes to sec. 82, *ante* at pp. 179-180.

See notes to art. 59, *supra*.

*Private Companies:* May delete the last part of the article (*ante*, p. 78). This may also conveniently be done by public companies.

65. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than forty eight hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

*Source:* Art. 60 of Table A of the Act.

66. An instrument appointing a proxy may be in the following form or in any other form which the directors shall approve:—

..... Company, Limited.

"I..... of ..... being a member of the ..... Company, Limited, hereby appoint ..... of ..... as my proxy to vote for me and on my behalf at the

(ordinary or extraordinary as the case may be) general meeting of the company to be held on the ..... day of ..... and at any adjournment thereof."

Signed this ..... day of

Source: Art. 61 of Table A of the Act.

A proxy in this form does not entitle the holder to ask for a poll (notes to art. 56) or, possibly, to vote on a show of hands (see notes to art. 59). This may nullify the purpose of the appointment and make the proxy holder incapable of exercising the rights of the member whom he represents. The English articles set out in Table A of the Act contain a special provision to meet this case. Art. 62 thereof, which is not reproduced in the Ordinance, provides as follows:

62. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

Proxies need not be stamped (exemption(1) to item No. 32 of the Schedule to the Stamp Duty Ordinance).

A corporation may give a proxy: See art. 64 and sec. 65 of the Ordinance.

#### DIRECTORS.

67. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.

Source: Art. 64 of Table A of the Act.

Private Companies usually adopt a variant of this article (see *ante*, pp. 78 and 160) and this may also be adopted by other companies. But if the company is a public company, not less than two directors should be named (*ante*, p. 160, notes to sec. 70(1)), and see the special provisions of sec. 70(2)-(5).

See also art. 82, *infra*.

68. The remuneration of the directors shall from time to time be determined by the company in general meeting.

Source: Art. 65 of Table A of the Act.

69. The qualification of a director shall be the holding of at least one share in the company, and it shall be his duty to comply with the provisions of section 71 of the Companies Ordinance.

Source: Art. 66 of Table A of the Act, but the words following the comma do not appear in the Act. See note CONSTRUCTION, INTERPRETATION, *ante* at p. 433.

See notes to sec. 71 of the Ordinance (*ante*, p. 164) and cross-references therein. And see notes to sec. 72, *ante*, p. 165. Private Companies usually delete this article (*ante*, p. 78).

#### POWERS AND DUTIES OF DIRECTORS.

70. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering

the company and may exercise all such powers of the company as are not by the Companies Ordinance, or any modification thereof for the time being in force, or by these regulations, required to be exercised by the company in general meeting, subject nevertheless to any regulation of these articles, to the provisions of the said Ordinance, 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.

*Source:* Art. 67 of Table A of the Act.

The following are the divergences between the article and the model: The words "or any modification thereof for the time being in force" do not occur in the Act, nor do they appear to be required, as they are implied by the ordinary rules of construction. (See title *INTERPRETATION*). Again, the expression "the said Ordinance" appears in the model as "the Act". The words immediately following the phrase first quoted, *viz.*: "or by these regulations", appear in the Act as "or by these articles". This is an unhappy and incorrect variation, as the word "regulations" is used later in a different sense, and "articles" are defined in sec. 2(1) (*ante*, p. 18 and see notes following the definition).

See also, on the office of director, notes to sec. 70, *ante*, at p. 161, and cross-references.

*Effect of the Article:* In C.D.C., Ha. 108/43<sup>(1)</sup> the effect of an article similarly worded was considered. It had been argued that the appointment of advocates to act on behalf of the company had been made *ultra vires* the directors, as no such authority was vested in the directors by the articles of association of the company, and no resolution had been passed by the company authorising that appointment. The Court held<sup>(2)</sup>:

"The appointment of an advocate by the company has not been reserved by the articles to the general meeting, and as the company is entitled to sue, consequently the directors as trustees of the company and representing its juristic body could appoint an advocate to represent the company in Court."

*Ratification:* When the directors pass an invalid resolution which is not *ultra vires* the company, the latter may always ratify the resolution in general meeting (*cf.* Mo.D.C., Ha. 219/44)<sup>(3)</sup> and notes to sec. 72 (*ante*, p. 165).

71. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term, and at such remuneration, whether by way of salary, or commission or participation in profits, or partly in one way and partly in another, as they may think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation or taken

<sup>(1)</sup> 1944, S.C.D.C. 313.

<sup>(2)</sup> *Ibid.* at p. 318.

<sup>(3)</sup> 1944, S.C.D.C. 166.



into account in determining the rotation of retirement of directors; but his appointment shall be subject to determination *ipso facto* if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined.

*Source:* Art. 68 of Table A of the Act.

On rotation of directors, see arts. 77-85.

72. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company, otherwise than by the issue of share capital, shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

*Source:* Art. 69 of Table A of the Act.

*Private Companies* usually delete this article (*ante*, p. 78).

73. The directors shall duly comply with the provisions of the Companies Ordinance, or any modification thereof for the time being in force, and in particular with the provisions in regard to the registration of the particulars of mortgages and charges affecting the property of the company or created by it and to keeping a register of the directors, and to sending to the registrar of companies an annual return and notice of any consolidation, or increase of share capital, or conversion of shares into stock, and copies of special resolutions, and a copy of the register of directors and notifications of any changes therein.

This article, which merely serves to act by way of reminder to company directors and other officers, has no counterpart in Table A of the Act. (See note CONSTRUCTION, INTERPRETATION, *ante* p. 433). But the article does not exhaust the duties of directors under the Ordinance.

74. 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.

*Source:* Art. 70 of Table A of the Act.

See sec. 68 of the Ordinance and notes, *ante* pp. 156-9.

## THE SEAL.

75. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors and in the presence of at least two directors and of the secretary or such other person as the directors may appoint for the purpose; and those two directors and secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

*Source:* Art. 71 of Table A of the Act. But only one director need, under the Act, sign together with the secretary.

As regards the use of the seal, see note *The Seal, ante* at pp. 179-180. See also sec. 114 and note (*ante*, pp. 255-6).

*Private Companies:* For the usual variation of this article in the case of private companies, see *ante* p. 78.

## DISQUALIFICATION OF DIRECTORS.

76. The office of director shall be vacated, if the director—
- (a) ceases to be a director by virtue of section 71 of the Companies Ordinance; or
  - (b) holds any other office of profit under the company except that of managing director or manager; or
  - (c) becomes bankrupt; or
  - (d) is found lunatic or becomes of unsound mind; or
  - (e) is concerned in, or participates in the profits of, any contract with the company,

Provided, however, that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is director; but a director shall not vote in respect of any such contract or work and, if he does so vote, his vote shall not be counted.

*Source:* Art. 72 of Table A of the Act. The local article differs from the English model in the following respects:

*Divergences:* The English article mentions seven instances in which the office of a director is vacated: The five instances given in the local article 76, appearing in the English article as clauses (a), (b), (c), (e) and (g), and the following two additional instances:

- (d) becomes prohibited from being a director by reason of any order made under sections 217 or 275 of the Act<sup>(1)</sup>.
- (f) resigns his office by notice in writing to the company.

<sup>(1)</sup> For sec. 217 see sec. 161(3) of the Ordinance. Sec. 275 corresponds to sec. 234 of the Ordinance.

Clause (g) in the Act, which corresponds to clause (e) in the Ordinance, differs in wording. It reads:

(g) is directly or indirectly interested in any contract with the company or participates in the profits of any contract with the company.

In the proviso, in addition to minor divergences, the Act has, before the semi-colon, the words "if he shall have declared the nature of his interest in manner required by section 149 of the Act."<sup>(2)</sup>

Clause (b) in the Act begins with the words "without the consent of the company in general meeting."

*Effect of the Divergences:* Notwithstanding the omission of the English clauses (d) and (f), a director may be restrained from acting as such by sec. 234(5) of the Ordinance, and the office of a director is, naturally, vacated if he resigns.

There appears to be no reason for the variation in clause (e) and the proviso, from the English model. But here again, the omission of any reference to sec. 75 of the Ordinance does not in any way derogate from the powers and duties under that section and the effect of the English and Palestinian enactments is the same notwithstanding the divergences. Note that in clause (g) of the Act the wording follows that of sec. 149 of the Act, which corresponds to our Sec. 75. But clause (e) in Table A of the Ordinance uses a different wording.

*Private Companies:* See *ante*, pp. 79 and 160.

*Cross-references:* See secs. 71-5 of the Ordinance, and notes (*ante*, pp. 163 and 171).

#### ROTATION OF DIRECTORS.

77. At the first ordinary meeting of the company the whole of the directors shall retire from office, and at the ordinary meeting in every subsequent year one third of the directors for the time being, or, if their number is not there, then the number nearest to one third shall retire from office; but no director shall hold office for more than five years without re-election by the company in general meeting.

*Source:* Art. 73 of Table A of the Act. There is some difference in wording<sup>(1)</sup> and the limitation appearing after the semi-colon does not form part of the Act.

*Cf.* art. 74, *supra*.

*Private Companies* usually abrogate this and the following eight articles. See *ante*, p. 79.

78. 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.

*Source:* Art. 74 of Table A of the Act.

*Private Companies:* See this heading in the notes to art. 77, *supra*.

<sup>(2)</sup> Which corresponds to sec. 75 of the Ordinance.  
Art. 77.

<sup>(1)</sup> Such as "meeting" for "general meeting", a variant which is not adopted consistently in Table A.

79. A retiring director shall be eligible for re-election.

*Source:* Art. 75 of Table A of the Act.

*Private Companies:* See this note following art. 77, *supra*.

80. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto.

*Source:* Art. 76 of the Table A of the Act. The Act adds the words "and in default the retiring director shall be deemed to have been re-elected unless at such meeting it is resolved not to fill up such vacated office". The omission of these words in the Ordinance may have been due to the variation from the wording in the Act, appearing in art. 77 above.

See the notes to art. 77.

See also the notes to the next article.

*Private Companies:* See this note to art. 77, *supra*.

81. If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place, and, if at the adjourned meeting the places of the vacating directors are again not filled up, the vacating directors or such of them as have not had their places filled up, shall be deemed to have been re-elected at the adjourned meeting.

This article has no corresponding provision in the Act. It provides an alternative mode of automatic election to that mentioned in art. 76 of the Act. See art. 80, *supra* and notes.

*Amendments:* The word "again" was inserted by the 1936 Amendment Ordinance.

*Private Companies:* See this note to art. 77, *supra*.

82. The company may, from time to time in general meeting, increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

*Source:* Art. 77 of Table A of the Act.

But the number of directors cannot, in the case of public companies, be reduced to one director. See sec. 70(1).

For private companies see this note to art. 77, *supra*.

83. Any casual vacancy occurring in the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

*Source:* Art. 78 of Table A of the Act.

*Private Companies:* See this note following art. 77, *supra*.

See art. 88 which authorises continuing directors to act notwithstanding a vacancy.

84. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

*Source*: Art. 79 of Table A of the Act.

*Private Companies*: See this note following art. 77, *supra*.

85. The company may, by extraordinary resolution, remove any director before the expiration of his period of office, and may, by an ordinary resolution, appoint another person in his stead: the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

*Source*: Art. 80 of Table A of the Act.

*Private Companies*: See this note following art. 77, *supra*.

*Extraordinary Resolution, Ordinary Resolution*: See sec. 66 of the Ordinance and notes.

#### PROCEEDINGS OF DIRECTORS.

86. 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.

*Source*: Art. 81 of Table A of the Act.

*Effect of the Article*: All the directors should be summoned to attend the meeting. A director who is abroad or cannot be reached need not be summoned (*Halifax Sugar Refining Co. v. Francklyn*<sup>(1)</sup>, followed in *Mo.D.C.*, *Ha.* 219/44<sup>(2)</sup>). But the mere fact that a director has absented himself from board meetings for a considerable time is not sufficient to waive the requirement of notice (*Mo.D.C.*, *Ha.* 219/44, *supra*).

If all the directors are not summoned to attend the board meeting, any resolution, taken at the meeting is invalid (*same case*, following *Homer District Consolidated Gold Mines*)<sup>(3)</sup>.

For an unusual alteration of this article see *C.A.* 297/44<sup>(4)</sup>.

(1) [1890] 59, L.J.Ch. 591; 62, L.T. 563.

(2) 1944, S.C.D.O. 166.

(3) *In re Smith* [1888] 39, Ch.D. 546; 58, L.J.Ch. 134; 60, L.T. 97.

(4) 1945, A.L.R. 175.

See sec. 68(1)-(2) of the Ordinance (*ante*, pp. 156-7) and art. 74(c), *supra*, for minutes of proceedings of directors' meetings.

*Quaere* whether a director may appoint a proxy to represent him at a board meeting.

As regards the chairman, see art. 89, *infra*.

87. The quorum necessary for the transaction of the business of the directors may be fixed by the directors and unless so fixed shall, when the number of directors exceeds three, be three.

*Source*: Art. 82 of Table A of the Act which adds: "and when the number of directors does not exceed three, be two".

For a variant of this article adopted by Private Companies see notes to sec. 25A of the Ordinance, *ante*, at p. 79.

Private Companies usually also insert an article enabling resolutions of directors to be recorded without the necessity for a formal board meeting (*ante*, p. 79, art. 87A). But it is submitted that, as in the case of general meetings, the consent of all directors may validate an informal meeting notwithstanding the absence of an article similar to art. 87A. *Cf. ante*, p. 153, note *Resolution passed without a Meeting*.

88. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by, or pursuant to, the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

*Source*: Art. 83 of Table A of the Act.

89. 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.

*Source*: Art. 84 of Table A of the Act.

A chairman has, under art. 86, a casting vote.

90. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit: any committees so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on them by the directors.

*Source*: Art. 85 of Table A of the Act.

This article is required as the directors, being themselves agents (*ante*, p. 161) cannot, without special authority, delegate their powers (*delegatus non potest delegare*)<sup>(1)</sup>.

91. A committee may elect a chairman of their meeting: 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.

*Source:* Art. 86 of Table A of the Act.

92. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and, in case of an equality of votes, the chairman shall have a second or casting vote.

*Source:* Art. 87 of Table A of the Act.

93. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

*Source:* Art. 88 of Table A of the Act.

This article should be read together with sec. 72 of the Ordinance. See *ante*, p. 165.

See also notes to sec. 26, *ante*, p. 81.

#### DIVIDENDS AND RESERVE.

94. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

*Source:* Art. 89 of Table A of the Act.

95. 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.

*Source:* Art. 90 of Table A of the Act.

96. No dividend shall be paid otherwise than out of profits.

*Source:* Art. 91 of Table A of the Act.

The Ordinance like the Act, does not specifically state out of what funds

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<sup>(1)</sup> *Vide*, e.g. Cartmell's Case, *in re* County Palatine Loan and Discount Co. [1874] L.R. 9, Ch.A. 691; 43, L.J.Ch. 588; 31, L.T. 52.

dividends should be paid, but English case law has now made it clear that dividends can only be paid out of profits and cannot be paid out of capital<sup>(1)</sup>.

The reason for this prohibition is that it is the policy of the Act (and hence of the Ordinance) to retain the capital of the company for payment to the creditors in the event of winding up. Any reduction of capital which is not specifically authorised by the statute is therefore *ultra vires*<sup>(2)</sup>.

The statutory exceptions to this rule may be found in sec. 99 (payment of interest out of capital in certain cases) — see notes to that section, *ante*, p. 227; sec. 45 (reduction of share capital), and the sections quoted in the notes to sec. 45, at pp. 124-5.

It is not always easy to determine what part of the company's assets constitute capital and what part profits. Not only does the Act (or the Ordinance) give no indication in this respect, but the English Courts have refused to lay down a general rule to serve as guidance in doubtful cases<sup>(3)</sup>.

See also sec. 107(1) for the distinction between fixed and floating assets. But there is no prohibition to pay dividends out of profits made on fixed assets. So also, there may be a loss of capital and dividends yet be paid out of profits on revenue account.

This important and intricate aspect of company law cannot properly be understood without reference to English law texts.

97. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but, if and so long as nothing is paid up on any of the shares in the company, dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

*Source:* Art. 92 of Table A of the Act.

See sec. 41 and notes (*ante*, p. 115).

98. The directors shall, before recommending any dividend, set aside out of the profits of the company such sums, being at least ten per cent of the net profits of the company during the previous year, as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for

(1) E.g. Flitcroft's case, *in re* Exchange Banking Co. [1882] 21, Ch.D. 519; 52, L.J.Ch. 217; 48, L.T. 86; Leeds Estate, Building and Investment Co. v. Shepherd [1887] 36, Ch.D. 787; 57, L.J.Ch. 46; 57, L.T. 684; 3, T.L.R. 841; *Re Sharpe, in re* Bennett, Masonic & General Life Insurance Co. v. Sharpe, [1892] 1, Ch. 154; 61 L.J.Ch. 193; 65 L.T. 806.

Even if the payment is authorised by the memorandum and articles of association: *Trevor v. Whitworth* [1887] L.R. 12, A.C. 409; 57, L.J.Ch. 28; 57, L.T. 457; 3 T.L.R. 745.

(2) *Vide in re* National Funds Assurance Co. (1878) 10, Ch.D. 118; 48, L.J.Ch. 163; 39 L.T. 420.

(3) *Vide* *Dovey v. Cory* [1901] A.C. 477 (H.L. — E.); 70, L.J.Ch. 753; 85, L.T. 257; 17, T.L.R. 730.



equalising dividends, or for any other purpose to which the profits of the company may be properly applied and, pending such application, may, at the like discretion, either be employed in the business of the company or be invested in such investments, other than shares of the company, as the directors may from time to time think fit:

Provided that nothing in this article shall compel directors to set aside any sum as a reserve so long as the reserve fund of the company is equal to the paid-up capital thereof.

*Source:* Art. 93 of Table A of the Act. But neither the proviso nor the minimum requirement of 10% appear in the English article. The Act reads "may", not "shall".

Private Companies usually substitute "may" for "shall" at the beginning of the article (*ante*, p. 79). It is then no longer necessary to retain the proviso.

99. If several persons are registered as joint holders of any share, any one of them may give effectual receipts for any dividend payable on the share.

*Source:* Art. 94 of Table A of the Act.

100. Notice of any dividend that may have been declared shall be given in manner hereinafter mentioned to the persons entitled to share therein.

This article has no counterpart in the Act. "In manner hereinafter mentioned" refers to arts. 106-110. The act makes special provisions (art. 95 of Table A) for payment of dividends.

101. No dividend shall bear interest against the company.

*Source:* Art. 96 of Table A of the Act.

#### ACCOUNTS.

102. The directors shall cause books and accounts to be kept in accordance with the provisions of the Companies Ordinance, or any modification thereof for the time being in force.

*Source:* Art. 97 of Table A of the Act. But the English article specifies the matters in respect to which the accounts should be kept. (Sec. 106(1)(a)-(c) of the Ordinance). Both the English and the local article are "reminder provisions" (*ante*, p. 433). See sec. 106 of the Ordinance and notes (*ante*, pp. 242-4).

103. 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 law or authorised by the directors or by the company in general meeting.

*Source:* Art. 99 of Table A of the Act. The counterpart to this article, authorising directors to inspect the books of account, is set out in Art. 98 of Table A of the Act. That article has no equivalent provision in Table A of the Ordinance, but it is in the same terms as sec. 106(2) of the Ordinance.

#### AUDIT.

104. Auditors shall be appointed and their duties regulated in accordance with the regulations of the Companies Ordinance, or any modification thereof for the time being in force.

*Source:* Art. 102 of Table A of the Act. But the wording differs. The last few words are surplusage (see title *INTERPRETATION*).

Arts. 100-101 of the Act do not appear in Table A of the Ordinance. They are "reminder provisions" (*ante*, p. 433) of the requirements in sec. 123 of the Act (see sec. 106(4) of the Ordinance).

See sec. 105 of the Ordinance and notes (*ante*, pp. 235-242).

#### COMMISSION.

105. The company may 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, provided such commission does not exceed ten per cent on such shares or any amount equivalent thereto, and such commission may be paid in cash or fully or partly paid shares of the company, or partly in one way and partly in another.

This article has no corresponding provision in Table A of the Act. It is made necessary to give effect to sec. 96 of the Ordinance, which allows certain commissions to be paid "if the payment of the commission is authorised by the articles". But the same words appear in sec. 43(1)(a) of the Act. See also notes to sec. 96, *ante*, p. 222.

#### NOTICE.

106. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or, if he has no registered address in Palestine, to the address, if any, within Palestine supplied by him to the company for the giving of notices to him: where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and, unless the contrary is

proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

*Source:* Art. 103 of Table A of the Act, which provides that the notice is deemed served 24 hours after posting.

For requirements in the articles concerning notices, see e.g. art. 48, notes to art. 86 and 100.

For meetings and proceedings, see secs. 61-9 of the Ordinance and for forms of notices see notes to sec. 61 (*ante*, p. 140) and to sec. 62 (p. 144). See also notes to sec. 64 (at p. 149).

107. If a member has no registered address in Palestine and has not supplied to the company an address within Palestine for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company shall be deemed to be duly given to him on the day on which the advertisement appears.

*Source:* Art. 104 of Table A of the Act.

108. A notice may be given by the company to the joint holders of a share by giving notice to the joint holder named first in the register in respect of the share.

*Source:* Art. 105 of Table A of the Act.

*Cf.* arts. 60 and 99 *supra*.

109. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, in Palestine 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.

*Source:* Art. 106 of Table A of the Act.

110. Notice of every general meeting shall be given in some manner hereinbefore authorised to—

- (a) every member of the company, including bearers of share warrants, except those members who, having no registered address within Palestine, have not supplied to the company an address within Palestine for the giving of notices to them; and also to

(b) every person entitled to a share in consequence of the death or bankruptcy of a member who, but for his death or bankruptcy, would be entitled to receive notice of the meeting:

no other persons shall be entitled to receive notices of general meetings.

*Source:* Art. 107 of Table A of the Act.

The words "including bearers of share warrants" do not appear in the Act and should be omitted in the case of private companies (*ante*, p. 79). The insertion of these words is difficult to explain as the company is usually not in a position to know who holds the share warrant at the time the notice is sent. If the first holder of the warrant is intended (see sec. 30, *ante*, p. 89), this should have been stated, and in any event he would have no interest to attend the meeting.

## THE FOURTH SCHEDULE.

(Section 88(1)).

*Source:* This Schedule is taken from the Fifth Schedule of the Act.

### STATEMENT IN LIEU OF PROSPECTUS.

filed by.....

pursuant to section 88 of the Companies Ordinance.

Presented for filling by.....

The nominal share capital of the Company	£P.
Divided into ..... ..	Shares of £P. each.
Amount, if any, of above capital which consists of redeemable preference shares.	Shares of £P. each.
The date on or before which these shares are, or are liable, to be redeemed.	
Names, descriptions and addresses of directors or proposed directors	
Amount of shares issued <i>These words do not appear in the Act.</i>	Shares

Amount of commissions paid in connection therewith.  
*The Act varies in wording.*

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.  
*These words do not appear in the Act.*

Unless more than one year has elapsed since the date on which the company was entitled to commence business:—  
Amount of preliminary expenses—  
Amount paid to any promoter—  
Consideration for the payment—  
*The Act varies in wording.*

£P.  
Name of promoter  
Amount £P.  
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.

*In the Act this provision appears as: Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.*

Consideration for the issue of those shares or debentures.  
*The Act refers to "intended issue". (vide supra).*

1. Shares of £P. fully paid.
2. Shares upon which £P. per share credited as paid.
3. Debenture £P.
4. Consideration.

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

<p>(2) agreed or proposed to be purchased or acquired by the company.  <i>The Act does not mention acquisition within the two preceding years.</i></p> <p>Amount (in cash, shares or debentures) paid or payable to each separate vendor.  <i>The Act only mentions amounts payable (vide supra).</i></p>	
<p>Amount paid or payable in cash, shares or debentures for any such property, specifying the amount paid or payable for goodwill.</p>	<p>Total purchase price £P.  Cash ..... £P.  Shares ..... £P.  Debentures ..... £P.  Goodwill ..... £P.</p>
<p>Dates of, and parties to, every material contract, other than contracts entered into in the ordinary course of business or entered into more than two years before the filing of this statement.  <i>The Act differs in wording.</i></p>	
<p>Time and place at which the contracts or copies thereof may be inspected.</p>	
<p>Names and addresses of the auditors of the company.</p>	
<p>Full particulars of the nature and extent of the interest of every director in any property purchased or acquired by the company within the two years preceding the date of this statement or proposed to be purchased or acquired by the company or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise, by any person either to induce him to become,</p>	

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.

*The Act differs in wording.*

If it is proposed to acquire any business, the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement:

Provided that, in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year, the above requirement shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years, and, in any such case, the statement shall say how long the business to be acquired has been carried on.

(Signature of the persons above named as directors or proposed directors or of their agents authorised in writing)

Date.....

NOTE:—In this Schedule the expression "vendor" includes a vendor as defined by section 86(2) and (3) of the Companies Ordinance, and the expression "financial year" has the same meaning as in section 86(11) of the said Ordinance.

## THE FIFTH SCHEDULE.

(Section 100(1).)

*Source:* Seventh Schedule of the Act. In the Act the Schedule refers not only to Insurance, but also to Banking Companies, Provident Societies.

There are also some minor alterations. The provision regarding the liability on the first day of January (*or July*) might have been altered for the first day of January (*or April*), as balance sheets must be made up on either date (see title *INCOME TAX*. But the I.T. Ord. allows balances to be made up at a different date).

## FORM OF STATEMENT TO BE PUBLISHED BY INSURANCE COMPANIES.

\*The share capital of the company is divided into shares of £P. of which shares of £P. each are redeemable preference shares.

The number of shares issued is

Calls to the amount of £P. per share have been made under which a sum of £P. 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 £P.
- On notes or bills £P.
- On simple contracts £P.
- On estimated liabilities £P.

The assets of the company on that day were:—

- Government securities (*stating them*).
- Bills of exchange and promissory notes, £P.
- Cash at the bankers, £P.
- Other securities, £P.

\*If the company has no share capital, the portion of the statement relating to capital and shares must be omitted.

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## THE SIXTH SCHEDULE.

(Section 244.)

(as replaced by Order under sec. 244).

Source: The Tenth Schedule of the Act. The fees were taken from the Act, but were doubled under the amendment. See notes to sec. 244, ante p. 406.

## TABLE OF FEES TO BE PAID TO REGISTRAR.

## PART I.

## REGISTRATION FEES.

(1) By a company having a share capital:—

	£P.	mils.
Where the nominal capital does not exceed £P.2000.	4	000
Where the nominal capital exceeds £P.2000:—		
For every £P.1000 of nominal share capital, or part of £P.1000 up to £P.5000 .....	2	000
For every £P.1000 of nominal share capital, or part of £P.1000, after the first £P.5000 up to £P.100,000 .....	—	500
For every £P.1000 of nominal share capital, or part of £P.1000, after the first £P.100,000 .....	—	100

For registration of any increase in share capital made after the first registration of the company, the fees per £P. 1000 or part of £P. 1000 shall be the same as would have been payable if the increased share capital had formed part of the original capital at the time of registration:

Provided that no company shall be liable to pay registration fees in respect of nominal share capital, on registration or afterwards, any greater amount of registration fees than £P. 100, taking into account, in the case of fees payable on an increase of share capital after registration, the fees paid on registration.

The words "registration fees" which appear for the first time in this paragraph are otiose and should be omitted. They do not appear in the Act.

(2) By a company not having a share capital:—

Where the number of members as stated in the articles does not exceed twenty .....	4	000
Where the number of members as stated in the articles exceeds twenty but does not exceed one hundred .....	10	000
Where the number of members as stated in the		

articles exceeds one hundred but is not stated to be unlimited, the above fee of £P.10 with an additional 500 mils for every fifty members or less number than fifty members after the first one hundred.

Where the number of members is stated in the articles to be unlimited ..... 40 000

For registration of any increase of members made after the registration of the company in respect of every fifty members or less than fifty members of that increase: ..... — 500

Provided that no company shall be liable to pay on the whole a greater fee than £P.40 in respect of its number of members taking into account the fee paid on the first registration of the company.

(3) By any company:—

For registration of any existing company, except such companies as are by this Ordinance exempted from payment of fees in respect of registration under this Ordinance, the same fee as is charged for registering a new company.

For registering any mortgage or charge created by a company:—

Where the amount of the mortgage or charge does not exceed £P.200 1 000

In all other cases ..... 2 000

Provided that the fee for registering a mortgage or charge given by a registered cooperative agricultural society or registered cooperative credit society shall be 400 mils where the amount of the mortgage or charge does not exceed £P. 300 and 700 mils where the amount of the mortgage or charge exceeds £P.300.

(Proviso originally enacted by order dated 24.9.29).

For registering particulars of a series of debentures:—

Where the total amount secured by the series does not exceed £P.200 1 000

In all other cases ..... 2 000

For registering any other document by this Ordinance required or authorised to be registered, other than the memorandum or the abstract required to be filed with the

registrar by a receiver or manager or the statement required to be sent to the registrar by a liquidator in a winding-up	— 500
For making a record of any fact by this Ordinance required or authorised to be recorded by the registrar	— 100

## PART II.

## CAPITAL DUTY.

(See also secs. 39, 43(1) and notes).

On registration of the company or of any increase of share capital made after the first registration of the company:—

Where the nominal capital or nominal amount of the increase of share capital does not exceed £P. 1000	10 000
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In all other cases .....	One per cent of the nominal capital or of the nominal amount of the increase of the share capital of the company.
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On registration of any existing company, except such companies as are by this Ordinance exempted from payment of fees in respect of registration under this Ordinance.	The same duty as is charged on registration of a new company.
--	---

(See also sec. 17 and notes).

On any issue of redeemable shares .....	One half per cent of the nominal amount of the shares in addition to the fees prescribed above.
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For the fees payable on the registration of a foreign company, see sec. 248 and notes.



## WINDING UP

RULES MADE BY THE CHIEF JUSTICE WITH THE APPROVAL  
OF THE HIGH COMMISSIONER UNDER SECTION 241, OF  
THE COMPANIES ORDINANCE, 1929.

### PRELIMINARY.

1—(1) These Rules may be cited as the Companies (Winding-Up) Rules 1936.

Short title,  
application and  
commencement.

(2) Subject to the limitation hereinafter mentioned these Rules shall without prejudice to acts already done, apply to the proceedings in every winding-up under the Companies Ordinance, 1929, Rules which from their nature and subject matter are, or which by the head lines above the group in which they are contained or by their terms are made applicable only to the proceedings in Winding-up by the Court shall not apply to the proceedings in a Voluntary Winding-up, or Winding-up under the Supervision of the Court.

WINDING UP RULES, 1936, dated 7.4.36, approved by the High Commissioner 9.4.36 P.G. 599 of 29.5.36, sup. 2, p. 413. The Companies (Winding Up) (Amendment) Rules, 1936 (P.G. 615 of 30.7.36, sup. 2 p. 739). The Companies (Winding Up) (Amendment) Rules, 1936 (P.G. 654 of 24.12.36, sup. 2 p. 1370). The Companies (Winding Up) (Amendment) Rules, 1939 (P.G. 873 of 23.3.39 sup. 2 p. 208). The Companies (Winding Up) (Amendment) Rules (No. 2), 1939 (P.G. 885 of 4.5.39, sup. 2, p. 325). The Companies (Winding Up) (Amendment) Rules, 1941 (P.G. 1076 of 6.2.41 sup. 2, p. 214).

SOURCE: The Rules are adopted from the English Companies (Winding Up) Rules, 1929. The English Rules are, however, much more detailed.

AUTHORITY: These Rules were enacted under the authority of sec. 241 of the Ordinance. See the notes to that section.

FORMER RULES: Companies (Fees on Winding Up) Rules, Drayton Vol. III, p. 2326. Revoked by the Court Fees Rules, 1935.

(3) These Rules shall come into operation on the date of their publication in the Gazette.

Source: Sub-rules (1) and (3) are taken from r. 227 of the English Rules. Sub-rule (2) is taken from r. 1 of the English Rules. R. 1 in England refers separately to voluntary winding up and to members' voluntary winding up — a distinction made under the Act but not followed in the Ordinance. (See notes to sec. 207 of the Ordinance, heading Divergences, ante, p. 366).

Divergence: The English rule also contains the following words which do not appear in the local rule, and which follow the mention of the Act (in the local rule they would appear after the expression "the Companies Ordinance, 1929"): "of a company, which shall commence on or after the day on which these rules come into operation, and they shall also, so far as practicable, and subject to any general or special order of the Court, apply to all proceedings which shall be taken or instituted after the said date, in the Winding-Up of a Company which commenced on or after the first day of January 1891."

*Cases:* A result of this omission, may be seen in C.D.C., Jm. 234/35<sup>(1)</sup>, where the Court came to the conclusion that the Winding Up Rules (and the Ordinance itself) do not apply to a winding up which has started before the enactment of the Ordinance in 1929. See also note *Saving Provision* to sec. 142, *ante*, p. 307.

*Winding Up by the Court:* See secs. 148 *sqq.*

*Voluntary Winding Up:* See secs. 196 *sqq.*

*Winding Up under the Supervision of the Court:* Or rather, as stated in the Ordinance, *subject* to the supervision of the Court; see secs. 210 *sqq.*

*Date of Publication:* *I.e.*, 29.5.1936.

Interpretation  
of terms.

2. In these Rules, unless the context or subject matter otherwise requires:—

“The Ordinance” means the Companies Ordinance 1929.

“The Company” means a Company which is being wound-up or against which proceedings to have it wound-up have been commenced.

“Court” means the Court which has jurisdiction to wind-up the Company.

“The Treasurer” means the Treasurer of the Government of Palestine.

“Creditor” includes a corporation, and a firm of creditors in partnership.

“Gazetted” means published in the Palestine Gazette.

“Liquidator” includes the Official Receiver when acting as Liquidator.

“Official Receiver” includes any officer appointed by the High Commissioner to discharge the duties of Official Receiver under the Ordinance.

“Chief Clerk” means the Chief Clerk of the Court having jurisdiction to wind-up the Company.

“Proceedings” means the proceeding in the winding-up of a Company under the Ordinance.

“The Rules” means these Rules, and includes the prescribed Forms.

“Sealed” means sealed with the seal of the Court.

*Source:* R. 2 of the English Rules. But the following terms are not defined in the English Rules: “Court”, “The Treasurer”, “Creditor”, “Gazetted”, “Liquidator”, “Official Receiver” and “Chief Clerk”. On the other hand, the English Rules define the following terms which are not defined in the local rule: “Judge”, “Registrar” and “Taxing Officer”.

*Definitions:* These definitions apply only to the W.U. Rules. But there are other definitions in sec. 2(1) of the Ordinance, which apply both to the Ordinance and to the Rules. See sec. 10(2) of the Interpretation Ordinance.

(1) P.P. 18.11.37.

*The Company*: Cf. the definition of this term for the purpose of the Ordinance (sec. 2(1)).

*Court*: See sec. 150 and notes, *ante*, p. 316. And see sec. 2(1) of the Ordinance *sub verbo*.

*The Treasurer*: This title is now substituted by the title "Financial Secretary". See Vol. II. p. 389.

*Official Receiver*: See sec. 159 of the Ordinance and notes, *ante*, pp. 322-3.

*Chief Clerk*: Wherever the Chief Clerk is mentioned in the Rules, the English Rules refer to the Registrar of the Court. The Winding Up Rules were enacted in Palestine prior to the coming into operation (in 1937) of the Registrars Ordinance, so that the Office of Registrar was unknown when the Rules were enacted. The expression "Chief Clerk" should now be substituted by the word "Registrar": See notes to r. 23 and see sec. 13 of the Registrars Ordinance.

3—(1) The forms in the Appendix, where applicable, and where they are not applicable forms of the like character, with such variations as circumstances may require, shall be used. Where such forms are applicable any costs occasioned by the use of any other or more prolix forms shall be borne by or disallowed to the party using the same, unless the Court shall otherwise direct.

Use of forms  
in Appendix.

(2) Provided that the Chief Justice may from time to time alter any forms or substitute new forms in lieu thereof. Where the Chief Justice alters any form, or substitutes any new form in lieu of a form prescribed by these Rules, such altered or substituted form shall be published in the Palestine Gazette.

*Source*: R. 3 of the English Rules, with the Board of Trade exercising the powers conferred by the local rules upon the Chief Justice.

4.—(1) The following matters and applications to the Court shall be heard in open Court:—

Proceedings  
in Court.

- (a) Petitions.
- (b) Public Examinations,
- (c) Applications under sub-section (1) of section 226 of the Ordinance.
- (d) Applications to rectify the Register.
- (e) Appeals from the Official Receiver.
- (f) Appeals from any decision or act of the Liquidator.
- (g) Applications relating to the admission or rejection of proofs.
- (h) Applications under section 236 of the Ordinance.
- (i) Applications for the committal of any person to prison for contempt.
- (j) Such matters and applications as the Court may from time to time by any general or special orders direct to be heard in open Court.

(2) Any other matter or application may be heard and determined in Chambers.

*Source:* Rr. 5 and 6 of the English Rules. But the English rule enumerates five other matters which must be heard in open Court.

*Petitions:* Petitions are used to initiate winding up proceedings, whether by the Court or subject to the supervision of the Court. See r. 16. Any other application is made by summons with notice. See r. 6 and notes.

*Sub-sec. (6) (f):* See notes to r. 87, *infra*.

*Sub-rule (2):* See r. 5, *infra*.

Applications  
in Chambers.

5. Any matter or application may, if the Court thinks fit, be adjourned from Chambers to Court, or from Court to Chambers.

*Source:* R. 7(3) of the English Rules. But that rule empowers the Judge or Registrar to exercise those powers.

The Rules do not define "Chambers". (Nor do the English Rules). See *CIVIL PROCEDURE*. See note *Leave of the Court* to sec. 220, *ante*, pp. 380-1.

Form of  
Application,  
Form 1.

6. Every application in Court other than a petition, shall be made by summons, notice of which shall be served on every person against whom an order is sought, not less than two clear days before the day named in the notice for hearing the motion.

*Source:* R. 8(1) of the English Rules. But the procedure under that rule is by motion and not by summons. In adopting the English rule, the draftsman substituted "summons" for "motion" at the beginning of the rule, but omitted to do so where the word "motion" occurs at the end of the rule — thereby leading to an inconsistency which calls for amendment.

The second part of the English rule provides that application in Chambers should be made by summons and Form I annexed to the local rules is taken from the English form applying to summons in Chambers.

*Practice:* Apart from the form, there is little to distinguish between the procedure applying under summons or motion and proceedings in winding up are frequently taken by motion. See e.g. C.A. 159/44<sup>(1)</sup> where an application to remove a liquidator, and an application by the liquidator for directions were both taken by motion. The *dictum* in C.A. 279/42<sup>(2)</sup> that "in Companies Winding Up actions are started by petition or motion" is therefore more consonant with the present practice than with a strict reading of the Rules.

#### PROCEEDINGS.

7.—(1) Every proceeding in a winding-up matter shall be dated, and shall with any necessary additions, be intitled as follows:—

IN THE DISTRICT COURT OF  
COMPANIES (WINDING-UP)

Title of  
proceedings.  
Form 2.

<sup>(1)</sup> 11, P.L.R. 220; 1944, A.L.R. 352.

<sup>(2)</sup> 10, P.L.R. 96; 1943, A.L.R. 88.



IN THE MATTER OF THE COMPANIES ORDINANCE, 1929  
AND

IN THE MATTER OF .....

(Insert the name of the matter to which it relates)

Numbers and dates may be denoted by figures.

(2) The first proceeding in every winding-up matter shall have a distinctive number assigned to it in the office of the Chief Clerk of the District Court, and all proceedings in any matter subsequent to the first proceeding shall bear the same number as the first proceeding.

*Source:* This rule is taken from r. 11 of the English Rules, read together with Form 2 (applying to the High Court) and Form 3 (for County Courts proceedings). The draftsman retained the corresponding Form (Form 2) and also included it in the rule. There appears to be no reason for this repetition.

*District Court:* This should read "Court", as that term is defined in r. 2.

*Title:* Cf. notes to "Court", ante at pp. 19-20.

*Sub-rule (2):* See also r. 10.

8. All proceedings shall be written or typewritten or printed, or partly written or partly typewritten or printed on foolscap paper of the size of 13 inches in length and 8 inches in breadth, or thereabouts, and must have a stitching margin; but no objection shall be allowed to any proof or affidavit on account only of its being written or printed on paper of other size.

Written or  
printed  
proceedings.

*Source:* R. 12 of the English Rules, which does not mention typewritten proceedings and foolscap.

See also r. 181.

9. All orders, summonses, petitions, warrants, process of any kind (including notices when issued by the Court) and office copies in any winding-up matter shall be sealed with the seal of the Court.

Process to  
be sealed.

*Source:* R. 13 of the English Rules. The last six words do not form part of the English rule and should have been omitted in the instant rule as well, having regard to the definition of "sealed" in r. 2.

10. A file of proceedings in every winding-up matter shall be kept in Court on which, subject to the directions of the Court, all petitions, affidavits, summonses, orders, proofs, notices, depositions and other proceedings in the matter shall be placed and remain of record as far as possible in continuous order.

File of  
proceedings  
in Courts.

*Source:* R. 17 of the English Rules.

See also r. 7(2).

11. In every Court all office copies of petitions, affidavits, depositions, papers and writings, or any parts thereof, required by the

Office copies.

Official Receiver or any Liquidator, contributory, creditor, officer of a Company, or other person entitled thereto, shall be provided by the Chief Clerk and shall, except as to figures, be fairly written out at length, and be sealed and delivered out without any unnecessary delay, and in the order in which they shall have been applied for.

*Source:* R. 18 of the English Rules.

*Chief Clerk:* See note to r. 2.

Inspection  
of file.

12. The Official Receiver or his nominee shall be entitled, free of charge, and every Liquidator and every contributory or creditor, whose claim or proof has been admitted, shall be entitled on payment of a fee of 50 mils for each hour or part of an hour occupied, at all reasonable times, to inspect the file of proceedings and to take copies or extracts from any document therein, or to be furnished with such copies or extracts at a rate not exceeding 30 mils for each one hundred words or part thereof.

*Source:* R. 19 of the English Rules. In addition to a number of verbal divergences, the English rule is at variance by conferring the same rights upon former officers and directors of the Company.

Use of Court  
file by Official  
Receiver.

13. Where in the exercise of his functions under the Ordinance or Rules, the Official Receiver requires to inspect or use the file of proceedings, the Chief Clerk shall (unless the file is at the time required for use in Court) on request transmit the file of proceedings to the Official Receiver.

*Source:* R. 20 of the English Rules.

*Chief Clerk:* See note to r. 2.

#### SERVICE AND EXECUTION OF PROCESS AND ENFORCEMENT OF ORDERS.

Service.

14.—(1) All notices, summonses, and other documents other than those of which personal service is required, may be sent by letter post to the last known address of the person to be served therewith and the notice, summons, or document shall be considered as served at the time that the same ought to be delivered in the due course of post by the post office, and notwithstanding the same may be returned by the post office.

(2) No service shall be deemed invalid by reason that the name, or any of the names other than the surname of the person to be served, has been omitted from the document containing the person's name, provided that the Court is satisfied that in other respects the service of the document has been sufficient.

*Source:* R. 23 of the English Rules.



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