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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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Vol. V

COMPANIES

S. BURSI, LAW PUBLISHER
20, AHAD HA'AM STREET, TEL-AVIV

1946

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

Source: Sec. 25 of the Act.

Sub-sec. (1): The subscriber is deemed to be a member of the company whether his name is entered in the register of members or not, from the date of incorporation of the company. If he agrees to take shares otherwise than by subscribing the memorandum sub-sec. (2) applies (*infra*).

Sub-sec. (2): Where the shares are acquired by a person who has not subscribed the memorandum, he is considered a member only after his name is entered in the register of members. But the entry must be made with his consent or he must be estopped from contesting that he consented. See notes to sec. 35 under the heading *Action for Rectification* and cross-references therein.

See secs. 88 and 91 for restrictions on the first allotment of shares and for general annotations on allotment.

An allotment is not invalidated by the mere fact that the appointment of the directors approving the allotment was irregular. See sec. 72 and art. 93 of Table A.

See notes to sec. 19 for the effect of the memorandum and articles on the members of the company.

The remaining sections in this part, up to sec. 44, deal with the register of members, transmission of share and kindred matters.

See sec. 28(4) as regards the holder of a share warrant.

See sec. 29 and cross-references for the register of members.

27. Each share in a company having a share capital shall be distinguished by an appropriate number.

Number for
each share.

Source: Sec. 62(2) of the Act.

"Share" is defined in sec. 2(1) as including stock, except where a distinction is made between share and stock. No such distinction is made in this section, but this should not be read as an obligation to number stock, as such an intention would conflict with the word "each". The word "share" in this section should therefore be read subject to the opening words of sec. 2(1) which gives the definitions in the sub-section "unless the context otherwise requires".

When shares are of different categories, such as redeemable, or preference, it is also necessary to distinguish the category. This may be done by the use of letters or other signs (e.g. "Redeemable 'A' shares").

For the obligation to issue shares, and for the form thereof, see sec. 94 and notes.

Companies limited by Guarantee: In certain cases a company limited by guarantee is deemed to have a share capital. In those cases the provisions of sec. 27 will apply.

Issue and
effect of share
warrants
to bearer.

28. (1) A company limited by shares, if so authorised by its articles, may, with respect to any fully paid-up shares or to stock, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares or stock therein specified, and may provide, by coupons or otherwise, for the payments of the future dividends on the shares or stock included in the warrant, in this Ordinance termed "a share warrant."

(2) A share warrant shall entitle the bearer thereof to the shares or stock therein specified, and the shares or stock may be transferred by delivery of the warrant.

(3) The bearer of a share warrant shall, subject to the articles of the company, be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members; and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register the name of a bearer of a share warrant in respect of the shares or stock therein specified without the warrant being surrendered and cancelled.

(4) The bearer of a share warrant may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Ordinance, either to the full extent, or for any purposes defined in the articles, except that he shall not be qualified in respect of the shares or stock specified in the warrant for being a director or manager of the company, in cases where such a qualification is required by the articles, unless he shall deposit and keep deposited with the company share warrants of the nominal capital value required for his qualification.

Source: Sub-sec. (1) is taken from sec. 70(1) (2) of the Act; sub-sec. (2) from sec. 70(3); sub-sec. (3) from sec. 97(2)(3). The first part of sub-sec. (4), up to the words, "in the articles" is taken from sec. 97(5) which is qualified, however, by the words "subject to the provisions of this Act". These words refer to sec. 141(2) of the Act which is opposite in effect to the second part of the present sub-sec. (4), as it excludes share warrants when the articles require directors' qualification shares.

The Act refers to "shares" where the Ordinance uses "shares or stock". This expression is tautologous in view of the definition of "share" in sec. 2(1), which includes stock. The same redundancy appears in sec. 30.

Sub-sec (1):

"*A Company limited by shares*": This expression is defined in sec. 4(i). It includes companies registered before the enactment of the Ordinance. See definition of "company" in sec. 2(1).

Entry in Register of Members: See sec. 30.

"*If authorised by its articles*": See arts. 34-9 in Table A.

Private Companies may not issue share warrants as it would negate the restrictions stipulated in sec. 25(A)(1). See notes to that section and the alterations suggested therein to Table A.

Qualification Shares: See sec 71 and notes.

Seal: This appears to be the the only instance when the seal *must* be used. See notes to sec. 82.

Coupons: See notes to sub-sec. (2).

Stock: For conversion of shares into stock and *vice versa*, see sec. 43.

"*Dividend on shares*": This includes interest on shares. See definition in sec. 2(1).

Sub-sec. (2):

Share Warrants, Form: The following form of a share warrant may be used:

	<i>Name of the Company</i>		£P..... shares.
No.	Capital	£P.....	

SHARE WARRANT.

This is to certify that the bearer of this warrant is entitled to fully paid up shares of £P..... each in the abovenamed Company numbered ... to inclusive, subject to the provisions of the Articles of the Company.

Given under the common seal of the said Company this day of 19..

The common seal of the said Company was hereunto affixed in the presence of:—

.....	}	Directors.	Seal of the Company.
.....			
.....)		Secretary.	

Stamping: The Stamp Duty Ordinance (sec. 71) refers to share warrants, depending on whether they are issued in respect of shares or of stock, as "share warrants to bearer" and "stock certificates to bearer". But no difference as to stamping is made between the two.

Share warrants are, by this sub-section, made transferable by delivery, so that stamp duty may not be exacted on transfer, as in the case of transfer

of ordinary shares (see notes to sec. 31(3) under the same heading). Stamp duty is therefore made payable on the issue of the warrant and the Stamp Duty Ordinance (sec. 72) imposes a fine of L.P. 50.- upon any company and upon the managing director or secretary or other principal officer if a share warrant is issued without being duly stamped. The duty is imposed by means of impressed stamps (S.D.Ord., sec. 5). It is as follows (Item 36, Schedule) :

For every L.P. 10.- and also for any fractional part of L.P. 10.- of the nominal values thereof: 100 mils.

Although sec. 28 is not made applicable to foreign companies having established a place of business in Palestine (see notes to sec. 248), the Stamp Duty Ordinance appears to contemplate share warrants issued by such companies, as sec. 71 of that Ordinance refers to companies "formed or established in Palestine". Note that the wording of the phrase does not correspond with the new wording of sec. 248. See notes to that section. This question appears in a number of other instances of stamping company documents under the Stamp Duty Ordinance.

For mitigation of fines, production in evidence of unstamped warrants and stamping after execution, see title *STAMP DUTY*.

Form, Variants: Conditions may be imposed in the warrant, regarding payment of dividends, surrender, etc.

Seal: See notes to sec. 82.

Coupons: Numbered dividends coupons on the share are often attached to the warrant in varying numbers and provision may be made in the warrant for the supply of new coupons after those issued are exhausted. The coupons should state in respect of what period they are available, the place of payment (at the company's office, or at a named bank) and the time of payment (usually, to be notified by advertisement in the press). Coupons need not be stamped.

Sub-sec. (3): For surrender of share warrants, see also sec. 30(2).

Sub-sec. (4):

"Deemed to be a member of the company": See sec. 26.

See also note *Source, supra*.

Defence Regulation: See the supplement at the conclusion of this title.

Register of
members.

29. (1) Every company shall keep in one or more books a register of its members and enter therein the following particulars —

- (a) the names and addresses of the members and, in the case of a company having a share capital, a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid, or agreed to be considered as paid, on the shares of each member;
- (b) the date at which each person was entered in the register as a member;

- (c) the date at which any person ceased to be a member;
- (d) the amount of the calls, if any, still outstanding on the shares of each member.

(2) No notice of any trust express, implied or constructive shall be entered on the register or receivable by the registrar in respect of any company.

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

(ii) The index, which may be in the form of a card index, shall in respect of each member contain a sufficient indication to enable the account of that member to be readily found.

(4) The register and index of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company and, except when closed under the provisions of this Ordinance, shall during all reasonable business hours be open to the inspection of any member gratis, and to the inspection of any other person on payment of fifty mils, or such less sum as the company may prescribe, for each inspection.

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

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

(6) A company may, on giving notice by advertisement in a newspaper circulating in the District in which the registered office of the company is situate and printed in the language in which the com-

pany usually transacts its business, close the register and index of members for any time or times, not exceeding, in the whole, thirty days in each year.

(7) If inspection of the register of members of a company is refused to any person, the court may, by order, compel an immediate inspection of the register or direct that the copies required shall be sent to the persons requiring them.

(8) If a company fails to comply with subsections (1), (3), (4) and (5), it is liable to a fine of five pounds for every day during which the default continues; and every director, manager, secretary or other officer of the company who knowingly authorises or permits the default is guilty of an offence and is liable to the like penalty.

Source: Sub-sec. (1): sec. 95(1) without the proviso thereto. (See sec. 43 of the Ordinance under this heading). Clause (d) has no counterpart in the Act and appears to be superfluous as the information which it requires may be ascertained from that given under clause (a). Sub-sec. (2): sec. 101 which, however, refers to "companies registered in England" instead of "any company"; sub-sec. (3) (i) (ii): sec. 96(1)(2); sub-sec. (4): sec. 98(1) with variations which enable the company, in addition to closing the register (sub-sec. (6)), to impose reasonable restrictions on inspection; sub-sec. (5): sec. 98(2); sub-sec. (6): sec. 99, but the Ordinance includes the power to close the index of members as well as the register, whereas only the latter may be closed under the Act. The reference to language does not form part of the Act. For sub-sec. (7): sec. 98(4) which also refers, to the omission to send copies required by any person. See notes to that sub-section. For sub-sec. (8): secs. 95(2), 96(3), 98(3) read together with sec. 365. The wording and penalties differ.

Sub-sec. (1):

Branch Registers: Companies may also, in certain cases, keep branch registers in other countries. See secs. 35A-E and, in particular, sec. 35D.

Company: This includes companies existing on the day the Ordinance was enacted. See definition of company in sec. 2(1).

"Company having a share capital": See sec. 4(i).

Joint holders: See art. 20 in Table A.

"Members": See sec. 26.

Number of shares: All shares should be numbered: sec. 27.

Share: This includes stock. See definition of "share" in sec. 2(1). But a special provision is made in sec. 43(4) for the inclusion in the register of particulars relating to stock.

Finally, an entry should be made as to the amount of calls (if any) still outstanding on the share of each member, and the amount paid or agreed to be paid on each share.

For a variant, see Kantrovitch-Baker (*op. cit.*) p. 131.

Sub-sec. (2): The mention of the word "trust" in this sub-section and in other parts of the Ordinance was held in H.C. 77/31⁽¹⁾ not to have introduced the doctrine of private trusts into Palestine. See notes to sec. 2(2), *ante* p. 28, where this question is discussed. See also notes to sec. 226.

The section does not⁽²⁾ prohibit a company from receiving notice of a trust, but only from recording it in the register. The effect will, however, be the same so long as private trusts are not recognised in Palestine (*supra*).

By sec. 10(3) of the Charities (Public Trustees) Ordinance, it is provided that the entry of the Public Trustee of Charities by that name in the books of the Company shall not constitute notice of a trust. The sub-section also prohibits companies from objecting to the entry of the Public Trustee of Charities' name in its books by reason only that he is a corporation.

The representative capacity of an executor holding shares as such is recognised and may be entered in the register: See secs. 33 and 146, and arts. 20-1 of Table A. The same applies to a trustee in bankruptcy: see art. 22 of Table A.

The sub-section makes it clear that, as in England, registration of shares in the names of nominees is not prohibited. (See note to sec. 4 (*ante* p. 32) "*Seven or more persons... two or more persons.*") But the company need not take into account the effect of such registration.

The majority of members on the Cohen Committee (see *INTRODUCTORY NOTE*) took the view that registration in the name of nominees should not be prohibited (para. 78 of the Report). While pointing to very serious arguments in favour of disclosure of beneficial ownership (*ibid.*, para. 79), the Committee felt that no watertight method of control was possible (*ibid.*, para. 80). They recommended, however, that every member should be bound to disclose whether or not he was a beneficial owner (*ibid.*, para. 81) and that this disclosure should be made both in the case of existing registration and in the case of future transfers (*ibid.*). Non-registered beneficial owners should make similar declarations (*ibid.*, para. 82). No recommendation is made in the case of bearer shares (*ibid.*, para. 83), but the Report contemplates (*ibid.*, paras. 84 & p. 45 (*m*), (*n*)) the grant to the Board of Trade of wide powers of investigating the true position as to beneficial ownership in cases where it is in the interest of the public that that information should be disclosed. See sec. 32.

Sub-sec. (4): See sub-sec. (6) for closure of the register. For the registered office, see sec. 59(1) and notes.

Sub-sec. (7):

There appears to be an omission in drafting as the sub-section provides two remedies for one omission. Provision should have been made for failure to comply with sub-secs. (4) and (5), and not only with sub-sec. (4).

⁽¹⁾ 1, P.L.R. 735; 5, R. 1813.

⁽²⁾ As did The English Act of 1856.

Court is defined in sec. 2(1), and the notes following the definition detail the procedure applicable in proceedings under the Ordinance. The following particulars of the English practice are given subject to the limitations set out *ante* at the bottom of p. 20 and at p. 21.

Proceedings under the corresponding section are taken in England on application by summons (O.53B, r. 8(a)), 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(1)). The Rules of the Supreme Court apply to the proceedings (r. 3). The respondent need not enter an appearance (r. 9).

Sub-sec. (8): See secs. 251-2 and notes.

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

Entry on
issue of
share
warrant.

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

(b) a statement of the shares or stock included in the warrant, distinguishing each share by its number; and

(c) the date of the issue of the warrant.

(2) Until the warrant is surrendered, the above particulars shall be deemed to be the particulars required by this Ordinance to be entered in the register of members, and, on the surrender, the date of the surrender must be entered.

Source: Sub-sec. (1): sec. 97(1); sub-sec. (2): sec. 97(4).

The Act mentions "shares" only, not "shares or stock".

See the same heading in sec. 28.

Amendments: The following words, which appeared at the end of sub-sec. (2), were deleted by the 1936 amending Ordinance: "As if it were the date at which a person ceased to be a member." The insertion of these words in the original Ordinance may have been due to a clerical error. They do not appear in the Act.

Share Warrants: See sec. 28.

Register of members: See sec. 29.

Members: See sec. 26.

See also the notes to the above three sections.

The surrender of share warrants is dealt with in sec. 28(3).

31. (1) The shares or other interests of any member in a company shall be transferable in manner provided by the articles of the company.

Shares to be
transferable.

(2) Subject to the provisions of this section, on the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

(3) Notwithstanding anything in its articles, it shall not be lawful for a company to register a transfer of shares of the company unless a proper instrument of transfer has been delivered to the company:

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

(4) The production to a company of any document which is, by law, sufficient evidence of probate of the will or letters of administration of the estate of a deceased person having been granted to some person shall be accepted by the company, notwithstanding anything in its articles, as sufficient evidence of the grant.

Source: Sub-sec. (1) is taken from sec. 62(1) of the Act, which reads as follows:

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

The divergence between the texts is analyzed in the notes to sub-sec. (1).

Sub-sec. (2) is taken from sec. 65 of the Act, with the addition of the first seven words. Sub-sec. (3) is taken from sec. 63, which also refers to transfers of debentures. Transfers of debentures are dealt with, in the Ordinance, in sec. 122(2). Sub-sec. (4) is taken from sec. 69, which also refers to confirmation as executor in addition to probate of will or grant of letters of administration. There appears to be no reason for this departure from the English model, as an executor may, in Palestine, be confirmed without probate, when the will is confirmed instead of proved (on the distinction between these two manners of dealing with a will, see title *SUCCESSION*).

Sub-sec. (1):

Articles, Company, Shares: These words are defined in sec. 2(1).

Member: See sec. 26.

Or other interest: See sec. 9.

Table A: For the manner of transferring shares under the model articles in Table A, see arts. 17-22.

When the transfer requires approval, the vendor should undertake that

the approval will be obtained, otherwise he has no further liabilities after signing the transfer.

Effect of divergence in Texts: It is pointed out, in the note *Source, supra*, that sub-sec. (1) differs in form and contents from the corresponding provision (sec. 62(1)) of the Act. The specific provisions in sec. 62(1) of the Act, that shares should be deemed personal estate, were not included in the Ordinance, the effect being the same; as it is clear, under Palestine law, that shares cannot constitute an interest in land, even if the company owns only immovable property. See heading *Attachment of Shares, infra*, and notes to sec. 15. (*ante*, p. 46). And see title *INTERPRETATION*, sec. 2 of that Ordinance, *sub. verb.* "Immovable Property".

Restrictions on the Transfer of Shares: In the case of private companies provisions should be made in the articles restricting the free transfer of shares. See notes to sec. 25A.

Restrictions on transfers intended to avoid liability for calls, see sec. 32. (The restrictions made by the legislation dealing with Trading with the Enemy are not considered in this title, as being of a transitory nature, but see title *TRADING WITH THE ENEMY*).

As regards restrictions on transfers made by the Defence (Finance) Regulations, these are separately considered in a supplement to this title.

A director is not precluded from transferring his qualification share (sec. 71), but must resign his appointment after transfer.

As a transfer is a two partite agreement, it cannot be effected to a minor, lunatic or other person under legal incapacity unless a guardian is appointed, for that specific purpose. See also arts. 20-2 of Table A.

See also heading *The Cohen Report, infra*.

The company may, if so provided in the articles, impose a fee for the registration of the transfer. See art. 19 of Table A.

For refusal by the company to register a transfer, see sec. 94(3)(6).

Form of Transfer: See art. 18 of Table A.

Pledge of Shares: Shares (or stock) may be pledged by depositing the certificates relating thereto (Palmer's *Company Law*, quoted in C.A. 162/41⁽¹⁾). This is called an equitable mortgage, as no title passes. In the case of a legal mortgage under English law, it is necessary for the mortgagee to obtain title to the shares, so that an instrument of transfer must be executed. When a pledge purports to be made without transfer of the shares and without deposit of the share certificates, the pledge is valueless, being neither equitable nor legal.

In re Tahiti Cotton Co.⁽²⁾, and *In re Tees Bottle Co.*⁽³⁾, followed in C.A. 162/41⁽¹⁾.

In C.D.C., T.A. 120/38⁽⁴⁾ a similar conclusion had been reached, al-

(1) 8, P.L.R. 596; 1941, S.C.J. 620; 10. Ct.L.R. 225. The relevant quotation and authorities in support appear at p. 130 in the 7th ed.

(2) *Ex parte Sargent* [1874] L.R. 17 Eq. 273; 43 L.J.Ch. 425.

(3) *In re, Davies' case* [1876] 33 L.T. 834.

(4) 1938, T.A. 140 (*in Hebrew*).

though the Court refused to follow English law, holding that the *Mejelle* provided a complete code in the matter of pledges. It was held that nominal shares may be pledged under the *Mejelle*, such pledges being effected by delivery of the shares certificate to the pledgee or to his nominee.

For stamping a pledge or mortgage of shares. See notes to sub-sec.(3).

Attachment of Shares: Shares are *choses in action* (*dictum* of Cozens Hardy L. J. in *Harrold v. Plenty*⁽⁵⁾, followed in C.A. 162/41) (*supra*).

They may be attached and sold in satisfaction of a debt (H.C. 37/44)⁽⁶⁾.

In the case of shares in private companies, the limitations imposed by sec. 25A should be observed (*ibid.*)

The Cohen Report: (See *INTRODUCTORY NOTE*). As regards transfer by, or to, nominees, see the concluding paragraphs, dealing with the recommendations in the Cohen Report, in the notes to sec. 29(2).

Sub-sec. (2): The first seven words in this sub-section refer to the provisions of sub-sec. (1) — that the transfer should be made in the manner provided by the articles, and sub-sec. (3) — that there should be (whether so provided in the articles or not) an instrument of transfer.

The sub-section protects a transferor from future liability on the shares by enabling him to insist on registration of the transfer if the transferee has neglected to do so. But this can only be done if the instrument of transfer has been delivered to the company. See notes to the next sub-section.

Sub-sec. (3): For a form of transfer, see art. 18 of Table A.

The following sub-section deals with the registration of new members who obtained title to the shares as the result of the death of an existing member, either as executor or administrator. The proviso to sub-sec. (3) contemplates transmission of shares by operation of law, such as by succession, in bankruptcy, or as the result of a sale in execution. (See notes to sub-sec. (1) and arts. 21-2 of Table A).

In C.A. 342/43⁽⁷⁾ an action had been filed for rectification of the register of members (see sec. 35). The Court of Appeal held that the plaintiffs could not succeed in having their names entered on the register as they had established no title to the shares. A transfer of shares cannot, therefore, be enforced as against the company if no instrument of transfer has been executed.

Stamping: The transfer instrument is required in every case as it is the vehicle on which stamp duty is imposed, for that duty is payable only on documents. But when no stamp duty is payable, as when the devolution of shares is effected by operation of law, no instrument is required. See the following sub-sections and notes.

Stamp duty is payable on transfers of shares and stock (Stamp Duty Ordinance, Schedule, Item 37 as amended in 1946) of any company "formed

(5) [1901] 2 Ch. 314 at p. 316; 70 L.J.Ch. 562; 85 L.T., 45.

(6) 11, P.L.R. 249; 1944, A.L.R. 293.

(7) 11, P.L.R. 360; 1944, A.L.R. 344.

or established in Palestine" (S.D. Ord., sec. 73⁽⁸⁾). The duty is denoted by means of impressed stamps (*ibid.*, sec. 5). Transfer of shares in the Palestine Government stocks or funds are exempted from stamp duty by Item 37 of the Schedule to the Stamp Duty Ordinance, which fixes the following rates on all transfers on sale:

Where the amount or value of the consideration	Mls.
does not exceed L.P. 5	20
exceeds L.P. 5 and does not exceed L.P. 10	50
exceeds L.P. 10 and does not exceed L.P. 15	100
exceeds L.P. 15 and does not exceed L.P. 20	150
exceeds L.P. 20 and does not exceed L.P. 25	200
exceeds L.P. 25 and does not exceed L.P. 50	250
for any L.P. 50 and also for any fractional part of L.P. 50.	250

Where the transfer is otherwise than on sale a fixed fee of 250 mils is provided.

On a mortgage or pledge of shares the same duty is payable on the document of mortgage or pledge as in every other case of mortgage under the Stamp Duty Ordinance. If a transfer is executed in connection with the mortgage, it may be stamped for a nominal consideration. See title *STAMP DUTY* and see notes on stamping in part V of the Companies Ordinance.

For payment of fines for failure to stamp, mitigation of fines, production of unstamped transfers in evidence and for stamping after execution, see title *STAMP DUTY*.

Sub-sec. (4):

See arts. 20-2 of Table A.

See the remarks at the end of the heading *Source*, in the notes to this section.

A grant of probate etc., made in a foreign country, is insufficient for the purpose of this sub-section and these should be a resealing or fresh grant in Palestine. See *SUCCESSION*.

For transfer of shares by executors and administrators, see sec. 33.

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

32. A transfer of shares made for the purpose of avoiding any liability of a shareholder, as such, for a nominal or no consideration, or to a person without any apparent pecuniary ability to discharge his liabilities as a shareholder shall be presumed to be a fraudulent transfer and need not be recognised by the company,

Fraudulent transfers need not be recognised.

(⁸) The wording should be altered to read "having established a place of business in Palestine", to correspond with the new wording of sec. 248 of the Companies Ordinance, dealing with foreign companies. See notes to that section. Transfers of shares of foreign companies having a place of business in Palestine appear to require stamping. But see note to sec. 28(2) under the same heading.

or by the court or, subject to any order of the court, by the liquidator on the winding up of the company.

This section is new and has no counterpart in the Act. It remedies a defect in the Act which enables a shareholder to transfer his shares to a man of straw, when the company is in difficulties, in order to avoid liability for calls. The Cohen Report does not deal with this question (see notes to sec. 29(2)) which had already arisen in numerous cases decided before the Act of 1929.

The law in England is analyzed in *Re Discoverer's Finance Corporation*(¹), which reviews the previous case law.

Note that there is only a presumption that the transfer is fraudulent in the circumstances stated in the section.

Transfer by
executor or
administrator

33. A transfer of the share or other interest of a deceased member of a company made by his executor or administrator shall, although the executor or administrator is not himself a member, be as valid as if he had been a member at the time of the execution of the instrument of transfer.

Source: This section is taken from sec. 64 of the Act, with the substitution of the words "executor or administrator" for "personal representative". But personal representatives are the executors or administrators, so that the meaning is not changed.

See notes to sec. 31 (3) and (4). See notes to arts. 20-2 of Table A.

Register to
be evidence.

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

Source: Sec. 102 of the Act.

Register of Members: See sec. 29.

"*Prima facie*": The register may be rectified under the provisions of the following section. Even if not rectified, entries therein are not conclusive.

"*Directed or authorised to be inserted therein*": See sec. 29 and notes.

Power of
court to
rectify
register.

35. (1) If —

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

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

(¹) (*Lindlar's Case*) (No. 2) [1910] 1Ch. 312; 79 L.J.Ch. 193; 102 L.T. 150; 26 T.L.R. 291.

the person aggrieved, or any member of the company, or the company, may apply to the court for rectification of the register; and the court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.

(2) On any application under this section, the court may decide any question relating to the title of any person who is a party to the application to have his name entered in, or omitted from, the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand; and generally may decide any question necessary or expedient to be decided for rectification of the register.

(3) In the case of a company required by this Ordinance to send a list of its members to the registrar of companies, the court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the registrar.

Source: Sec. 100 of the English Act, which is divided into 4, not 3 sub-sections, the second part of sub-sec. (1) in the Ordinance being set out in sub-sec. (2) of sec. 100 of the Act.

Cross-references: See sec. 26 for definition of member, sec. 29 for the register, secs. 31-3 for transfer of shares. See annotations to the definition of "Court", in sec. 2. See sec. 36 for returns of the list of members to be filed. For rescission of contracts to acquire shares, see sec. 90(2). For rectification after a winding up order, see secs. 179(1) and 189(b). The section may be applied to a branch register by order of the High Commissioner in Council (sec. 35D.)

Action for Rectification: In *Mo. D. C., Ha. 219/44*⁽¹⁾ application was made under this section for an allotment of shares to be set aside on the ground that the allotment had not been made for the benefit of the company, that it had not been made in accordance with the articles of the company and that it had only been intended to increase the powers of certain directors in the management of the company.

In setting aside the allotment the court held that it had not been made for the purpose of raising more capital which (following *Punt v. Symons & Co.*)⁽²⁾ is generally the object of an issue of shares; that the applicant director had not been summoned to the board meeting and that the resolution passed at that meeting was therefore invalid (following *in re Homer District*

(1) 1944, S.C.D.C. 166.

(2) [1903] 2 Ch. 506; 72 L.J.Ch. 768; 89 L.T. 525.

Consolidated Gold Mines *ex parte* Smith)⁽³⁾. Although a subsequent board meeting, duly convened, purported to ratify the allotment, the Court held that this could only cure the former defect and not the fact that the object of the allotment had not been to raise capital (distinguishing *in re* Portuguese Consolidated Copper Mines Ltd., *ex parte* Badman, *ex parte* Bosanquet)⁽⁴⁾.

In *Mo.D.C.*, *Jm.* 154/45⁽⁵⁾ a director and salesman of a company who had a qualification share for which he had not paid in cash, had left the employment of the company and taken employment with a competing firm. The company thereupon altered its articles so as to give the directors power to enforce the transfer of any particular share. In the exercise of these powers the directors transferred that single share to another. The former director applied for rectification of the register. In defence it was contended that the transfer had been for the benefit of the company as the applicant could, so long as he remained a shareholder, have access to the books of the company and thus obtain information which could be used by the company's competitors with whom he was employed. The Court applied the test formulated in *Sidbottom v. Kershaw, Leese & Co., Ltd.*⁽⁶⁾, "Is the amendment for the benefit of the company as a whole and is it *bona fide*?", and dismissed the application.

Procedure: See note to "Court" in sec. 2, whence it will appear that an action is normally the proper form in which to apply for a remedy under this section.

An action (or application) for the rectification of the register is not the proper remedy when the plaintiff seeks to enforce a transfer of shares, for a person cannot have his name entered in the register of members as shareholder unless he establishes that he has a legal title to the shares, *i.e.* that the shares have in fact been transferred (*C.A.* 342/43)⁽⁷⁾. The same applies to actions by a pledgee of shares who does not seek to establish ownership: *C.D.C.*, *T.A.* 120/38⁽⁸⁾.

On the other hand, the remedy of rectification may be incidental to the main remedy. Thus in *C.A.* 231/41⁽⁹⁾, in an action against a company for the return of a loan, the company pleaded that the plaintiff was a shareholder as shares had been allotted to him for the amount of the loan and that he should have first applied for correction of the register. The District Court held⁽¹⁰⁾ that the plaintiff was not a member, quoting the following two passages from *Palmer's Company Law*:

"Mere entry of a person's name on the register cannot make him a member if there is no contract."

"A person is to be regarded as member if his name is on the register of members with his consent, or if he is estopped from denying that he is

(3) [1888] 39 *Ch.* 546; 58 *Ch.* 134; 60 *L.T.* 97.

(4) [1890] 45 *Ch.D.* 16, 26; 63 *L.T.* 423.

(5) 1945, *S.C.D.C.* 221.

(6) [1920] 1 *Ch.* 154; 89 *L.J.Ch.* 113; 122 *L.T.* 325; 36 *T.L.R.* 45.

(7) 11, *P.L.R.* 360; 1944, *A.L.R.* 344, quoting English authorities.

(8) 1938, *T.A.* 140 (*in Hebrew*).

(9) 8, *P.L.R.* 612; 1941, *S.C.J.* 593; 11, *Ct.J.R.* 22.

(10) *C.D.C.*, *T.A.* 347/40, *not reported*.

registered with his consent. He may not have applied. The shares may have been placed there without his consent and contrary to his wishes, but if he assents to his name being in the register, he is to be considered a member of the company".

(See also sec. 26(2) which lays down two conditions before a person becomes a member of the company *viz.*, agreement to become a member and entry of the person's name in the register).

The Court therefore held that the plaintiff was entitled to recover his money but, on counsel's request in final address, also ordered rectification of the register. The Court of Appeal confirmed the judgment of the District Court, holding on the question of rectification, "the relief of rectification is not inconsistent with the relief asked for since, if in fact, the plaintiff is entitled to recover L.P. 270, clearly the allotment of shares of 1938 is not a good one".

The local cases decided under this section may not, perhaps, give a complete picture of the wide powers conferred upon the Courts to rectify the register in cases of fraud and misrepresentation. Reference should be made to English case law for particulars of the remedy available under the section.

35 A.—(1) A company having a share capital may, if so authorised by its articles, cause to be kept in the United Kingdom of Great Britain and Northern Ireland a branch register of members resident in the United Kingdom of Great Britain and Northern Ireland (in this Ordinance called a "branch register").

Power for
company to
keep
branch
register.

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

(3) If a company fails to comply with this section it shall be liable to a fine of two pounds for every day during which the default continues, and every director, manager, secretary or other officer of the company who knowingly or wilfully authorises or permits the default shall be liable to the like penalty.

Source: Secs. 35A-35E were enacted by the 1935 Amendment Ordinance. Sec. 35A is taken from sec. 103(1)-(3) of the Act. (Sub-sec. (3) in the Act should be read together with sec. 365 thereof). For divergences, *vide infra*.

Object: It was stated in the *Objects and Reasons* annexed to the draft of the amending Ordinance that the amendment was intended to enable companies registered in Palestine to have branch registers in the United Kingdom; that this was a reciprocal provision, an Order in Council having been passed to enable a company registered under the Companies Act to keep a branch register in Palestine. (See *Reciprocity, infra*).

Divergences from the Act:

Sub-sec. (1): The Act refers to branch registers as "dominion registers". Sub-sec. (1) of the Act authorises a company to keep a dominion register in such part of His Majesty's dominions in which it does work, if authorised by its memorandum of association to transact business outside the United Kingdom. There must therefore be authority to transact business abroad and business must be so transacted. Neither of these conditions are mentioned in the Ordinance. As regards authority to transact business outside Palestine, this is implied by sec. 6 read together with clause (v) of the Second Schedule; but there need not be any business actually transacted in the United Kingdom, for a branch register to be kept there. On the other hand the Ordinance requires the articles of the company to authorise the opening of a branch register. This condition does not appear in the Act. (But see sec. 35B(6)). Otherwise, sub-sec. (1) forms the local reciprocal provision to sec. 103(1) of the Act.

Sub-sec. (2): The Ordinance substituted one month for fourteen days in the Act.

"Company having a share capital": See secs. 4(ii)(iii) and sec. 9.

Form: The following is a form of notice under sub-sec. (2):

THE COMPANIES ORDINANCE, CAP. 22.

Name of Company.

Notice of the Situation of the Office where a Branch Register is kept or of any change in, or discontinuance of, any such office.

(Pursuant to sec. 35A(2)).

Name of Company:

Presented for filing by:

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

_____ Limited hereby gives you notice in accordance with sec. 35A(2) of the Companies Ordinance, and by the authority of (*special resolution, or clause — of the Articles of Association*) that a Branch Register is now kept at (*in case of change, write "in lieu of" followed by the old address. In case of notice of discontinuance, strike out the words "is now kept" and insert the words "is discontinued" after the address.*)

Signature

(*State whether Director, Manager or Secretary.*)

Dated this _____ day of _____ 194 _____

Fees: A fee of 100 mils appears to be payable on the registration of the notice (last term in Part I of the Sixth Schedule as substituted in 1944).

Sub-sec. (3): See secs. 251-2 and notes.

Reciprocity: Secs. 35A-E are the reciprocal provisions to those set out in an Order-in-Council dated December 20th, 1934, enabling a company registered under the Act to keep a branch register in Palestine.

Regulations
as to
branch
register.

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

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

the advertisement before closing the register shall be inserted in some newspaper circulating in the district where the branch register is kept.

(3) The company shall transmit to its registered office in Palestine a copy of every entry in its branch register as soon as may be after the entry is made, and shall cause to be kept at such registered office, duly entered up from time to time, a duplicate of its branch register.

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

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

(5) A company may discontinue to keep a branch register and thereupon all entries in that register shall be transferred to the principal register.

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

(7) If a company fails to comply with this section it shall be liable to a fine of two pounds for every day during which the default continues, and every director, manager, secretary or other officer of the company who knowingly or wilfully authorises or permits the default shall be liable to the like penalty.

Source: This section together with secs. 35A, 35C - 35E were enacted by the 1935 Amendment Ordinance. It is taken from sec. 104 of the Act, with the following divergences (apart from minor verbal differences): In sub-sec. (2) of the Act power is given to Courts of the dominion where the branch register is kept ("dominion register" in the Act) to rectify the register and to punish refusals to allow inspection of, or copy out extracts from, the register. Under sub-sec. (5) of the Act if a company discontinues to keep a dominion register it may transfer the entries either to some other dominion register kept by the company in the same part of His Majesty's dominions or, as in the Ordinance, to the main register. Sub-sec. (7) is taken from sec. 104(7) of the Act read together with sec. 365 thereof.

See sec. 29 and notes.

For sub-sec. (7) see secs. 251-2 and notes.

Stamp duties
in case of
shares registered
in branch
registers.

35 C. An instrument of transfer of a share registered in a branch register, shall be deemed to be a transfer of property situate out of Palestine, and unless executed in any part of Palestine shall be exempt from a stamp duty chargeable in Palestine.

Source: Sec. 105 of the Act. This section was enacted by the 1935 Amendment Ordinance. See notes to the preceding sections.

See sec. 31 and notes.

Provisions
as to branch
registers
kept in
Palestine.

35 D. The High Commissioner-in-Council may by order published in the Gazette direct that sub-sections (4), (5), (7), and (8) of section 29 and section 35 of this Ordinance shall, subject to any modifications and adaptations specified in the order apply to and in relation to any branch registers of members resident in Palestine, of companies incorporated under the law of the United Kingdom of Great Britain and Northern Ireland, kept in Palestine as they apply to and in relation to the registers of companies within the meaning of this Ordinance.

Source: Compare sec. 106 of the Act. This section, together with secs. 35A-C and E, was enacted in 1935.

No orders have been made under this section.

Power of
High
Commissioner
to extend
provisions
of sections
35A to 35D
of this
Ordinance to
certain countries.

35. E. If the High Commissioner is satisfied that by virtue of the law in force in any country other than the United Kingdom of Great Britain and Northern Ireland:—

- (a) companies incorporated under that law have power to keep in Palestine branch registers of their members resident in Palestine, and
- (b) any instrument of transfer of a share registered in any register so kept (unless executed in any part of such country) is exempted from stamp duty chargeable therein, and
- (c) power exists to inspect and rectify any branch register kept in such country by a company incorporated in Palestine,

the High Commissioner may by order published in the *Gazette* direct

that sections 35A to 35D inclusive of this Ordinance shall, subject to the modifications and adaptations specified in the order, be deemed to be extended to such country.

Source: This and the preceding four sections were enacted in 1935. Compare sec. 107(1) of the Act.

No orders have been made under this section.

See notes to the preceding sections.

36.—(1) Every company having a share capital shall, once at least in every year, make a return containing a list of all persons who, on the fourteenth day after the first or only ordinary general meeting in the year, are members of the company, and of all persons who have ceased to be members since the date of the last return or, in the case of the first return, of the incorporation of the company.

Annual list
of members
and summary.

(2) The list must state the names, addresses and occupations of all the past and present members therein mentioned, and the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return or, in the case of the first return, of the incorporation of the company by persons who are still members and have ceased to be members respectively, and the dates of registration of the transfers, and, if the names therein are not arranged in alphabetical order, must have annexed to it an index sufficient to enable the name of any person in the list to be readily found.

(3) The return must also state the address of the registered office of the company and must contain a summary distinguishing between shares issued for cash and shares issued, as fully or partly paid up otherwise than in cash, and specifying the following particulars—

- (a) the amount of the share capital of the company and the number of the shares into which it is divided;
- (b) the number of shares taken from the commencement of the company up to the date of return;
- (c) the amount called up on each share;
- (d) the total amount of calls received;
- (e) the total amount of calls unpaid;

- (f) the total amount of the sums, if any, paid by way of commission in respect of any shares or debentures, or allowed by way of discount in respect of any debentures, since the date of the last return;
- (g) the total number of shares forfeited;
- (h) the total amount of shares for which share warrants are outstanding at the date of the return;
- (i) the total amount of share warrants issued and surrendered respectively since the date of the last return;
- (j) the number of shares comprised in each share warrant;
- (k) the number and amount of outstanding redeemable shares of the company;
- (l) all such particulars with regard to the persons who, at the date of the return, are directors of the company as are, under section 76, required to be contained with respect to directors in the register of directors of a company;
- (m) the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the registrar of companies under this Ordinance.

(4) Every company, not having a share capital, shall, at least once in every calendar year, make a return stating—

- (a) the address of the registered office of the company;
- (b) all such particulars with regard to the persons who, at the date of the return, are the directors of the company as are, under section 76, required to be contained with respect to directors in the register of directors of a company;
- (c) the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the registrar of companies under this Ordinance.

(5) Except where a company is a private company the annual return shall, in every case, include a written copy, certified by

a director or the manager or secretary of the company to be a true copy of the last balance sheet which has been audited by the company's auditors, including every document required by law to be annexed thereto, together with a copy of the report of the auditors thereon, certified as aforesaid, and, if any such balance sheet is in a language other than English, Hebrew or Arabic, there shall be annexed to it a translation thereof in English certified in the prescribed manner to be a correct translation:

Provided that, if the last balance sheet did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets, there shall be made such additions to, and corrections in, the said copy as would have been required to be made in the said balance sheet in order to make it comply with the said requirements; and the fact that the said copy has been so amended shall be stated thereon.

(6) The annual return must be contained in a separate part of the register of members and must be completed within fourteen days after the fourteenth day aforesaid, and the company must forthwith forward to the registrar of companies a copy signed by a director or by the manager or by the secretary of the company.

(7) The inclusion in the annual return of a statement as to the registered office of the company shall not be taken to be in satisfaction of the obligation of a company under section 59 to give notice to the registrar of companies of the situation of its registered office and of any change therein.

(8) If a company fails to comply with this section it is liable to a fine of two pounds for every day during which the default continues, and every director, manager, secretary or other officer of the company who knowingly or wilfully authorises or permits the default is guilty of an offence and is liable to the like penalty.

Source: Sub-sec. (1): sec. 108(1) of the Act. Sub-sec. (2): sec. 108(2) of the Act, which also contains a proviso relating to particulars of stock, if any; but the obligation to supply particulars of stock also applies under the Ordinance, as sec. 2(1) contains a definition of "share" which is made to include stock (and see sec. 43(4)). Sub-sec. (3) is taken from sec. 108(3) with the following divergences: A separate item (g), in the Act, deals with discounts, not written off, on shares and item (h) deals with such

discounts on debentures; item (k) in the Ordinance does not appear in the Act. The lettering marking these clauses does not therefore correspond in the two enactments. There are other minor verbal divergences in a number of the clauses. Sub-sec. (4) is taken from sec. 109 of the Act, which provides for particulars of indebtedness on mortgages and charges to be annexed to the return instead of, as in the Ordinance, forming part of the return. Sub-sec. (5) is taken from sec. 110(3) of the Act with drafting divergences, but that sub-section also refers to Insurance Companies coming under the Assurance Companies Act of 1909. Sub-sec. (6) is taken from sec. 110(1); sub-sec. (7): the second paragraph of sec. 92(2) and sub-sec. (8) from sec. 110(4) read together with sec. 365.

Amendments: See notes to sub-secs. (4) and (5).

See sec. 95(3) of the Ordinance which provides for discount on shares to be shown in the return.

Sub-secs. (1) (2):

Company: See definition in sec. 2(1)

Share capital: See definition of "share" (*ibid.*) and sec. 9.

First or ordinary general meeting: See sec. 61 and references in the notes thereto.

Fourteenth day: See sec. 6 of the Interpretation Ordinance.

Members: See sec. 26.

Form: There is no statutory form of annual return, such as that given in the Sixth Schedule of the Act (made applicable by sec. 108(4) thereof).

The following form may be used:

THE COMPANIES ORDINANCE, CAP. 22.

Name of Company.

Annual Return of a Company having a Share Capital.

(Pursuant to sec. 36).

Name of Company:

Presented for filing by:

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

Annual Return of _____ Limited, made up to the _____ day of _____ 194 (being the fourteenth day after the day of the first or only general meeting in 194).

The address of the registered office of the Company is as follows:

SUMMARY OF SHARE CAPITAL AND SHARES.

1. Nominal Share Capital LP. _____
divided into _____ shares of LP. _____ each
_____ shares of LP. _____ each

(Where there are shares of different kinds or amounts they should be stated separately).

2. Total number of shares taken up to the _____ day of _____ 1940
 being the date of the return _____ shares of L.P. _____
 _____ shares of L.P. _____

(The number must agree with the total shown in the list as held by existing members.)

(Where there are shares of different kinds or amounts they should be stated separately.)

3. Number of shares issued subject to payment wholly in cash _____
 4. Number of shares issued as fully paid up otherwise than in cash _____
 5. Number of shares issued as partly paid up to the extent of L.P. _____
 (or _____ %) per share otherwise than in cash.
 6. Number of _____ shares (if any) issued at a discount
 and _____ shares (if any) issued at a discount

(Where the shares are of different kinds, they should be stated separately.)

7. Total amount of discount on the issue of shares which has not been
 written off at the date of this return. L.P. _____

8. There has been called up on each of _____ shares L.P. _____
 and on each of _____ shares L.P. _____

(Where various amounts have been called, or where there are shares of different kinds, this should be stated separately.)

9. Total amount of calls received, including payments on application and
 allotment L.P. _____

(Amounts received on forfeited as well as on existing shares should be included.)

10. Total amount (if any) agreed to be considered as paid on _____ shares
 which have been issued as fully paid up otherwise than in cash L.P. _____
 and on _____ shares which have been issued as fully paid up otherwise than
 in cash L.P. _____

(Where various amounts have been paid or where there are shares of different kinds, this should be stated separately.)

11. Total amount (if any) agreed to be considered as paid on _____
 shares which have been issued as partly paid up to the extent of L.P. _____
 (or _____ %) per share otherwise than in cash; L.P. _____
 and on _____ shares which have been issued as partly paid up to the extent
 of L.P. _____ (or _____ %) per share otherwise than in cash L.P. _____

(Where various amounts have been considered to be paid or where there are shares of different kinds, this should be stated separately.)

12. Total amount of calls unpaid L.P. _____

13. Total amount of the sums (if any) paid by way of commission in
 respect of any shares or debentures or allowed by way of discount in respect

- of any debentures since the date of the incorporation of the Company (*or, if not the first return*) the last return: I.P. _____
14. Total amount of shares forfeited I.P. _____
15. Total amount (*if any*) paid on shares forfeited: I.P. _____
16. Total amount of shares (*if any*) for which share warrants to bearer are outstanding: I.P. _____
17. Total amount of share warrants to bearer (*if any*) issued and surrendered respectively since the date of incorporation of the Company (*or, if not the first return*) the last return issued: I.P. _____
surrendered I.P. _____
18. Number of shares comprised in each share warrant to bearer (*if any*) _____
19. Numbers and amounts of outstanding redeemable shares of the Company. Nos. _____ to _____: I.P. _____
20. Total amount of the indebtedness (*if any*) of the company in respect of all mortgages and charges of the kind which are required to be registered with the Registrar of Companies under the Companies Ordinance I.P. _____

(See sec. 127 of the Ordinance.)

COPY OF LAST AUDITED BALANCE SHEET OF THE COMPANY.

(See sub-sec. (5). This need not be submitted in the case of a private company (*eo loco*)).

PARTICULARS OF DIRECTORS.

(See secs. 2 and 76(6)).

Forename and surname	Usual Residential Address	Other business occupation, if any.

(In the case of a corporation, the corporate name and the registered and principal offices should be stated sec. 76(1)(b)). If there are no other business occupations this should be stated (3rd column) and if the director holds other directorships, particulars thereof should be entered (sec. 76(1)(a)). (See secs. 2(1) (definition of "director" and 76(6)).

LIST OF MEMBERS.

(For private companies, see sec. 31 A).

List of persons holding shares in _____ Limited, on the day _____ of _____ 194— and of persons who have held shares therein at any time since the date of incorporation of the Company (*or, if not the first return*) last return, showing their names and addresses, and an account of the shares so held.

(The names should either be arranged in alphabetical order, or an index be annexed, enabling the name of any person to be readily found.)

(Number of shares: In the first column of the Account of shares, the aggregate and not the distinctive number of shares should be stated.

When the shares are of different classes, columns one, two and four in "Account of Shares" may be subdivided so that the number of each class held or transferred may be shown separately.

Where any shares have been converted into stock the amount of stock held by each member must be shown.

For columns three and five in that part, the date of registration of each transfer should be given as well as the number of shares transferred on each date. The particulars should be placed opposite the name of the transferor, and not opposite that of the transferee, but the name of the transferee may be inserted in the last ("remarks") column, immediately opposite the particulars of each transfer.)

Signature

(State whether Director, Manager or Secretary.)

Dated this day of 194 .

Private Companies: See sec. 36A.

Banking Companies: In addition to the Annual Return, see the requirement as to returns and balance sheets set out in secs. 9 and 10 of the Banking Ordinance (Vol. II, pp. 231 sqq).

Insurance Companies: See sec. 100 for additional requirements imposed upon insurance companies.

Stamping: The above and the following (sub-sec. (4)) form should be stamped with revenue stamps to the value of 100 mils (Stamp Duty Ord., Schedule, Item 35). It was formerly necessary, in virtue of sec. 5 of that Ordinance, to have the stamp impressed. An amendment to the Stamp Duty Ordinance enacted in 1936 (Ord. 6 of 1946 P.G. 1442 of 5.2.46, sup. I, p. 53, enacting sec. 70A) allows adhesive stamps to be affixed on the returns, the former practice having proved to be a cause of inconvenience and delay ("Objects and Reasons" to the draft amendment).

Sub-sec. (3): See sec. 36A for the certificates to be sent by private companies together with the annual return. For shares forfeited, see sec. 42; for shares issued at a discount see sec. 95, and for payment of commission, secs. 96, 97 and 127(8). As regards stock, see sec. 43(4). See sec. 127 for charges requiring to be registered and sec. 125 for the register of charges. Sec. 76 deals with the register of directors and sec. 59 with the registered office.

Sub-sec. (4): The sub-section was amended by the 1936 Amending Ordinance which inserted the following words at the beginning of the sub-section: "Except where the company is a private company". This amendment was repeated in the Revised Edition of the laws (Revision) Ordinance, although the numbering of the amended sub-section had been erroneously given, sub-sec. (5) having been intended. No. 30 of 1937 repealed the former amendments and enacted the words quoted as part of sub-sec. (5).

See notes to sub-sec. (3) for the particulars required by clauses (b)

and (c) of this sub-section and for banking, private and insurance companies.

The following form may be used:

THE COMPANIES ORDINANCES, CAP. 22.

Name of Company

Annual Return of a Company not having a share capital.
(Pursuant to section 36.)

Name of Company:

Presented for filing by:

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

Annual Return of _____ Limited, made up to the _____
day of _____ 194— (being the fourteenth day after the date of the
first or only annual general meeting in 194).

The address of the registered office of the company is:-

INDEBTEDNESS OF COMPANY.

Total amount of the indebtedness of the Company in respect of all mortgages and charges of the kind which are required to be registered with the Registrar of Companies under the Companies Ordinance: LP.

PARTICULARS OF DIRECTORS.

Forename and surname.	Usual Residential Address	Other business occupation, if any.

("Director" includes any person who occupies the position of a director by whatever name called, and any person in accordance with whose directions or instructions the directors of a company are accustomed to act (Sections 2(1), and 76(6)).

In the case of a corporation acting as director, its corporate name and registered or principal office should be shown (Section 76(1)(b)).

In the case of an individual who has no business occupation but holds any other directorship or directorships particulars of that directorship or of some of those directorships must be entered (Section 76(1)(a)). If he has no other occupation, the fact, should be stated.

(Signature)

(State whether Director or Manager or Secretary).

Dated this _____ day of _____ 194

Stamping: See this heading in the notes to sub-secs. (1) and (2).

Sub-sec. (5):

Amendments: The words "Except where a company is a private company" were added by the amending Ordinance No. 30 of 1937, at the begin-

ning of the sub-section in lieu of in sub-sec. (4). See notes to that sub-section. But in transposing these words from sub-sec. (4) to sub-sec. (5), the words "where *the* company" were rendered as "where *a* company." (Cf. the text of these words in *Kantrovitch-Baker, op. cit.* p. 163.) For private companies, see sec. 25A and cross-references in the notes thereto.

Balance sheet: See sec. 107. The documents required by law to be annexed thereto are (in addition to the auditor's report, sec. 110(1)), the directors' report (sec. 106(4)) and statements by holding companies, if any (sec. 107(5)).

"Certified in the prescribed manner": "Prescribed" when used otherwise than in connection with winding up, means prescribed by the High Commissioner (sec. 2(1) *s.v.*). No order has been made by the High Commissioner under this section and the sufficiency of the certification is presumably left to the discretion of the Registrar. A notarial certification will be accepted in all cases.

Sub-sec. (6):

Registrar of members: See sec. 29.

"Within fourteen days after the fourteenth day aforesaid.": See sub-sec. (1).

Sub-sec. (8):

See secs. 251-2.

A fine may be imposed only in respect of a past omission. It cannot apply for the future, *i.e.* until actual compliance: CR.A. 6/41⁽¹⁾.

Certificates
to be sent
by private
company
with annual
return.

36 A. A private company shall send with the annual return required by section 36 of this Ordinance a certificate signed by a director or the secretary of the company that the company has not, since the date of the last return, or in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company, and, where the annual return discloses the fact that the number of members of the company exceeds fifty, also a certificate so signed that the excess consists wholly of persons who under paragraph (b) of sub-section (1) of section 25 (A) of this Ordinance are not to be included in reckoning the number of fifty.

Source: This section, taken from sec. 111 of the Act, was enacted by the 1936 Amendment Ordinance which introduced private companies into the scheme of the Ordinance.

The section is intended to ensure that notice should be given of compliance with the requirements of sec. 25 A, relating to private companies. When those requirements cease to be satisfied, the company cannot continue to be a private company. See notes to sec. 25A.

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

Company, Debenture, Director, Share: These terms are defined in sec. 2(1).

Member: See sec. 26.

"Fourteenth day:" See sec. 6 of the Interpretation Ordinance for the computation of a period of days.

Form: The following form may be used:

THE COMPANIES ORDINANCE, CAP. 22.
(Name of the Company)

Certificate to be given by a private company
(Pursuant to sec. 36A)

Name of Company:

Presented for filing by:

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

I hereby certify that the Company has not since the date of the last return (*or, in the case of a first return*) incorporation of the Company issued any invitation to the public to subscribe for any shares or debentures of the Company.

Signature

(State whether Director or Secretary)

Dated this day of 194 .

(Should the number of the members of the Company exceed fifty, the following certificate should also be annexed, using the same heading).

I certify that the excess of members of the Company above fifty consists wholly of persons who are in the employment of the Company and/or of persons who, having been formerly in the employment of the Company were while in such employment, and have continued after the determination of such employment to be, members of the Company.

37. Subject to any provisions in the memorandum or articles, the shares of a company shall have the right to share in divisible profits *pari passu*; but a company with a share capital may by its memorandum or articles divide its capital into shares of different classes and may attach different rights as to dividend and participation in surplus assets in a winding-up to shares of different classes.

Right of
shareholders
to profits.

This section has no corresponding provision in the Act, but it reproduces the common practice. It is an explanatory section which does not enact any new provisions.

The following provisions in the Ordinance may be compared: Sec. 41 (power of company to arrange for different amounts to be paid on shares), sec. 43 (alteration of share capital), sec. 44 (rights of holders of special classes of shares), sec. 117 (arrangements). And see the next two sections. See also sec. 19(2).

If any privileges, as to payment of dividends and participation of surplus assets in winding up, attach to any type of shares in virtue of the memorandum, these privileges may not be altered without alteration of the memorandum, so that this is nearly impossible to carry out in practice. See sec. 7 and cross-

references in the notes. If special provisions are made in the articles regarding any type of shares, these provisions may be altered, subject to the sections quoted at the beginning of this note, by special resolution (see sec. 12 and notes).

See arts. 3 and 4 in Table A. And see notes to sec. 41.

Articles, Capital, Memorandum, Shares: See definitions in sec. 2(1).

Share Capital: See sec. 9.

Issue of
redeemable
shares.

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

Provided that—

(a) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend, or out of the proceeds of a fresh issue of shares made for the purposes of such redemption;

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

(c) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall, out of the profits which would otherwise have been available for dividend, be transferred to a reserve fund, to be called "the capital redemption reserve fund," a sum equal to the amount applied in redeeming the shares, and the provisions of this Ordinance relating to the reduction of the share capital of a company shall, except as hereinafter provided, apply as if the capital redemption reserve fund were paid up share capital of the company;

(d) where any such shares are redeemed out of the proceeds of a fresh issue, if a premium is payable on redemption, such premium shall have been provided for out of the profits of the company before the shares are redeemed.

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

(ii) If a company fails to comply with the provisions of this subsection it is liable to a fine of one hundred pounds, and every director, manager, secretary or other officer of the company who knowingly and wilfully authorises or permits the default is guilty of an offence and is liable to the like penalty.

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

Source: Sub-sec. (1) is taken from sec. 46(1) of the Act; sub-sec. (2), from sec. 46(2) thereof, read together with sec. 365; sub-sec. (3), from sec. 46(3).

See foot-note to sec. 39 for a discussion of the divergence between the Act and the Ordinance.

Company, Director, Dividends, Share: See definitions in sec. 2(1).

Sub-sec. (1):

Company limited by shares: See sec. 4(i).

"If so authorised by its articles": See arts. 3 and 40 of Table A.

Redeemable Shares: See sec. 5(1) (d) and notes.

Currency of new Shares: New shares should be issued in Palestine currency unless the company was registered prior to the enactment of the Ordinance with a capital expressed in any other currency. See sec. 53A.

Fees: See notes to secs. 17 and 43 for the capital duty payable on the issue of shares.

Clause (c): The provisions of the Ordinance relating to the reduction of the share capital, mentioned in this clause, are set out in secs. 45-53.

Notice of Redemption: See also sec. 43(3).

Sub-sec. (2): For the balance sheet see sec. 107. Para. (ii) should be read in conjunction with secs. 251-2. See notes thereto.

Sub-sec. (3): "Subject to the provisions of this Ordinance": This means secs. 38 and 39. See also next section and notes.

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

Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to

Ordinary shares may be issued in place of redeemed shares.

capital duty, be deemed to have been issued in pursuance of this section, unless the old shares are redeemed within one month after the issue of the new shares.

(2) Where new shares have been issued in pursuance of the preceding subsection, the capital redemption reserve fund may, notwithstanding anything in this Ordinance, be applied by the company, up to an amount equal to the nominal amount of the shares so issued, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

Source: Sec. 46(4) and (5) of the Act.

Amendments: This section was amended in 1936 by the substitution of the word "capital duty" for "stamp duty" in sub-sec. (1) and in the proviso to that sub-section. The English sub-section refers to stamp duty, as *ad valorem* duty on capital issues is payable in England by means of stamps. The subsection should be further amended as it now refers, like the Act, to "enactments relating to duty" and duty is imposed not, as in England, by separate enactment, but under the Ordinance itself.

The exact effect of this and the preceding section is not always easy to ascertain and they raise a number of questions which cannot find answer in the Ordinance. The same remark also applies to the English Act⁽¹⁾.

The provisions of sec. 45 do not appear to apply to shares issued in pursuance to this section. (*See quære?*)

Share Capital: See sec. 9

Company, Shares: See definitions in sec. 2(1).

Member: See sec. 26.

40. No person shall be given the right to participate in the divisible profits of the company limited by guarantee and not having a share capital otherwise than as a member of the company; and any provision to the contrary in the memorandum or articles or any resolution of the company shall be void.

Source: This section is adapted from sec. 21(1) of the Act. But the Act excludes the prohibition for companies incorporated before 1901.

The section contemplates existing companies registered under former laws. See definition of "company" in sec. 2(1).

Company limited by Guarantee: See sec. 4(ii).

⁽¹⁾ See, e.g. the various queries raised in Buckley's *Companies Acts*, in the notes to sec. 46 (11th ed., pp. 106 sq.).

Secs. 38 and 39 are, in the Act, combined in sec. 46. Sub-sec. (3) thereof, which corresponds to sec. 38(3) of the Ordinance, reads, "subject to the provisions of this section" instead of, as in sec. 38(3), "subject to the provisions

Share of profits in companies limited by guarantee.

"Not having a share capital": See sec. 9.

Member: See sec. 26.

41. A company, if so authorised by its articles, may do any one or more of the following things, namely—

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

(a) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payments of calls on their shares;

(b) accept from any member who assents thereto the whole or a part of the amount remaining unpaid on any shares by him, although no part of that amount has been called up;

(c) pay dividend in proportion to the amount paid up on each share, where a larger amount is paid up on some shares than on others.

Source: Sec. 48 of the Act.

In the absence of any special provisions in the memorandum or in the articles of association, all members have equal rights: Sec. 37, *cf.* sec. 44.

See sec. 2(1) for definitions of "articles", "company", "dividends", "shares."

"If so authorised by its articles": For clause (a) see art. 15 of Table A; for clause (b), art. 16 and for clause (c), art. 97.

42. A company may, if so authorised by its articles, forfeit shares for non-payment of calls in accordance with the provisions of its articles.

Power to forfeit shares on non-payment of calls.

Source: This section is not taken from the Act, but from English Common Law⁽¹⁾. Table A sets out, in arts. 230-9, provisions relating to the forfeiture of shares. Although the Act contains no section corresponding to sec. 42 of the Ordinance, Table A in the Act contains articles corresponding to arts. 23-9, and sec. 108(3), corresponding with sec. 36(3) of the Ordinance also refers to the inclusion, in the annual return, of particulars relating to shares forfeited.

of this Ordinance. In making the variation, the draftsman no doubt only had in mind the division of sec. 46 of the Act into the two corresponding sections in the Ordinance and intended to refer, in sub-sec. (3), to secs. 38 and 39. But *quaere* whether the effect of the alteration was not to apply the provisions of secs. 45 *sqq.* to the redemption of preference shares, as these sections deal with reduction of capital and are not excluded in the same manner as the corresponding sections are under sec. 46 of the Act (if they are in fact excluded — see query above notes to sec. 39) by the use of the words quoted from sub-sec. (3) of sec. 46.

(1) *E.g.*, *Allen v. Gold Reefs of West Africa* [1900] 1 Ch. 656; 69 L.J.Ch. 266; 82 L.T. 210; 16 T.L.R. 213.

This does not amount to a reduction of share capital for the purpose of the Ordinance. See notes to sec. 45. But a voluntary surrender of shares does not come within that exception and involves a reduction of share capital to which sec. 45 applies⁽²⁾.

For liens on shares, see arts. 8-10 of Table A.

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

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

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

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

- (3) If a company having a share capital has—
 - (a) consolidated and divided its share capital into shares of larger amount than its existing shares, or
 - (b) converted any of its shares into stock, or

⁽²⁾ See *Bellerby v. Rowland & Marwood's S.S. Co.* [1902] 2 Ch. 14; 71 L.J.Ch. 541; 86 L.T. 671; 18 T.L.R. 582.

(c) reconverted stock into shares, or

(d) redeemed any redeemable preference shares, or

(e) cancelled, otherwise than in connection with a reduction of share capital under section 45, any shares,

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

(4) Where a company having a share capital has converted any of its shares into stock and given notice of the conversion to the registrar of companies, all the provisions of this Ordinance which are applicable to shares only shall cease as to so much of the share capital as is converted into stock; and the register of members of the company, and the list of members to be forwarded to the registrar, shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares hereinbefore required by this Ordinance.

(5)(i) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, and where a company not having a share capital has increased the number of its members beyond the registered number, it shall give to the registrar of companies, within fifteen days after the passing of the resolution authorising the increase, and, in the case of an increase of members, within fifteen days after the increase was resolved on or took place, notice of the increase of capital or members, and the registrar shall record the increase.

(ii) In the case of an increase of share capital, the notice to be given as aforesaid shall include such particulars as may be prescribed with regard to the classes of shares affected and the conditions subject to which the new shares have been, or are to be, issued and there shall be forwarded to the registrar of companies, together with the notice, a printed copy of the resolution authorising the increase.

(6) If a company makes default in complying with the requirements of subsections (3), (4) or (5), it is liable to a fine of five pounds for every day during which the default continues, and every director, manager, secretary or other officer of the company who knowingly and wilfully authorises or permits the default is guilty of an offence and is liable to the like penalty.

Source: Sub-sec. (1) is taken from sec. 50(1) of the Act; that subsection does not refer to a special resolution, but sec. 50(2) of the Act, which is not reproduced in the Ordinance, provides, "The powers conferred by this section must be exercised by the company in general meeting". Sub-sec.(2) is taken from sec. 50(3) of the Act; sub-sec. (3), from sec. 51(1); the latter contains an item (clause (d)), which is not included in sub-sec. (3) of the Ordinance; it reads, "(d. subdivided its shares or any of them, or"; (the lettering of the clauses does not therefore correspond in the two enactments). The corresponding amendment is made at the end of sub-sec. (3), which refers to shares "consolidated, divided, converted, redeemed or cancelled", whilst the Act also mentions shares "subdivided". (Cf. sub-sec. (1)(d) in the Ordinance which allows sub-division.) Sub-sec. (4) is taken from the proviso to sec. 95(1), but the following provisions are not included in the proviso; (a) that all the provisions of the Ordinance applicable to shares only shall not apply to stock, (b) the list of members to be forwarded to the Registrar should show particulars as to stock; as regards the latter, provision is made in the proviso to sec. 108(2) of the Act to the same effect. (See heading *Source* in the notes to sec. 36). This divergence is discussed in the notes to sub-sec. (4), *infra*. Sub-sec. (5)(i) is taken from sec. 52(1) and (as regards companies not having a share capital) 7(3). Sub-sec. (5)(ii) is taken from sec. 52(2), and sub-sec. (6), from secs. 51(2) and 52(3) and also 7(3), last sentence and 95(2) read in both cases, together with sec. 365 of the Act.

Company, Articles, Memorandum, Registrar, Shares: See definitions in sec. 2(1) and note that "shares" does not always include stock in this context.

Sub-sec. (1):

Company limited by shares: See sec. 4(i).

Company limited by guarantee: See sec. 4(ii).

And having a share capital: See sec. 9.

"If so authorised by its articles": See the following articles in Table A, dealing with alterations of the share capital: Arts. 3, 4, 30-3, 34-9, 40-44.

"May alter the conditions or its memorandum": The alteration of the memorandum must be embodied in every copy subsequently issued; sec. 21.

Special Resolution: See sec. 66(4).

Increase of capital: The capital may also be increased in manner provided by sec. 39(2). See notes to sub-sec. (5), *infra*.

The increase of capital refers to the registered capital.

Procedure on alteration: "a) Resolution about increase of capital, which should be taken by special resolution... b) Notice to the Registrar of Com-

panies within fifteen days from the date of the resolution, c) registration of the resolution by the Registrar of Companies and then (follows) the procedure regarding the distribution of the new shares among the members of the company, or their issue outside the company, etc." (C.A.D.C., T.A. 158/41) (1).

Currency of altered Capital: Unless the company was registered before the enactment of the Ordinance with a capital expressed in a currency other than Palestine currency, the amount of new shares issued or of the altered share capital should be expressed in Palestine currency. (Sec. 53A).

Payment of Fees on increase: It was held in the case quoted above that the words "may increase its share capital by special resolution" indicate that the capital is increased by the special resolution and not by any of the steps taken after the resolution. In the instant case a special resolution was passed, increasing the capital; it was followed by another special resolution cancelling the former. The interval of 15 days for registering a special resolution (sec. 67(1)) had expired before the second resolution was passed. The Court held that the fee payable on the increase of capital (sec. 244) was due notwithstanding the second resolution.

Preference: If Table A applies to the company, art. 42 thereof gives existing members a right of preference on the new issue of shares.

Sub-sec. (2): Reduction of capital is dealt with in secs. 45-53A.

Sub-sec. (3):

Share capital modified as specified in sub-sec. (1) is dealt with by this sub-section, but subdivided shares (sub-sec. (1)(d)) are not mentioned. See note *Source, supra*, for divergence from English law. Redeemed preference shares (sec. 38) are also included.

Form: The following form may be used:

THE COMPANIES ORDINANCE, CAP. 22.

Name of Company.

Notice of Consolidation, Division, or Conversion into Stock of Shares, specifying the Shares so Consolidated, Divided, or Converted into Stock, or of the Re-Conversion into Shares of Stock, specifying the Stock so re-converted, or of the Redemption of Redeemable Preference Shares or of the Cancellation of Shares (otherwise than in connection with a reduction of share capital under Sec. 45 of the Companies Ordinance, Cap. 22).

(Pursuant to sec. 43(3)).

Name of Company:

Presented for filing by:

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

_____ Limited, hereby give you notice in accordance with sec. 43(3) of the Companies Ordinance, that _____

Signature

(State whether Director, Manager or Secretary).

Dated the _____ day of _____ 19 .

(1) 1941-2. T.A. 199. Translated from the report in Hebrew.

Sub-sec. (4): As pointed out in the note *Source*, this sub-section differs from its model (proviso to sec. 95(1) of the Act), which applies only to entries in the register of members. As regards the particulars required to be forwarded to the Registrar, the sub-section does not appear to have added to the provisions of sec. 36 as that section calls for particulars regarding shares and the latter are defined (sec. 21(1)) as including stock "except where a distinction between stock and shares is expressed or implied". But see *Source*, above, where sec. 108(2) of the Act is also mentioned.

"All the provisions of this Ordinance which are applicable to shares only": Apart from sec. 27 (and 29(1)(a)) which deals with the numbering of shares, there does not appear to be any specific provision in the Ordinance dealing with shares to the exclusion of stock. Provisions relating to the register of members and the annual list and summary are separately dealt with by this sub-section. The divergence from English law in this sub-section has therefore led to a certain obscurity. See also notes to the definition of "share", in sec. 2(1).

For the register of members see sec. 29 and for the annual list, sec. 36.

Sub-sec. (5):

See notes to sec. 39.

The notice contemplated by this sub-section is in addition to the registration of a special resolution under sec. 67.

Forms: Of the following two forms the first should be used when the company has increased its share capital; the second form is for companies having no share capital, where members have been increased in number.

THE COMPANIES ORDINANCE, CAP. 22.

Name of Company.

Notice of Increase of Share Capital.

(Pursuant to sec. 43(5)).

Name of Company:

Presented for filing by:

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

_____ Limited, hereby gives you notice pursuant to sec. 43(5) of the Companies Ordinance that by special resolution of the Company dated the _____ day of _____ 19____, the share capital of the Company has been increased by the addition thereto of the sum of L.P. _____ beyond the registered capital of L.P. _____

Copy of the resolution is hereto annexed.

The additional capital is divided as follows:

Number of Shares	Class of Shares	Nominal amount of each share

The conditions (*e.g.*, voting rights, dividends, &c.) subject to which the new shares have been or are to be issued are as follows:-

(If any of the new shares are preference shares, state whether they are redeemable or not. But as to this item see note, infra para(ii) "Particulars.. prescribed").

Signature

(State whether Director, Manager or Secretary).

Dated the _____ day of _____ 194—.

THE COMPANIES ORDINANCE, CAP. 22.

Name of Company

Notice of Increase in Number of Members.

(Pursuant to sec. 43(5)).

Name of Company:

Presented for filing by:

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

_____, Limited hereby gives you notice, pursuant to sec. 43(5) of the Companies Ordinance, that by a special resolution of the company dated the _____ day of _____ 194—, the number of members of the Company has been increased by the addition thereto of _____ members beyond the present registered number of _____.

Copy of the resolution is hereto annexed.

Signature

(State whether Director, Manager or Secretary).

Dated the _____ day of _____ 194—.

Para. (ii): "Particulars.. prescribed": "Prescribed" means prescribed by the High Commissioner (sec. 2(1)), but no orders have been made under this section by the High Commissioner. The necessary entry has, however, been provided in the form given above.

Printed copy of Resolution: The reference to printed copies is obviously due to an oversight. Both the articles and the memorandum must be printed in England, though the Ordinance allows typewritten documents for registration. The draftsman omitted to make the necessary correction in this paragraph⁽²⁾.

See also sec. 21(3).

Fifteen days: See Interpretation Ordinance, sec. 6, for the computation of a period of days.

Sub-sec. (6): See secs. 251-2 and notes.

44.—(1) If in the case of any company the share capital of which is divided into different classes of shares provision is made by the memorandum or articles for authorising the variation of the rights

Rights of holders of special classes of shares.

(2) That typewritten copies will be accepted appears from Kantrovitch-Baker *Palestine Company Practice*, p. 94, where Form 15 mentions printed or typed copies.

attached to any class of share in the company subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and, in pursuance of the said provision, the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than fifteen per cent. of the issued shares of that class, being persons who did not consent to, or vote in favour of, the resolution for the variation, may apply to the court to have the variation cancelled; and, when any such application is made, the variation shall not have effect unless and until it is confirmed by the court.

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

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

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

(5) The company shall, within fifteen days of the making of an order by the court on any such application, forward a copy of the order to the registrar of companies, and if the company fails to comply with this provision, it is liable to a fine of five pounds for every day during which the default continues and every director, manager, secretary or other officer of the company who knowingly and wilfully authorises or permits the default is guilty of an offence and is liable to the like penalty.

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

Source: Sec. 61 of the Act, read, in the case of sub-sec. (5) thereof, together with sec. 365.

Articles, Company, Director, Memorandum, Shares: See definitions in sec. 2(1).

Sub-sec. (1):

See sec. 67(7)(d).

Provision in the Articles: See art. 4 of Table A.

Court is defined in sec. 2(1). The application should be made by motion or petition. See notes to sec. 2(1), following the definition of "Court", *ante*, pp. 19-23, and cross-references therein.

Applications in England (*vide ante*, p. 20, last paragraph) are made by petition (O. 53 B. r. 5(e)) entitled in the High Court of Justice, Chancery Division, and in the matter of the Company, and in the matter of "The Companies Act, 1929" (r. 4); unless otherwise provided in O. 53 B, the Rules of the Supreme Court apply to such proceedings (r. 3). The procedure after filing the petition is similar to that applying in cases of applications in connection with a reduction of capital. See notes to sec. 46, under the same heading.

Variation includes abrogation — sub-sec. (6).

Sub-sec. (2): Seven days: See sec. 6 of the Interpretation Ordinance for the computation of a period of days.

Sub-sec. (5):

Fifteen days: See sec. 6 of the Interpretation Ordinance.

For the penal provisions see secs. 251-2 and notes.

Reference should be made to English text books for the procedure and the rights of shareholders under this section.

Reduction of share Capital.

45.—(1) Subject to confirmation by the court, a company limited by shares or a company limited by guarantee and having a share capital may by special resolution reduce its share capital in any way and, in particular, and without prejudice to the generality of the foregoing power, may—

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

Special
resolution for
reduction of
share capital.

(c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company, and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) A special resolution under this section is in this Ordinance called a resolution for reducing share capital.

Source: Sec. 55 of the Act. The words "if so authorised by its articles" appear, in the Act after the word "may". See art. 44 (d) of Table A which authorises such reductions. Even where Table A does not apply and the articles contain no provision corresponding to art. 44(d), no alteration of the articles are, as in England, required before a resolution is passed to reduce the capital. Another divergence in the texts is noted in the comments to sub-sec. (1)(c).

Definition of Terms: "Company", "court", "memorandum" and "shares" are defined in sec. 2(1).

"Subject to the confirmation by the Court": See sec. 46 and notes.

"Company limited by shares": See sec. 4(1).

"Company limited by Guarantee": Sec. 4(ii).

"— and having a share capital": sec. 9.

Special Resolution: Sec. 66(4).

Cross-references: The remaining sections in this part, up to and including sec. 53, deal with reduction of capital. And see sec. 53A. Secs. 7, 38(1)(c), 43(1)(c) and 43(2) and other provisions are referred to in the notes to the present section, *infra*.

Reduction of Share Capital: Sec. 45 deals with reductions of share capital requiring the sanction of the Court. The section allows wide scope as to the manner in which the reduction may, subject to the provisions of the section, be effected. In addition to these methods of reducing the share capital, other methods are dealt with in the Ordinance, not requiring the sanction of the Court: a) Shares which have not been taken or agreed to be taken may, under sec. 43(1)(c), be cancelled and the amount of the share capital reduced accordingly. This cancellation of the nominal capital is not deemed a reduction of share capital within the meaning of the Ordinance (sec. 43(2)), and only notice of the cancellation must be given to the Registrar (sec. 43(3)). b) Shares may be forfeited by the company for non-payment of calls or other payments, if so provided in the articles. (sec. 42 and see arts. 23-29 of Table A).

Although, strictly speaking, such forfeiture may amount to a reduction of capital (as the shares need not be issued again) no formalities are specified in sec. 42 and it is therefore neither necessary to apply for the sanction of the Court nor even to give special notice to the Registrar other than the entry of the necessary particulars in the annual return to be submitted under sec. 36. See notes to sec. 42. c) Sec. 38(1)(c) provides for the

redemption of shares out of the capital redemption reserve fund; and that that redemption should be governed by the provisions of the Ordinance relating to reduction of capital (save as otherwise provided in sec. 38. See notes to that section.). The reduction of capital according to secs. 45 *sqq.* refers to issued capital, which may or may not be paid up.

Object of Reduction: Reductions of capital under the provisions of this and the following sections may be effected either in cases of profits or of losses: when it results from profits, it may be effected either by reducing the members' liability on the shares (clause (a)) or by paying them back part of the share capital (clause (c)); when it results from loss, part of the share capital is cancelled, so that the issued shares represent the actual value of the company's assets (clause (b)).

"In any way": The reduction contemplated by this part of the Ordinance is not limited to the three methods enumerated in clauses (a) - (c). Any reduction which does not fall within the methods mentioned in the heading *Reduction of Share Capital, supra*, may, subject to the consent of the Court, be effected under the provisions of this and the following sections.

Sub-sec. (1)(c): The words beginning "and may, if and so far as is necessary", at the end of the clause, appear in the act without indentation, so that they refer to clauses (a) and (b) in addition to clause (c). There appears to be no reason for the divergence and the difference in printing is probably due to a technical drafting or printing mistake.

For alteration of the memorandum see sec. 7 read together with the notes and cross-references.

46. Where a company has passed a resolution for reducing share capital, it may apply by petition to the court for an order confirming the reduction.

Application
to court for
confirming
order.

Source: Sec. 56(1) of the Act.

"A resolution for reducing share capital": Sec. 45(2).

Court: The Court is that having jurisdiction to wind up the company. See the notes following the definition of "Court" in sec. 2(1) and cross-references therein (*ante* pp. 19-23). The notes to that definition detail the procedure to be followed generally in applications under the Ordinance. In addition to these general remarks the procedure indicated in the following section should also be observed.

The Court may impose conditions before approving the reduction. Two of these conditions are specifically mentioned in the Ordinance: Alteration of name (sec. 49(2)) and publication of reasons (sec. 53). But in addition to these specific conditions, English practice has recognized that the Courts have a discretion to approve or refuse to sanction a reduction of capital. In the exercise of this discretion the Courts may, indirectly, enforce the compliance of any conditions they may wish to impose for the protection of different classes of shareholders, or any other persons. So long as the conditions suggested by the Court are not complied with, the Court will refuse to sanction

the reduction, leaving the company a *locus poenitentiae* by resolving upon an alteration of the scheme to suit the requirements of the Court⁽¹⁾.

The procedure in England (*vide ante*, p. 20, last paragraph) is also by petition, under O. 53 B, r. 5(c). Applications for directions must be made by summons in chambers (r. 10(1)) and directions will be given as regards publication of notices and the inquiries and dispensation mentioned in sec. 56(2) (47 of the Ordinance). Under r. 11, where an inquiry is ordered, the following provisions apply. An affidavit is filed containing, so far as possible, the names and addresses of the creditors of the company to whom the inquiry extends, the amount due to them, or an estimate of their debt or claim. A statutory form of affidavit and list is annexed (Appendix L) to the R.S.C. Copies of the list of creditors, and a statement of the *total* amount due to them must be kept for inspection at the registered office of the company. A notice should be sent to each creditor named in the list, informing him of the proposed reduction, order of the Judge, the amount of his debt and the time (to be fixed by the Judge) within which he may apply for his name to be entered in respect of a larger amount. A statutory form of notice is also provided. An advertisement of the petition and of the list of creditors should then be published, stating the amount of the proposed reduction, the place where the list of creditors may be inspected and the time within which the creditors of the company not entered and claiming to be entitled to be entered on the list should send particulars of their claim to the solicitors of the Company. A statutory form of advertisement is also provided. An affidavit verifying the above requirements and particulars of communications received should then be filed in statutory form.

Any difference between the company and a creditor or alleged creditor as to his right to, or the amount of, a claim is adjudicated by the Judge. A certificate is thereupon given by the Master or Registrar as to the persons appearing as creditors and the amount of their claim. The hearing of the petition is then advertised and the petition heard.

The petition is entitled in the High Court of Justice, Chancery Division, and in the matter of the company, and in the matter of "The Companies Act, 1929, (r. 4)." The R.S.C. apply to the proceedings, save where special provisions are made (r. 3).

Forms: It is not certain how far the local Courts will follow the English practice outlined above. Statutory forms being provided in the appendix to O. 53 B, it is easy to adapt the necessary form to any given set of facts. For a form of petition see Kantrovitch-Baker *Palestine Company Practice*, pp. 108-9.

See also notes to sec. 47.

For a form of order confirming a reduction, see notes to sec. 49.

47.—(1) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and

Objections by
creditors and
settlement of
list of object-
ing creditors.

⁽¹⁾E.g., *Direct Spanish Telegraph Co., In re* [1886] 34 Ch. D. 307; 56 L.J.Ch. 353; 55 L.T. 804; 3 T.L.R. 240.

in any other case if the court so directs, every creditor of the company who, at the date fixed by the court, is entitled to any debt or claim which, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction.

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

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

- (a) if the company admits the full amount of his debt or claim or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;
- (b) if the company does not admit, or is not willing to provide for, the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the court after the like enquiry and adjudication as if the company were being wound up by the court.

(4) Where an application has been made to the court for the confirmation of a reduction of capital to which this section would otherwise apply, the court may, if having regard to any special circumstances of the case it thinks proper to do so, direct that this section shall not, as regards any class or any classes of creditors, apply in relation to the reduction to which the application relates, and where the court so directs, the consent of the creditors of that class or those classes to the reduction shall not be required.

Source: Sub-secs. (2) and (3) of sec. 56 in the Act. There are certain drafting divergences and rearrangements. "May", in the first line of sub-sec. (2) is substituted for "shall" of the Act. Sub-sec. (4), which corresponds with sub-sec. (3) in the Act, is entirely re-written, giving more clearly the effect intended. A diversion in sub-sec. (3) is considered in the notes to that sub-section.

Sub-sec. (1): For the Court having jurisdiction and for the procedure to be followed, see notes following definition of "Court", in sec. 2(1) and cross-references therein. The affidavit in support should state particulars as to the incorporation of the company (name, dates, etc.), the objects, classes of shares, a history of the company's activities, the fact that a resolution was passed for reduction of capital and the particulars requisite to show that the reduction should be made and approved. It should exhibit the memorandum (which will have to be altered) and the resolution (showing the authority to reduce). Articles need not, it is submitted, be exhibited as in England⁽¹⁾; having regard to the divergence in the text of sec. 45 from the Act. See notes thereto. A list of creditors should also be annexed.

See also notes to sec. 46.

Date of commencement of winding-up: See secs. 153 & 197 and notes.

Sub-sec. (2): A citation is made calling upon all creditors to appear and object within a fixed time. Creditors whose names are given in the petition will presumably be summoned individually.

Sub. sec. (3):

"Or determined": The Act reads (sec. 56 (2)(c)) "has not determined". The variant makes the word 'determined' in the Ordinance synonymous with 'ascertained' whilst the intention is that the debt is still due, not that it is unascertained. The wording should therefore be altered. Cf. the wording in sec. 49(1).

Clause (b): See W.U. Rules, rr. 85-96.

Penalty for concealment or misrepresentation.

48. If any director, manager, secretary or other officer of the company wilfully conceals the name of any creditor entitled to object to the reduction, or wilfully misrepresents the nature or amount of any debt or claim of any creditor, or aids, abets, or is privy to, any such concealment or misrepresentation as aforesaid, he is guilty of an offence and is liable to imprisonment for six months or a fine of one hundred pounds.

Source: Sec. 60 of the Act. That section does not provide a penalty but merely states that the offender "shall be guilty of a misdemeanour". See sec. 365 of the Act.

"Director": See the definition of that term in sec. 2(1).

Penal provisions: See generally the notes to secs. 251-2.

⁽¹⁾ *Omnium Investments Co.* [1896] 2 Ch. 127; 64 L.J. Ch. 651.

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

Order
confirming
reduction.

(2) Where the court makes an order confirming a reduction of the share capital of a company, it may, if for any special reason it thinks proper so to do, direct that the company shall, during such period, commencing on or at any time after the date of the order, as is specified in the order, add to its name as the last words thereof the words "and reduced", and those words shall, until the expiration of the period specified, be deemed to be part of the name of the company.

Source: Sec. 57 of the Act, with drafting variations. Sec. 57 also contains the provisions set out in sec. 53 of the Ordinance.

See notes to the remaining sections in this part (secs. 45-8, 50-53A).

In addition to the restrictions which may be imposed by the Court under sub-sec. (2) and sec. 53 (*q.v.*), other conditions may be imposed: See note to sec. 46.

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

Registration
of order and
minute of
reduction.

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

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

(4) The registrar shall certify under his hand the registration of the order and minute, and his certificate shall be con-

clusive evidence that all the requirements of this Ordinance with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

Source: Sec. 58(1)-(4) of the Act, with a minor verbal divergence in sub-sec. (4).

Publication: If the order is also published in the *Gazette* (sub-sec. (3) *infra*), the publication need not (*Cf.* sec. 16) be made through the Registrar, as it is sent by the Court.

Sub-sec. (3): According to the practice applying in other matters before the Courts, publication will probably be ordered in the *Gazette* and in one of the daily periodicals appearing in the language in which the company's activities are normally transacted.

Forms: Kantrovitch-Baker (*op. cit.*) give a form of minutes approved by the Court (Form 32, p. 116) and of an advertisement of an order reducing capital (Form 28, p. 110).

Registrar: See definition in sec. 2(1).

This section should be read together with the notes to secs. 45-9 and 51-3.

Minute to
form part of
memorandum.

51 (1) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of the company and shall be valid and alterable as if it had been originally contained therein and must be embodied in every copy of the memorandum issued after its registration.

(2) If a company makes default in complying with the requirements of this section it is liable to a fine of one pound for each copy in respect of which default is made, and every director, manager, secretary or other officer of the company who knowingly and wilfully authorises or permits the default is guilty of an offence and is liable to the like penalty.

Source: This section is adopted from secs. 58(5) and 24(1) of the Act. The penal provision is adopted from sec. 24(2) of the Act, read together with sec. 365 thereof.

Instead of enacting a penal provision in sec. 58 of the Act, sub-sec. (6) of that section provides that the substitution of such minutes for part of the memorandum is to be deemed to be an alteration of the memorandum within the meaning of sec. 24 of the Act.

See notes to sec. 20 and cross-references.

For the penal provision see notes to secs. 251-2. See definition of "Director" in sec. 2(1) and notes.

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

Liability of members in respect of reduced shares.

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

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

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

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

Source: Sec. 59 of the Act, with verbal divergences.

Member: See sec. 26.

"Unable ——— to pay ——— his debt": See sec. 149.

Contributories: See sec. 179 and cross-references.

53. In any case of reduction of share capital, the court may require the company to publish as the court directs the reasons for reduction or such other information in regard thereto as the court

Publication of reasons for the reduction.

may think expedient with a view to giving proper information to the public and, if the court thinks fit, the causes which led to the reduction.

Source: Sec. 57(2) (b) of the Act.

See also sec. 49(2) and generally the other sections dealing with reduction of capital (secs. 45-52).

Currency
of altered
etc., capital.

53 A. When the capital of any company not being a foreign company is altered under the provisions of this Ordinance, the amount of new shares issued or the capital so altered shall be expressed in Palestine currency:

Provided that if prior to the commencement of this Ordinance any such company was registered with a capital expressed in a currency other than Palestine currency any amount of new shares issued by such company or any alteration of the capital of such company may be expressed in the currency in which the capital of the company is expressed.

This section was enacted by the 1934 Amendment Ordinance. It has no counterpart in the Act.

The original share capital of a company should, under the provisions of sec. 5(1)(d), be expressed in Palestine currency. The first part of sec. 53A therefore provides that the altered capital should also be expressed in Palestine currency. But foreign companies are not registered under the provisions of sec. 5 and existing companies registered before the enactment of the 1929 Ordinance were not subject to the requirement as to Palestine currency in sec. 5(1)(d). Sec. 53A therefore applies to neither type of company; former companies being excluded by the proviso, and foreign companies by the words "not being a foreign company". *Cf.* definition of "Company" in sec. 2(1) which does not apply in the context ("any company").

"A company" could therefore have been used for "any company not being a foreign company".

For foreign companies, see secs. 248-50 and notes.

Sec. 53A applies not only to reductions of capital discussed in previous sections, but to any increase or alteration of capital. See secs. 38, 43, 54 and notes to those sections.

Registration of unlimited company as limited.

Registration
of unlimited
company as
limited.

54.—(1) Subject to the provisions of this section, any company registered as unlimited may register under this Ordinance as limited, 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 the manner provided by this section.

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

(3) In the event of the company being wound-up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs and expenses of winding-up the company, so far as relates to such debts or liabilities as aforesaid.

(4) 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.

Source: Sub-sec. (1) is taken from sec. 16(1) of the Act. But that sub-section also provides for the registration under the Act of companies formerly registered under other enactments; (an obscure provision which was deleted by the Palestine draftsman⁽¹⁾). A cross-reference, in that sub-section, to certain provisions in Part IX of the Act (sec. 333) applies to the enforcement of rights and liabilities relating to unlimited companies registered as limited companies, those same provisions in Part IX of the Act which apply

(1) Cf. Buckley *Companies Acts*, 11th ed., p. 29 and Halsbury (Hailsham), Vol. 5, p. 122, footnote (r).

to companies existing prior to the enactment of the Act and registered thereunder. The original sec. 54(1) of the Ordinance was adopted from that sub-section without regard to the fact that the Ordinance did not contain provisions similar to sec. 333 of the Act. The section was re-enacted in 1936, two sub-sections (3) and (4) being added to provide for the manner of enforcement of rights and liabilities (*infra*). The words "the rights or liabilities of the company in respect of", before "any debt or obligation", omitted by an oversight in the former text, were also added by the 1936 Amending Ordinance. Sub-sec. (2) is taken from sec. 16(2) of the Act. Before the re-enactment of the section in 1936, the words "of any documents with copies" had inadvertently been omitted from the sub-section. Sub-secs. (3) and (4) are taken from sec. 333(3)(f) and (g), respectively, of the Act.

Amendment: The section, in its present form, was re-enacted in 1936. See the previous heading.

Definition of Terms: "Company" "document", "registrar" are defined in sec. 2(1). See notes thereto.

Sub-sec. (2): See sec. 247 and cross-references.

Sub-secs. (3)-(4): See WINDING UP, Part VI, *post*.

Unlimited Company: Sec. 4(iii) and notes.

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

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

Source: This section is taken from sec. 53 of the Act.

See notes to the previous sections and, for unlimited companies, the notes and cross-references following sec. 4(iii).

This section corresponds, as regards the companies to which it applies, to sec. 56, which deals with other companies. See notes to that section.

Reserve liability of limited company.

56. A limited company may, by special resolution, determine that any portion of its share capital which has not been already

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

Reserve liability of limited company.

called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

Source: Sec. 49 of the Act.

Special Resolution: Sec. 66(4).

Compare sec. 55, which deals with unlimited companies registering as limited, providing for a reserve share capital on re-registration.

The Ordinance does not allow the cancellation of such reserve share capital, once created, and it is conceived that the reserve can only be affected by proceeding under sec. 45.

Unlimited liability of directors.

57. (1) In a limited company the liability of the directors or managers, or of the managing director, may, if so provided by the memorandum, be unlimited.

Limited company may have directors with unlimited liability.

(2) In a limited company in which the liability of a director or manager is unlimited, the directors or managers of the company, if any, and the member who proposes a person for election or appointment to the office of director or manager, shall add to the proposal a statement that the liability of the persons holding that office will be unlimited, and the promoters, directors, managers, and secretary, if any, of the company, or one of them, shall, before the person accepts the office or acts therein, give him notice in writing that his liability will be unlimited.

(3) If any director, manager or proposer makes default in adding such a statement, or if any promoter, director, manager or secretary, makes default in giving such a notice, he is guilty of an offence and is liable to a fine of one hundred pounds and is also liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

Source: This section is taken from section 146 of the Act, sub-sec. (3) thereof being read together with sec. 365.

Director: See definition in sec. 2(1) and *cf.* secs. 76(6) and 81.

"If so provided by the memorandum": If no such provision is made in the memorandum, the latter may be altered under, and subject to the provisions of sec. 58.

Unlimited liability: See sec. 143(2) for the liability in winding up of directors who fall under this and the following section.

Limited Company: Sec. 4(1)(ii).

Company, Memorandum: Sec. 2(1).

Member: Sec. 26.

Sub-sec. (3): See Secs. 251-2.

Unlimited liability of Members: See sec. 112.

Special
resolution
of company
making
liability of
directors
unlimited.

58. (1) A limited company, if so authorised by its articles, may by special resolution, alter its memorandum so as to render unlimited the liability of its directors or managers, or of any managing director.

(2) Upon the passing of any such special resolution, the provisions thereof shall be as valid as if they had been originally contained in the memorandum, and a copy thereof shall be embodied in, or annexed to, every copy of the memorandum issued after the passing of the resolution.

(3) If a company makes default in complying with the requirements of this section, it is liable to a fine of one pound for each copy in respect of which default is made; and every director, manager, secretary or other officer of the company who knowingly and wilfully authorises or permits the default is guilty of an offence and is liable to the like penalty.

Source: Sec. 147 of the Act. But sub-sec. (3) and the latter part of sub-sec. (2), requiring copy of the alteration to be annexed to the memorandum, do not appear in sec. 147 of the Act, as this requirement is already imposed by sec. 24 of the Act in respect of any alteration in the memorandum. (The Ordinance follows, in this respect, the Act of 1908). The same provisions which are set down in sec. 24 of the Act in cases of alterations to the memorandum, also appear in sec. 21(3) and (4) of the Ordinance and may have been repeated in sec. 58 by way of reminder. See also notes to sec. 51, under the same heading.

For alteration of the memorandum generally, see notes to sec. 7.

Sec. 57 deals with companies whose memorandum already sets out provisions regarding the unlimited liability of directors. See the notes to that section.

"If so authorised by its articles": Even if the articles do not contain such authority, they may be amended accordingly (see notes to sec. 12) and the resolution may then be passed.

Special Resolution: See sec. 66(4).

Sub-sec. (3): See secs. 251-2 and notes.

Unlimited liability of Members: See sec. 112.

PART IV. — MANAGEMENT AND ADMINISTRATION.

Office and name.

59. (1) Every company shall, as from the day on which it begins to carry on business, or as from the twenty eighth day from the date of its incorporation, whichever is the earlier, have a registered office in Palestine to which all communications and notices may be addressed.

Registered
office of
company.

(2) Notice of the situation of the registered office, and of any change therein, shall, within twenty eight days after the date of the incorporation of the company or of the change, as the case may be, be given to the registrar of companies who shall record such notice.

(3) If a company makes default in complying with the requirements of this section it is liable to a fine of five pounds for every day during which the default continues, and every director, manager, secretary or other officer of the company who knowingly and wilfully authorises or permits the default is guilty of an offence and is liable to the like penalty.

Source: Sec. 92 of the Act read (as regards sub-sec. (3)) in conjunction with sec. 365. Sub-sec. (2) in the Act also contains a proviso that the inclusion in the annual return of the company of a statement as to the registered address of the company must not be considered as satisfying the requirements of the sub-section. The same provision appears in sec. 36(7) of the Ordinance.

Another verbal divergence may be found in the sub-title to this and the following section. It reads, in the Act: "*Registered Office and Name*".

"*Begins to carry on business*": See sec. 92.

Company, Registrar of Companies: See definitions in sec. 2(1).

"*Twenty eight days*": See sec. 6 of the Interpretation Ordinance for the computation of days.

Annual Return: Under sec. 36(3) and (4)(a), notice of the registered office of the company must be submitted once a year to the Registrar, together with the annual return.

Form: The following is a form of notice to be used under the section.

THE COMPANIES ORDINANCE, CAP. 22.

Name of Company

Notice of

Situation of Registered Office or of any change therein.

(Pursuant to sec. 59).

Name of Company:

Presented for filing by:

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

_____ Limited, hereby gives you notice, in accordance with sec. 59 of the Companies Ordinance, that the Registered Office of the Company is situated at (or, in the case of a change) is now situate at _____

Signature:

(State whether Director, Manager or Secretary).

Dated this _____ day of _____ 194—.

Fees: A fee of 100 mils is made payable, for recording the registered address or any change therein, by the last item in Part I of the sixth Schedule.

Foreign Companies: See secs. 248(2)(c), and 250(1).

Residence, Domicile: A company, like a person, may have different countries of domicile and residence. Although the registered office may indicate residence, it is not always conclusive as to the residence of a company.

The place of residence may often involve important questions, such as the manner of suing a company, or the assessment of its profits for purposes of income tax (see that title). Reference should be made to English text books for the determination of those questions.

Sub-sec. (3): See secs. 251-2 and notes.

Publication
of name by
a limited
company.

60. (1) Every company —

- (a) shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible;
- (b) shall have its name engraven in legible characters on its seal;
- (c) shall have its name mentioned in legible characters in all notices, advertisements and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts and letters of credit of the company, and generally on all mercantile and business documents issuing from, or purporting to be signed by, or on behalf of, the company.

(2) If a company does not paint or affix, or keep painted or affixed, its name in manner required by this section, it is liable to a fine of five pounds for not so painting or affixing its name, and for every day during which its name is not so kept painted or

affixed; and every director, manager, secretary or other officer of the company who knowingly and wilfully authorises or permits the default is guilty of an offence and is liable to the like penalty.

(3) If any director, manager, secretary or other officer of a company or any person acting on its behalf uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorises the issue of any notice, advertisement, or other official publication of the company, or signs or authorises to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque or order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt or letter of credit of the company wherein its name is not mentioned in manner aforesaid, he is guilty of an offence and is liable to a fine of fifty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque or order for money or goods for the amount thereof, unless the same is duly paid by the company.

Source: Sec. 93 of the Act. The marginal note to that section in the Act reads, "Publication of name by company". The addition, in the marginal note to sec. 60 of the Ordinance, of the words "a limited" is not justified, as the section also applies to unlimited companies.

The Act of 1908 had, in the corresponding section, the same marginal note, but that section only applied to limited companies.

In sub-sec. (1)(c) of the Ordinance the words beginning "and generally" were added by the draftsman to the text of the Act. Sub-sec. (2) varies from that in the corresponding part of the Act and should be read together with sec. 365 thereof. Sub-sec. (3) is taken from sub-sec. (4) of the Act, while sub-sec. (3) thereof, which imposes upon the company a maximum fine of £ 50 for failure to comply with clauses (b) and (c) of sub-sec. (1), has no counterpart in the Ordinance. (That provision did not appear in the Act of 1908).

Definitions: The following terms are defined in sec. 2(1): "company", "director", "document".

Cross-references: See sec. 22 and notes under the heading *Cross-references* (in the Ordinance).

Seal: See notes to sec. 82 and cross-references.

Sub-sec. (1), clause (c): Pleadings appear to be excluded from the list of documents set out in this clause (notwithstanding the definition of 'document' in sec. 2(1). See the quotation from H.C. 123/42 given in the notes to sec. 22(1)). Note that the expression used in this context is "business documents".

Penal provisions: See secs. 251-2 and notes.

Annual
general
meeting.

Meetings and proceedings.

61. (1) A general meeting of every company shall be held once at least in every calendar year, and not more than fifteen months after the holding of the last preceding general meeting, and, if not so held, the company and every director or manager of the company who is knowingly a party to the default is liable to a fine of fifty pounds.

(2) When default has been made in holding a meeting of the company in accordance with the provisions of this section, the court may, on the application of any member of the company, call or direct the calling of a general meeting of the company.

Source: Sec. 112 of the Act, which is divided into three sub-sections, the first two, in the Ordinance, being combined into one sub-section.

Company, Director: See the definition of those terms in sec. 2(1).

See art. 45(2) of Table A.

For the meetings see sec. 63, and for the first statutory meeting, sec. 62.

Member: See sec. 26.

Form: The following form of notice may be used to convene the annual general meeting (see also art. 19 of Table A).

Notice of Annual General Meeting.

Name of Company.

Notice is hereby given that the annual general meeting of _____ Limited, will be held at the registered office of the Company at _____ on _____ the _____ day of _____, 194— at _____ o'clock in the fore- (or) afternoon.

Agenda of the meeting:-

[The transfer books and register of members of the company will be closed from the _____ day of _____, 194— to the _____ day of _____, 194—, both days inclusive.]

Dated this _____ day of _____ 194—.

By Order of _____

Signed (Secretary).

Penal provisions: See secs. 251-2 and notes.

It will be noted that the section requires the meeting to be held both during every calendar year and also within fifteen months from the previous meeting.

Applications to Court: See notes following the definition of "Court" in sec. 2(1) *ante*, pp. 19-23), where questions of jurisdiction and procedure are discussed.

Applications under the corresponding section of the Act are made in England⁽¹⁾ by summons (O. 53 B, r. 8(f)) 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).

(1) See *ante*, p. 20, last paragraph.

The Rules of the Supreme Court apply to such summonses (r. 3), but (r. 9) the respondent is not required to enter an appearance.

The powers of the Court under this section are limited to the calling of a meeting, or to directing a meeting to be called. Compare the powers conferred on the Court by sec. 64(2).

62. (1) Every company limited by shares and every company limited by guarantee and having a share capital shall, within a period of not less than one month nor more than three months from the date of the issue of the certificate by the registrar that the company is entitled to commence business, hold a general meeting of the members of the company which shall be called the statutory meeting.

First
statutory
meeting of
company.

(2) The directors shall, at least seven days before the day on which the meeting is held, forward a report (in this Ordinance called "the statutory report") to every member of the company and to every other person entitled under this Ordinance to receive it.

(3) The statutory report shall be certified by not less than two directors of the company, or, where there are less than two directors, by the sole director and manager, and shall state:—

(a) the total number of share allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash and redeemable shares, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted.

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

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

- (d) the names, addresses and descriptions of the directors, auditors, managers, if any, and secretary of the company; and
- (e) the particulars of any contract which, or the modification of which, is to be submitted to the meeting for its approval, together with the particulars of any modification or proposed modification.

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

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

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

(7) Every director of the company who is guilty of, or who knowingly authorises or permits, any default in respect of the foregoing provisions of this section is guilty of an offence and is liable to a fine of fifty pounds.

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

(9) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently

to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(10) If a petition is presented to the court in manner provided by this Ordinance for winding-up the company on the ground of default in filing the statutory report or in holding the statutory meeting, the court may, instead of directing that the company be wound up, give directions for the statutory report to be filed or a meeting to be held, or make such other order as may be just.

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

Source: Sub-secs. (1)-(9) are taken from sec. 113 of the Act. Sub-sec. 10 is taken from sec. 171(2). Sub-sec. (11) is taken from sec. 113(10). Note the following —

Divergences: The marginal note to sec. 113 of the Act reads "Statutory meeting and statutory report" which, it is submitted, is to be preferred to the text in the Ordinance as the first meeting of the company is the statutory meeting and sec. 62 also makes provision for the statutory report. In sub-sec. (1), the words "of the issue of the certificate by the Registrar that" have been substituted for the words "at which" in the Act. In sub-sec. (2) the last twelve words do not appear in the Act. If the addition was intended to entitle debenture holders to a copy of the report (as was the case under the Act of 1908), these words do not appear to have implemented that intention, for in the absence of any provision in the Ordinance entitling persons other than members to receive a copy of the statutory report, the additional words in the Ordinance do not serve to add anything to the text of the Act. In sub-sec. (3)(a) the words "and redeemable shares" have been added to the text of the Act. In clause (d) of the same sub-section, the words "if any" which appear in the Act after the words "auditors" have been omitted in the Ordinance. These two words should, it is submitted, have been retained in the text of the Ordinance, as auditors need not be appointed before the statutory meeting (sec. 105(1)) and the statutory report is forwarded before the statutory meeting. (Cf. the text of sub-sec. (4) where those words appear). In clause (e) of sub-sec. (3), the words "which, or", in the first line, have been added; as a result, it is necessary to give in the statutory report particulars of any contract which is to be submitted for approval, even if no modifications thereof are contemplated. In sub-sec. (5), the Act reads: "to be delivered to the Registrar of Companies for registration" where the Ordinance has "to be filed with the registrar of companies". Sub-sec(7) appears in the Act as sub-sec. (9). Its provisions are rendered more stringent than in the Ordinance by the omission of the words "and wilfully" which appear in the Act after the words "knowingly". In sub-sec. (10), the words "or make such other order as may be just", at the end thereof, have been substituted for a provision in the Act entitling the Court to order any person responsible for the default to pay costs.

Amendments: Sub-sec. 3(a) was amended as shown in the notes thereto.

Sub-sec. (11) was enacted in 1936, in connection with the introduction of private companies (see sec. 25 A and notes).

Definition of Terms: The following terms, appearing in the section, are defined in sec. 2(1): "Company", "court", "registrar" (of companies), "director", "shares", "debentures", "Court" (see notes to sub-sec. (8) *infra*). "Company limited by shares": see sec. 4(i). "Company limited by guarantee" — sec. 4(ii); "...and having a share capital" — sec. 9. For "member" see sec. 26.

This section does not apply to private companies (sub-sec. (11)), to unlimited companies and to companies limited by guarantee which do not have a share capital.

Sub-sec. (1): See sec. 92(3) for the certificate to commence business. Art. 45(1) of Table A acts as a reminder for the compliance with the provisions of this section and see art. 46 thereof.

Sub-sec. (2): The report should be forwarded to members only. Note *Divergences, supra*. For the computation of the days see sec. 6 of the Interpretation Ordinance.

Form: The meeting should be convened as statutory meeting, and not as general meeting. The following notice may be used:

Notice of Statutory Meeting.

Name of Company

Notice is hereby given that the statutory meeting of _____ Limited, will be held at the registered office of the Company at _____ on the _____ day of _____, 194—, at _____ o'clock in the fore- (or) afternoon, for the purpose of considering the statutory report and of conducting all other business which ought to be conducted at such statutory meeting.

Dated this _____ day of _____, 194—.

By order of _____

Signed (Secretary)

Sub-sec. (3)(a): The words "are so paid up, and in either case the consideration for which they" were inadvertently omitted from Drayton's Revised Edition. The Revised Edition of the Laws (Revision) Ordinance, 1937, provided for the insertion of the missing words (Sup. 1, p. 22).

For the preliminary contracts, see sec. 92(4).

Form: The following form may be used:

THE COMPANIES ORDINANCE, CAP. 22.

Name of Company.

Statutory Report.

(Pursuant to sec. 62).

Name of Company:

Presented for filing by:

(See sub-sec. (5)).

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

1. The total number of shares allotted is _____

Of these _____ (if any) are redeemable shares.
 _____ shares (if any) have been allotted as paid up otherwise than
 in cash, viz:

_____ as fully paid up, and
 _____ paid up to the extent of LP. _____ (or _____ %) per share.

The consideration for which these shares have been allotted is as follows:

2. The total amount of cash received by the Company in respect of the shares allotted is as follows:-

For shares allotted wholly for cash LP. _____

For shares allotted partly for cash LP. _____

3. The following is an abstract of the receipts of the Company and of the payments made thereout, up to a date within seven days of the date of this report and particulars concerning the balance remaining in hand:

Receipts		Payments	Balance in hand
From shares and debentures	From other sources		

And the following is an account (or) estimate of the preliminary expenses of the Company:

Details	LP.	Mils

4. The following are the names, addresses and descriptions of the directors, auditors (if any), manager (if any) and secretary of the Company:

Directors:	Name	Address	Description
Auditors:			
Manager:			
Secretary:			

5. The following are particulars of contracts which, or the modification of which are to be submitted to the meeting for its approval, together with the particulars of any modification or proposed modification: _____

Dated this _____ day of _____ 194—.

We hereby certify the above report.

Signed (Directors).

We hereby certify that so much of this report as relates to the shares allotted by the Company and to the cash received in respect of such shares and to the receipts and payments of the Company on capital account is correct.

Signed (Auditors):

(This is not obligatory. See, infra notes to sub-sec. (4)).

Stamping: The filed report (sub-sec. (5)) should be stamped, under Item 35 of the Schedule to the Stamp Duty Ordinance, with 100 mils stamps. The stamp was formerly impressed, but since 1946 adhesive stamps may be used. See note, under this heading, to sec. 36.

Sub-sec. (4): Note that auditors need not be appointed before the statutory meeting (sec. 105(1)). See also note *Divergences, supra*, comments to sub-sec. (3), clause (d). For the allotment of shares see sec. 91.

Sub-sec. (5): See notes to sub-sec. (3) above for form and stamping.

Sub-sec. (7): See secs. 251-2 and notes. Notice that "director" includes any person occupying the position of director (sec. 2(1)).

Sub-sec. (8): As to notices and resolutions, see sec. 66 and notes.

Sub-sec. (10): See sec. 148(b) and notes.

Sub-sec. (11): This sub-section was enacted by the 1936 Amendment Ordinance. See notes to sec. 25A.

Convening of
extraordinary
general
meeting on
requisition.

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

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

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

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

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

(6) For the purposes of this section, the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required by section 66.

Source: Sec. 114 of the Act.

Definition of terms: The following terms are defined in sec. 2(1): "articles", "capital", "company", "director". For "member" see sec. 26. "Registered office" — sec. 59.

"Twenty one days": See sec. 6 of the Interpretation Ordinance.

See also sec. 64(2), *infra* and art. 47 of Table A.

And see sec. 66.

64. (1) The following provisions shall have effect in so far as the articles of the company do not make other provision in that behalf: —

Normal rules
as to
meetings.

(a) a meeting of a company, other than a meeting for the passing of a special resolution, may be called by seven days' notice in writing;

(b) notice of the meeting of a company shall be served on every member of the company in the manner in which

notices are required to be served by Table A in the third Schedule to this Ordinance, and, for the purpose of this provision, the expression "Table A" means that Table as for the time being in force;

- (c) two or more members holding not less than one tenth of the issued share capital or, if the company has not a share capital, not less than five per cent in number of the members of the company may call a meeting;
- (d) in the case of a private company two members, and in the case of any other company three members personally present, shall be a quorum;
- (e) any member elected by the members present at a meeting may be chairman thereof;
- (f) in the case of a company originally having a share capital, every member shall have one vote in respect of each share or each ten pounds of stock held by him: in any other case, every member shall have one vote.

(2) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called or to conduct the meeting of the company in manner prescribed by the articles or this Ordinance, the court, either on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting or of its own motion, may order a meeting of the company to be called, held and conducted in such manner as the court thinks fit, and, where any such order is made, may give such ancillary or consequential directions as it thinks expedient, and any meeting called, held and conducted in accordance with any such order shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.

Source: Sec. 115 of the Act, the marginal note whereof reads, "Provisions as to meetings and notes".

Sub-sec. (1):

Articles, Company: See definitions in sec. 2(1).

Clause (a): See sec. 66(4) for special resolution. For the computation of a period of days, see sec. 6 of the Interpretation Ordinance. See art. 48 of Table A.

Failure to send Notices: "When all the shareholders of a company are present at a meeting, there is in fact a general meeting, and there is no necessity for the observance of any formality to make it so". (*In re Express Engineering Works Ltd.*⁽¹⁾ quoted in C.D.C., Jm. 12/44⁽²⁾). So also, if shareholders assent to a resolution, subject to certain limitations, it is immaterial whether or not a meeting actually took place: See notes to sec. 66, heading *Resolutions passed without a Meeting*.

Clause (b): For notices, see arts. 48 and 106-110 of Table A.

Member: See sec. 26.

Clause (c): Cf. sec. 63.

Clause (d): This clause was re-enacted in 1936 to make provision for quorums in the case of private companies. (See sec. 25A). Under the former clause three members formed a quorum. See arts. 50-1 of Table A.

Clause (e): See arts. 52-3 of Table A.

Clause (f): For companies having a share capital see secs. 4 and 9. Note that the definition of "share" in sec. 2(1) does not apply in this context. See arts. 55-63 of Table A.

Sub-sec. (2): The powers given to the Court under this sub-section are wider than those it can exercise under sec. 61(2). See also sec. 63 for another manner of enforcing the holding of a meeting.

Application to Court: The procedure applicable and the Courts having jurisdiction are discussed in the notes following the definition of "Court" in sec. 2(1). (*Ante*, pp. 19-23). For the procedure applicable in England (*ante*, p. 20-1), see notes to sec. 61(2).

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

(a) if it is a member of another corporation, being a company within the meaning of this Ordinance, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company;

(b) if it is a creditor, including a holder of debentures, of another corporation, being a company within the meaning of this Ordinance, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Ordinance.

Representation of companies at meetings of other companies of which they are members.

(1) [1920] 1 Ch. 466; 89 L.J.Ch. 379; 122 L.T. 790; 36 T.L.R. 275.

(2) 1944, S.C.D.C. 520.

nance or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

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

Source: Sec. 116 of the Act, the marginal note whereof reads, "Representation of companies at meetings of other companies and of creditors."

"Corporations other than companies": See notes to sec. 3 under the heading *Cross references (other enactments)*. (*Ante*, pp. 30-1). Foreign companies (see notes to definition of "Company" in sec. 2(1), *ante*, p. 19), whether registered in Palestine or not, are also included.

Member: Sec. 26.

Company, Debenture, Director: See definitions in sec. 2(1).

Definitions of
ordinary,
extraordinary
and special
resolutions.

66. (1) Resolutions passed by a general meeting of a company shall be ordinary resolutions, extraordinary resolutions or special resolutions.

(2) A resolution shall be an ordinary resolution when it has been passed by a simple majority of such members as, being entitled so to do, vote in person or, where proxies are allowed, by proxy, at a general meeting of which notice has been duly given.

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

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

Provided that, if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed

as a special resolution at a meeting of which less than twenty one days' notice has been given.

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

(6) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed a poll shall be taken to be effectively demanded, if demanded —

(a) by such number of members for the time being entitled under the articles to vote at the meeting as may be specified in the articles, so however that it shall not in any case be necessary for more than five members to make the demand; or

(b) if no provision is made by the articles with respect to the right to demand the poll, by three members so entitled or by one member or two members so entitled if that one member holds or those two members together hold not less than fifteen per cent of the paid-up share capital of the company.

(7) When a poll is demanded in accordance with this section, in computing the majority on the poll reference shall be had to the number of votes to which each member is entitled by the articles of the company.

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

Source: Sub-secs. (3)-(8) are taken from sec. 117 of the Act. The first two sub-sections are new in the Ordinance and have been taken from English practice. The marginal note, which in sec. 117 of the Act reads "Provisions as to extraordinary and special resolutions" has been altered in the Ordinance in view of the different content of sec. 66.

Notices: The forms of notices given in the notes to secs. 61 and 62 may be adapted, with the necessary modifications.

For the notices of meetings referred to in sub-sec. (8), see sec. 64 and arts. 106-110 of Table A.

See also, as to notices, sec. 64 and see sec. 63(6).

Proxies: The following form may be used for a proxy:

PROXY

Name of Company

I _____ of _____, being a member of _____ Limited, hereby appoint _____ of _____ (*alternative proxies may also be named*) as my proxy to vote for me and on my behalf at the ordinary (*or*) extraordinary general meeting of the Company to be held on the _____ day of _____ 194— and at any adjournments thereof.

As witness my hand, etc. this _____ day of _____, 194—.

Signed

(*The articles may require the signature to be witnessed.*)

(See also the form appearing in art. 66 of Table A).

On proxies, see arts. 63-6 of Table A.

Stamping: Item 31, Exemption 1 of the Schedule to the Stamp Duty Ordinance exempts proxies to be used at a meeting from stamp duty otherwise payable as on a power of attorney.

Special Resolutions are required under the Ordinance to alter the articles of the company (sec. 12), the objects (sec. 20), the name (sec. 25) or the capital (sec. 43); to reduce the capital (sec. 45), create a capital reserve fund (sec. 56); make the liability of directors unlimited (sec. 58), pay interest out of capital (sec. 99), appoint inspectors (sec. 103) and to wind up the company, either by the Court (sec. 148) or voluntarily (sec. 196(b)). The articles may provide for other instances where a special resolution is required. See e.g. art. 49 of Table A.

"Twenty one days' notice": See the Interpretation Ordinance, sec. 6 for the computation of a period of days. For waiver of irregularities other than the time of notice see *infra*, *Resolution passed without a Meeting*.

Extraordinary Resolutions are required under the Ordinance for a company to resolve that it cannot, by reason of its liabilities, continue its business and that it is advisable to wind up (sec. 196(c)), to sanction arrangements with creditors in voluntary winding up (sec. 202); to determine, in a voluntary winding up, how to dispose of the books and papers of the company (sec. 235(1)(b)) and for permitting the exercise by the liquidator, in voluntary winding up, of extraordinary powers (sec. 207(10)(c), 225 (1)). The articles may specify other instances where extraordinary resolutions are required.

No period is provided for the notices of the meeting and reference should be made in the articles for any special provisions regarding notices.

See also sec. 67.

Ordinary Resolutions: Any decision which need not, under the Ordinance or the articles, be passed by special or extraordinary resolution, may be passed by ordinary resolution. The Ordinance specifies a number of instances when ordinary resolutions may be used (secs. 55, 196(a), 199, 201), but these are

not exhaustive. Under sec. 117(2) a special majority of 3/4 is required to sanction a compromise with members or creditors.

Resolution passed without a Meeting: As pointed out in the notes to sec. 64 (*Failure to send Notices*) shareholders present at a meeting may, by their conduct, waive the necessity for notices or other formalities. It is customary to insert in the articles of association of private companies an article validating resolutions determined without general meeting but evidenced under the hands of all the members of the company. (See art. 58A given in the notes to sec. 25A, *ante* p. 78). Even in the absence of this special provision in the articles, the shareholders may, by giving their unanimous consent to any transaction of the company so adopt it, notwithstanding any irregularity, as to make the transaction binding upon the company (*Parker & Cooper Ltd. v. Reading*⁽¹⁾ mentioned in C.D.C. Jm. 12/44⁽²⁾) and upon the assenting shareholders, for a shareholder is estopped if he ratifies, be it by acquiescence, any transaction even if it is *ultra vires* the directors (*Phosphate of Lime Co. Ltd. v. Green*⁽³⁾ mentioned in C.D.C., Jm. 12/44⁽²⁾). But there is neither estoppel nor ratification unless the transaction is *intra vires* the company (as distinct from *intra vires* the directors⁽⁴⁾) and honest, and especially unless it is for the benefit of the company (*Parker & Cooper Ltd. v. Reading*, (*supra*)). A special resolution for voluntary winding up is not, for this purpose, a transaction for the benefit of the company (C.D.C., Jm. 12/44, *supra*⁽⁵⁾). In circumstances when ratification is possible it is not necessary that the shareholders should hold a meeting in one room or one place to express their assent simultaneously (*Parker & Cooper Ltd. v. Reading*, (*supra*)). Nor is simultaneous assent necessary to bind the assenting shareholders (*ibid.*)

Chairman: See sec. 64(1)(e).

Arts. 48-66 of Table A may generally be referred to for the proceedings at meetings.

67. (1) A printed or typewritten copy of every such resolution as is hereinafter mentioned shall, within fifteen days after the date of the passing thereof, be forwarded to the registrar of companies and recorded by him.

(2) Where articles have been registered, a copy of every such resolution as aforesaid for the time being in force shall be embodied in, or annexed to, every copy of the articles issued after the passing of the resolution.

Registration
and copies of
resolutions.

(1) [1926] Ch. 975; 96 L.J.Ch. 23; 136 L.T. 117.

(2) 1944 S.C.D.C. 520.

(3) [1871] L.R. 7 C.P. 43; 25 L.T. 636.

(4) As to which see notes to sec. 72.

(5) And in the circumstances of that case there was the added difficulty mentioned by the Court, that a sworn declaration under sec. 207, which was a necessary statutory requirement in connection with a winding up petition, had to be made prior to the dispatch of the notices calling the general meeting. See notes to that section.

(3) Where articles have not been registered, a printed or typewritten copy of every such resolution as aforesaid shall be forwarded to any member at his request, on payment of fifty mills or such less sum as the company may direct.

(4) If a company makes default in forwarding a copy of any such resolution as aforesaid to the registrar it is liable to a fine of two pounds for every day during which the default continues.

(5) If a company makes default in embodying in or annexing to a copy of its articles or in forwarding to a member when required by this section a copy of any such resolution as aforesaid, it is liable to a fine of one pound for each copy in respect of which default is made.

(6) Every director, manager, secretary or other officer and every liquidator of a company who knowingly and wilfully authorises or permits any default by the company in complying with the requirements of this section is guilty of an offence and is liable to the like penalty as is hereby imposed on the company for that default.

(7) For the purposes of this section, the expression "resolution" shall include every resolution or agreement of any of the following classes, that is to say —

(a) extraordinary resolutions;

(b) special resolutions;

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

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

(e) resolutions requiring a company to be wound up voluntarily passed under paragraph (a) of section 196.

Source: Sec. 118 of the Act: Sub-secs. (1)-(3) from the same sub-sections in the Act; sub-secs. (4)-(6) from sub-secs. (5) and (6) read together with sec. 365 of the Act; sub-sec. (7) from sub-sec. (4). The words "and every liquidator" in sub-sec. (6) are adopted from sub-sec. (7) in the Act which deals with liquidators only.

Divergences: The wording of the two enactments varies in a number of respects. The following are the material divergences: a) Sec. 118 refers throughout (and in the marginal note thereto) to "resolutions and agreements" (defined in sub-sec. (4) thereof), while sec. 67 refers only to "resolutions" but defines "resolutions" (sub-sec. (7)) as including certain agreements. b) Sec. 67 allows typewritten copies, where only printed copies can be submitted for registration, etc. under this Act (*Vide infra*).

Sub-sec. (1).

"*Printed or typewritten copy*": Cf. Notes to sec. 43 (5)(ii), *Printed copy of Resolution*.

Fifteen days: See sec. 6 of the Interpretation Ordinance for the computation of a period of days.

Registrar of Companies: See definition in sec. 2(1).

Resolutions to which the Section applies: See *infra*, sub-sec. (7).

Form: The following form may be used for recording a resolution to which the section applies:

THE COMPANIES ORDINANCE, CAP. 22.

Name of Company

Special (or) Extraordinary (or) Ordinary Resolution.

Passed on the _____ day of _____, 194—.

(Pursuant to sec. 67).

At an extraordinary (or, as the case may be) general meeting of the members of _____ Limited duly convened and held at the registered office of the Company (or at _____) on the _____ day of _____ 194—, the following special (or, as the case may be) extraordinary (or) ordinary resolution was duly passed:

(State the resolution)

.....
Signed (Chairman)

(Note that ordinary resolutions being call for registration under sub-sec. (7)).

Fee: A fee of 100 mils is exacted on registration by virtue of the last item in Part I of the Sixth Schedule.

Sub-sec. (2):

"*Where articles have been registered*": Articles need not be registered, by ordinary companies and Table A applies automatically to such companies. (*vide* secs. 8(1), (2) & 10).

Companies limited by guarantee, unlimited companies (sec. 8(1)) and private companies (notes to sec. 25A) must register articles.

This sub-section should be read together with the definition of "articles" in sec. 2(1), the definition including alterations of the articles. See also sec. 12 and notes.

Sub-sec. (3): See the notes to the two previous sub-sections. A "member" is defined in sec. 26. See sec. 21(1).

Sub-secs. (4)-(6): See secs. 251-2 and notes. See the definition of "director" in sec. 2(1).

Sub-sec. (7):

Extraordinary Resolutions: Sec. 66(3).

Special Resolutions: Sec. 66(4).

Clause (c): See in notes to sec. 66, heading *Resolution passed without a meeting*⁽¹⁾.

Clause (d): See sec. 44(1).

Note: The requirements of sec. 43(5) are in addition (regarding the resolution to which they apply), to those of sec. 67.

Minutes of
proceedings of
meetings and
directors.

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

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

(3) Until the contrary is proved, every general meeting of the company or meeting of directors or managers in respect of the proceedings whereof minutes have been so made shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors, managers or liquidators, shall be deemed to be valid.

(4) The books containing the minutes of proceedings of any general meeting of a company shall be kept at the registered office of the company, and shall during business hours, subject to such reasonable restrictions as the company may by its articles or

⁽¹⁾ Buckley, *op. cit.*, p. 279 criticizes the wording of the corresponding provision of the Act in the light of the cases quoted in the heading referred, in the notes to sec. 66, *ante*.

in general meeting impose, so that no less than two hours in each day be allowed for inspection, be open to the inspection of any member gratis.

(5) Any member shall be entitled to be furnished, within seven days after he has made a request in that behalf to the company, with a copy of any of the minutes referred to in subsection (4) hereof at a charge not exceeding fifty mils for every hundred words.

(6) If any inspection required under this section is refused, or if any copy required under this section is not sent within the proper time, the company is liable in respect of each offence to a fine of two pounds and to a further fine of two pounds for every day during which the refusal or default continues, and every director, manager, secretary or other officer of the company who knowingly and wilfully authorises or permits the refusal or default is guilty of an offence and is liable to the like penalty, and the court may, by order, compel an immediate inspection of the books in respect of all proceedings of general meetings, or direct that the copies required shall be sent to the persons requiring them.

Source: Secs. 120 (for sub-secs. (1)-(3)) and 121 for sub-secs. (4)-(6)).

Divergences: In sub-sec. (1) the words "of all proceedings at meetings of its directors or of its managers" in the Act are given in the Ordinance as "of its directors or managers" but with no apparent alteration of meaning. In sub-sec. (3) the arrangement of the words is altered, also without affecting the meaning. There is, in addition, a very minor divergence in sub-sec. (4). For sub-sec. (5), see the notes to that sub-section. Sub-sec. (6) combines sub-secs. (3) and (4) of sec. 121 of the Act. The wording, again, varies in some particulars and the provisions regarding default fines should, in the Act, be read in conjunction with sec. 365 thereof.

Amendments: See notes to sub-sec. (5).

Definition of Terms: The following terms used in the section are explained or defined as shown: "Articles", "company", "court", "director" (sec. 2(1)), "member" (sec. 26), "registered office" (sec. 59).

Sub-sec. (1): See art. 74 of Table A which serves as a reminder to the directors or secretary.

It is customary in Palestine, particularly in the case of small companies, to include the minutes of general meetings and the minutes of board meetings in one book, part of it being used for each set of minutes. These are usually typed on separate sheets and pasted into the book after signature. The Sec-

retary should ensure, if this practice is followed, that the stamp of the company (or seal, sec. 82) or the signature of the secretary, appears across the resolution and the page of the book so as to show, if need arises, that the order of the resolutions has not been tampered with. The pages should be numbered.

Sub-sec. (3): As regards the validity of acts of directors see also sec. 72 and notes. As regards the relations of the company with strangers, *cf.* note *Strangers in relation to the Company*, following sec. 18, *ante* p. 57.

Notice of Board Meetings should be given to all the directors and if a director is not summoned to attend a board meeting, then notwithstanding the provisions of this sub-section, any resolution passed at the meeting is invalid (Mo.D.C., Ha. 219/44⁽¹⁾), following *in re* Homer District Consolidated Gold Mines, *ex parte* Smith⁽²⁾). But if a director is abroad, or cannot be reached, the notice may be dispensed with (Halifax Sugar Refining Co. *v.* Francklyn⁽³⁾) distinguished in Mo.D.C., Ha. 219/44, (*supra*). And as regards acquiescence and estoppel *cf.* notes to sec. 66, *Resolution passed without a Meeting*.

Sub-sec. (5): This sub-section was enacted in its present form by the 1939 Amendment Ordinance. The effect of the amendment was to substitute the words "copy of any of the minutes referred to in subsection(4) hereof" for the words "copy of any such minutes as aforesaid". The former sub-section followed the wording of sec. 121(2) of the Act, but the effect of the two enactments was not the same: Sec. 121(1) of the Act refers to minutes of proceedings of general meetings, so that the words "any such minutes as aforesaid" in sec. 121(2) can only refer to minutes of general meetings. But the combination, in sec. 68 of the Ordinance, of the provisions of both secs. 120 and 121 of the Act, resulted in the words "such minutes as aforesaid" in sub-sec. (5) applying equally to minutes of general meetings and minutes of directors' meetings. The position before the amendment was that members were entitled to be supplied with copies of minutes of directors' meetings in addition to the minutes of general meetings. The alteration in wording brought about by the amendment, therefore restricted the scope of sub-secs. (5) and (6), and brought these two sub-sections in line with the English model.

"*Within seven days*": For the computation of a period of days see sec. 6 of the Interpretation Ordinance.

Sub-sec. (6): See notes to sub-sec. (5). For the penal provisions see secs. 251—2 and notes.

Applications to Court: Notes on the procedure applicable and the Courts having jurisdiction follow the definition of Court in sec. 2(1). *Ante*, pp. 19—23. In connection with the remarks appearing in the last paragraph at p. 20, it should be stated that in England the procedure is on application by summons under O. 53 *v. r.* 8(b). The rules of the Supreme Court apply to the proceedings (*r.* 2), but the respondent is not called upon to enter an appearance.

(¹) 1944, S.C.D.C. 166.

(²) [1888] 39 Ch. 546; 58 L.J.Ch. 134; 60 L.T. 97.

(³) [1890] 59 L.J.Ch. 591; 62 L.T. 563.

(r. 9). The proceedings are entitled in the High Court of Justice, Chancery Division, and in the matter of the Company and in the matter of "The Companies Act, 1929"

69. Where a resolution is passed at an adjourned meeting of—

Date of
resolution.

(a) a company,

(b) the holders of any class of shares in a company,

(c) the directors of a company.

(d) any creditors or contributories of a company,

the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed and shall not be deemed to have been passed on any earlier date.

Source: Sec. 119 of the Act and, as regards clause (d), sec. 287.

Compare art. 54 of Table A which authorises adjournments and waives the requirement of notices if the adjournment is for less than ten days.

In referring to English cases bearing on this question, regard should be had to the fact that the 1929 Act brought a change in the existing law under the former Act and cases decided prior to 1929 no longer apply.

Clauses (a)—(d) do not exhaust all the meetings which may be held by the company.

See also sec. 197.

Appointment, qualification, liability, etc., of Directors.

70. (1) Every company registered after the commencement of this Ordinance shall have at least two directors.

Restriction on
appointment
of directors.

(2) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company or intended company in any prospectus issued by or on behalf of the company or as proposed director of an intended company in any prospectus issued in relation to that intended company or in any statement in lieu of prospectus filed by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus or the filing of the statement in lieu of prospectus, as the case may be, he has, by himself or by his agent authorised in writing, —

(a) signed and filed with the registrar of companies a consent in writing to act as such director, and

(b) either signed the memorandum for a number of shares not less than his qualification, if any, or taken from the company and paid or agreed to pay for his qualification shares, if any, or signed and filed with the registrar an undertaking in writing to take from the company and pay for his qualification shares, if any, or made and forwarded to the registrar a statutory declaration to the effect that a number of shares not less than his qualification, if any, are registered in his name.

(3) Where a person has signed and filed such an undertaking, he shall, as regards those shares, be in the same position as if he had signed the memorandum for that number of shares.

(4) On the application for registration of the memorandum and articles of a company, the applicant shall deliver to the registrar a list of the persons, if any, who have consented to be directors of the company, and, if the list contains the name of any person who has not so consented, the applicant is guilty of an offence and is liable to a fine of fifty pounds.

(5) This section shall not apply to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company was entitled to commence business, nor to the appointment and qualification of directors of companies which have no share capital.

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

Source: Sub-sec. (1) is taken from sec. 139(1) of the Act; Sub-sec. (2) from sec. 140(1); sub-sec. (3) from sec. 140(2); sub-sec. (4) from sec. 140(3); sub-sec. (5) from sec. 140(4)(a) and (d); sub-sec. (6) from sec. 139(2) and 140(4)(b).

For divergences, see notes to clause (b) of sub-sec. (2), and sub-secs. (5) and (6).

Amendments: See sub-sec. (6).

Sub-sec. (1): The definition of "Company" in sec. 2(1) does not apply in this context as the definition includes existing companies whilst the sub-section applies only to companies registered after the commencement of the Ordinance. See notes and cross-references following the definition.

Private Companies: This and the following four sub-sections do not apply to private companies, (See sub-sec. (6)). (It is customary, in the case of private companies, to nominate the director(s) in the articles of association. See clause IIC in the notes to sec. 25A, ante p. 78).

As on 29.5.1946